IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI PRASHANT MAHARISHI, A.M.

ITA.No.2269/Del./2017
Assessment Year 2007-2008

M/s. Supersonic Technologies Pvt. Ltd., A-104, Panchal Complex, Chand Vihar, IP Extension, Delhi – 110 092. PAN AAICS6245A	vs.	The PCIT-8, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Advocate & Shri Ashish Chadha, C.A.
For Revenue :	Shri S.S.Rana, CIT-D.R.

ITA.No.2857/Del./2017
Assessment Year 2007-2008

M/s. SPJ Hotels Private Limited, New Delhi-110017 PAN AAKCS7722C C/o. Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi – 110 085.	vs.	The PCIT-8, Room No.297, Central Revenue Building, IP Estate, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Goel, Advocate.
For Revenue :	Shri S.S.Rana, CIT-D.R.

ITA.No.2527/Del./2017
Assessment Year 2007-2008

M/s. Shiv Sai Infrastructure (P) Ltd., New Delhi-110048. PAN AAJCS5095B C/o. M/s. RRA Taxindia, D-28, South Extension, Part-I, New Delhi – 110049.	vs.	The PCIT, Delhi-8, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Ashwani Taneja & Shri Somil Agarwal, Advocates
For Revenue :	Shri S.S.Rana, CIT-D.R.

ITA.No.3301/Del./2017
Assessment Year 2009-2010

M/s. Superior Buildwell Private Limited, A-43, Allahabad Bank, CGHS Apartments, Mayur Vihar, Phase-III, Chilla Regulator, Delhi.PAN AALCS9413R	vs.	The PCIT-8, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Advocate & Shri Ashish Chaddha, C.A.
For Revenue :	Shri S.S.Rana, CIT-D.R.

Date of Hearing :	15, 16 & 25.10.2018
Date of Pronouncement :	10.12.2018

ORDER

PER BHAVNESH SAINI, J.M.

This Order shall dispose of all the appeals filed by different Assessees challenging the Orders under section 263 of the I.T. Act, 1961. Since issue is common in all the appeals, therefore, all appeals were heard together and are decided through this common consolidated Order.

2. We have heard the Learned Representatives of both the parties and perused the material available on record.

ITA.No.2269/Del./2017 – M/s. Supersonic Technologies Pvt. Ltd., Delhi.

3. The facts of the case are that original return of Income in this case was filed on 20.10.2007 at NIL income. The notice under section 148 of the Income Tax Act, was issued on 25.03.2014 after recording the reasons and taking prior approval from the competent authorities. The assessee in response to the statutory notice vide letter dated 10.04.2014

submitting therein that the original return filed may please be treated as return filed in response to the notice under section 148 of the I.T. Act and also requested to provide reasons recorded, which were duly provided to it. The assessee also filled its objections which were disposed off. The A.O. issued statutory notice which were complied by the assessee and filed details as called for. The A.O. after discussing the case with the assessee, accepted the returned income and completed the re-assessment order under section 147/143(3) of the I.T. Act, 1961, on Dated 30.06.2014.

3.1. The Ld. Pr. CIT on examining the assessment record noticed that though the assessment was reopened under section 148 of the I.T. Act on the allegation of accommodation entry taken from Shri S.K. Jain group of concerns who were searched on 14.09.2010 by the Investigation Wing of the Income Tax Department, some of the A.O's did not examine the seized material in the form of cash book and books containing the details of cheques issued by such concerns

seized from the premises of Shri S.K. Jain during the course of search. The Investigation Wing, Delhi, forwarded the hard copy of appraisal report to the then Commissioner, Delhi-III, which was received by him on 15.03.2013, the relevant seized material (containing many thousands of pages) was scanned and sent to the Commissioner of Income Tax in soft copy. However, while completing the assessment under section 147 r.w.s. 143 of the I.T. Act, though the A.O. referred the appraisal report but did not look into the relevant seized material in soft copy. This was one of the case where the A.O. did not examine the seized material. Accordingly, a show cause notice under section 263 of the I.T. Act was issued to the assessee on 27.01.2017 which is reproduced in the impugned order. In the show cause notice it is stated that the case was reopened on the allegation of accommodation entry of Rs.22 lakhs on account of share application/capital received from M/s. Pelican Finance and Leasing Ltd., M/s. Singhal Securities Pvt. Ltd., M/s. Hillridge Investments Ltd

and M/s. S.R. Cables Pvt. Ltd., a concern of S.K. Jain group of cases. Search and seizure operation was carried out on 14.09.2010 at the premises of Shri Surender Jain and Shri Virender Jain. During the course of search, cash book and bank books of the concerns managed by Shri S.K. Jain group wherein detailed of day-to-day receipts in cash and cheque from/to different persons/firms/companies have been recorded, were seized. On perusal of the re-assessment order, it is noticed that while passing the said order, the A.O. has failed to consider the relevant seized material pertaining to the assessee-company which is mentioned in the Order. It is noted in the notice under section 263 that the amounts received by assessee-company were accommodation entry in lieu of cash given by the assessee-company through Shri Manoj Bansal. The relevant copies of the seized material relating to the assessee-company were given along with show cause notice or during the proceedings under section 263 of the I.T. Act. The assessee-company submitted that the A.O. has considered the

seized material not only at the time of re-assessment but also at the time of recording reasons for re-assessment. The Learned Counsel for the Assessee referred to the reasons recorded by the A.O. wherein there is a mention of accommodation entries provided by the group of Shri S.K. Jain who had floated hundreds of bogus companies to provide accommodation entries in lieu of cash.

3.2. The assessee-company also submitted that during the course of assessment proceedings, assessee-company was asked to furnish income tax returns, confirmations, financials and bank statements, which were duly complied with by the assessee-company. The assessee-company has proved the creditworthiness of the Investors before A.O. Independent notices were issued under section 133(6) of the I.T. Act to the Investor companies by the A.O. The facts were examined based on information provided by the assessee-company. The proceedings under section 263 would amount to the consideration of material which has already been considered

by the A.O. during the assessment proceedings under section 147 read with section 143 of the I.T. Act, and if in case the documents are not available in the files of A.O, then, there is also no scope of revision under section 263 of the I.T. Act. The A.O. has not issued notice under section 143(2) of the I.T. Act during the re-assessment proceedings. The assessee relied upon several decisions in support of the contention that revision proceedings under section 263 may be dropped.

3.3. The Ld. Pr. CIT considering the submissions of the assessee and material on record noted in his findings that the seized papers contains various accommodation entries were provided by such companies to various beneficiaries. The appraisal report was forwarded by the Investigation Wing in the month of March, 2013 to then CIT-III, Delhi in hard copy. The seized material contained many thousand pages. The seized material contained consolidated day-to-day cash transactions of all such shell companies wherein the opening and closing balances of cash has been mentioned. During the

course of search, the entry in the cash book was admitted to be cash and bank balances. The cash is shown as received against the names of many intermediaries. Against the name of some intermediatery cheques have been shown as issued by such companies to various beneficiaries. The details of cheques such as cheque number, name of the bank and date, name of the issuer company and the name of beneficiary is mentioned in these details. It is, therefore, clear that even though the appraisal report has summarized the transactions of the cheques given by the shell companies to the various beneficiaries through intermediaries in the tabular form, the details of cash received from such intermediaries were not tabulated due to voluminous data of day-to-day cash transactions appearing in the seized material. Therefore, all the relevant seized material found from the premises of Shri S.K. Jain group was forwarded to the Commissioner in soft copy after scanning. The assessee-company is also shown as beneficiary as evident from the scanned copy of the seized

material. Against these entries, the name of assessee-company and the name of Shri Manoj Bansal (Mediator) is mentioned. All the cheques were found to be credited in the bank account of the assessee-company. Several scanned copies are attached from pages 9 to 19 of the impugned order. From pages 20 to 26 of the impugned order, summary of the appraisal report, year-wise details of accommodation entries provided by Shri S.K. Jain group to various beneficiary companies were tabulated for the charge of CIT-8. The A.O. has made mentioned details/table as the basis for reopening of the assessment which is clear from the reasons recorded for issue of notice under section 148 of the I.T. Act. From the entry No.230, the name of the assessee-company an amount of Rs.22 lakhs have been mentioned. It would shows that A.O. did not verify or examine the seized material relating to the assessee. The Ld. Pr. CIT also noted that as there is no statutory notice under section 143(2) prescribed in the Act and only non-statutory notice is prescribed, the purpose of which

is to intimate the assessee that the case has been selected for scrutiny and the notices issued on dated 11.06.2014 and 19.06.2014 clearly proves that the case of the assessee has been selected for scrutiny, such show cause notices are nothing but notice under section 143(2). of the I.T. Act. It is also noted by the Ld. Pr. CIT that even though no formal notice under section 143(2) was issued by the A.O, in the letters dated 11.06.2014 and 19.06.2014 it was specifically mentioned that in the absence of the requisite details the assessment would be completed under section 144 of the I.T. Act. The A.O. has not examined this issue in the light of seized material. Therefore, re-assessment order was found to be erroneous in so far as prejudicial to the interests of the Revenue because A.O. failed to look into the seized material. The Order was set aside and restored to the file of A.O. with a direction to examine the seized material and confront the same to the assessee and pass the order in accordance with law.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. Learned Counsel for the Assessee submitted that in this case the value of the share was Rs.10/- with premium of Rs.50/- per share. No business was there in this year. However, assessee proved the identity of the Investors, their creditworthiness and genuineness of the transaction in the matter, therefore, no addition can be made on the ground that shares were issued at excess premium. He has relied upon the decision of Hon'ble Madhya Pradesh High Court in the case of Pr. CIT-(1), Indore vs. Chain House International (P.) Ltd., (2018) 98 taxmann.com 47 (M.P). He has submitted that no cash was appearing against the name of the assessee in the seized paper and that all the papers after scanning were attached in the impugned order and did not relate to the assessee. He has submitted that admittedly no notice under section 143(2) have been issued for completion of the re-assessment proceedings, therefore, re-assessment order dated 30.06.2014 is illegal and

bad in law. He has submitted that in proceedings under section 263 of the I.T. Act only valid re-assessment order can be revised which should be erroneous and prejudicial to the interests of the Revenue. It is not necessary to record all the facts and findings in the re-assessment order. Ld. Pr. CIT cannot sit over the Order of the re-assessment passed by the A.O. The A.O. has taken one of the possible views as per law. Therefore, the re-assessment order cannot be revised under section 263 of the I.T. Act. There is a difference between lack of enquiry and inadequate enquiry. PB-11 is reasons recorded under sections 147/148 of the I.T. Act in which it is mentioned that information/documents in the form of CD, appraisal report along with relevant details has been received from the O/o. CIT-III, New Delhi, Dated 28.03.2013 that the assessee has received and is a beneficiary of accommodation entries provided by the group of Shri Surendra Kumar Jain, Shri Rakesh Gupta, Shri Vishesh Gupta, Shri Navneet Jain and Shri Vaibhav Jain. The accommodation entries have been

provided to various assessees who were re-routing their unaccounted cash through these accommodation entries. Therefore, all the relevant details were before A.O. at the time of reopening of the assessment. PB-17 to 24 are the information called by the A.O. from all Investor Companies under section 133(6) of the I.T. Act at re-assessment stage. PB-25 is objections filed by assessee for reopening of the assessment under section 148. PB 26-27 is queries raised by the A.O. at re-assessment stage along with documents of Investor companies. PB-35 is details of share applicant companies filed. PB-36 is objection decided under section 148 by the A.O. PB-37 to 139 are replies with documents filed by Investor Companies directly to the A.O. under section 133(6) of the I.T. Act. If the CD is not considered by the A.O. at the time of re-assessment order as per notice under section 263 of the I.T. Act, the re-assessment order is bad in law. Learned Counsel for the Assessee relied upon the Order of ITAT, Delhi Bench in the case of M/s. NKG Infrastructure Ltd., New Delhi

vs. Pr. CIT, Circle-3, New Delhi in ITA.No.3825 to 3827/Del./2018, Dated 05.09.2018, in which the issue was validity of proceedings under section 147/148 of the I.T. Act. The assessee submitted before the Tribunal that assessment order in this case is barred by limitation is non-est in the eye of Law. Therefore, the Pr. CIT cannot assume jurisdiction under section 263 of the I.T. Act to revise such assessment order which is non-est in the eye of Law and being barred by limitation. The Tribunal held that the Order which is barred by limitation cannot be revised under section 263 of the I.T. Act by the Pr. CIT. The appraisal report was based on CD and if same is not considered by the A.O, it is non-application of mind by the A.O. to initiate re-assessment proceedings under section 148 of the I.T. Act. Learned Counsel for the Assessee also relied upon decision of the Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunication (2010) 323 ITR 249 (Del.) in which it was held that *"notice under section 143(2)*

was simultaneously issued on filing of the return of income, therefore, it is bad in law and invalid". Learned Counsel for the Assessee relied upon decision of Hon'ble Supreme Court in the case of ACIT & Another vs. M/s. Hotel Blue Moon in Civil Appeal No.1198 of 2010 arising out of SLP (C) No.22973 of 2007, Dated 02.02.2010 in which it was held that "*issue of notice under section 143(2) is mandatory".* Learned Counsel for the Assessee relied upon decision of Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd., (2011) 332 ITR 167 (Del.) in which it was held that *"if the ITO acting in accordance with Law, makes certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the Order should have been written more elaborately."* Learned Counsel for the Assessee also relied upon decision of Hon'ble Delhi High Court in the case of ITO vs. D.G. Housing Projects Ltd., (2012) 343 ITR 329 (Del.) in which it was held that *"the A.O. is both Investigator and Adjudicator. If the A.O. fails to conduct enquiry, he commits*

error and the word 'erroneous' includes failure to make the enquiry. In cases, where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the Order/Inquiry made is erroneous. An Order is not erroneous and prejudicial to the interests of Revenue, unless the CIT hold and records reasons why it is erroneous." Learned Counsel for the Assessee relied upon decision of Hon'ble Delhi High Court in the case of CIT vs. New Delhi Television Ltd., (2014) 360 ITR 44 (Del.) in which it was held that *"once the claim was considered and examined by the A.O, Commissioner cannot set aside the Order without recording contrary finding. This will be contrary to Section 263 of the I.T. Act."* The CIT did not make any investigation by examining the Investors. He has relied upon the Order of ITAT, Delhi Bench in the case of Tirupati Infraprojects Pvt. Ltd., vs. Pr. CIT, Central-II, New Delhi 2016-(5)-TMI-1290-ITAT-Delhi. He has also relied upon the Judgment of Hon'ble Delhi High Court in the case of Globus Infocom Ltd., vs. CIT-IV, Delhi (2014) 369 ITR 14

(Del.). Learned Counsel for the Assessee has also relied upon the Judgment of Hon'ble Delhi High Court in the case of Pr. CIT-8 vs. Shri Jai Shiv Shankar Traders Pvt. Ltd., 2015-(10)-TMI-1765-Delhi-High Court in which it was held that *"no notice under section 143(2) of the I.T. Act was issued to the assessee after 16.12.2010, the date on which the assessee informed the A.O. that the return originally filed should be treated as return filed pursuant to the notice under section 148 of the I.T. Act. Therefore, the same is fatal to the Order of re-assessment."* He has submitted that assessee produced sufficient evidences before A.O. to prove identity of the Investors, their creditworthiness and genuineness of the transaction in the matter. Therefore, A.O. in the re-assessment order correctly accepted the explanation of assessee. In support of the said contention, the Learned Counsel for the Assessee relied upon decisions of Hon'ble Delhi High Court in the case of Pr. CIT vs. Softline Creations P. Ltd., (2016) 387 ITR 636 (Del.) and CIT vs. Fair Finvest Ltd., (2013) 357 ITR

146 (Del.). Learned Counsel for the Assessee, therefore, submitted that since re-assessment order was bad in law because no notice under section 143(2) have been issued to the assessee and that assessee produced sufficient evidences to prove the conditions of Section 68 of the I.T. Act, therefore, revision proceedings under section 263 of the I.T. Act in such circumstances is wholly unjustified.

5. On the other hand, the Ld. D.R. relied upon Order of the Ld. Pr. CIT. He has submitted that appraisal report was sent to the A.O. Pr. CIT noted that creditworthiness was not considered by the A.O. PB-11 is reasons recorded under section 148 of the I.T. Act which is the statement of the A.O. The disputed question cannot be raised for the first time before the Tribunal. The Ld. D.R. relied upon decision of Hon'ble Delhi High Court in the case of Ashok Chaddha vs. CIT (2011) 337 ITR 399 (Del.). The Ld. D.R. relied upon Order of ITAT, Delhi Bench in the case of M/s. Surya Jyoti Software Pvt. Ltd., vs. Pr. CIT, New Delhi vide ITA.No.2158/Del./2017,

Dated 25.10.2017 reported in 2017-TIOL-1775-ITAT-DEL in which the Tribunal noted that *"assessee-company has raised the issue of no notice has been issued under section 143(2) or served upon assessee during the course of re-assessment proceedings. The Tribunal noted that assessee has neither challenged this issue after passing of the re-assessment order nor has raised this issue before Pr. CIT during the course of revisionary proceedings under section 263 of the I.T. Act. The assessee has raised several legal issues/objections before Pr. CIT challenging the validity of the re-assessment proceedings. Even before the Tribunal at the time of filing of the appeal, this issue has neither been raised in the grounds nor has any additional ground been raised so that Department could have got the opportunity to object or respond to such a plea after verifying the record in this regard. Therefore, request of Counsel for Assessee was rejected. It is also noted that the impugned order demonstrated that the issue was neither enquired into nor was verified by the A.O."* The Ld. D.R. similarly relied upon

decision of ITAT, Delhi Bench in the case of Surya Financial Services Ltd., vs. PCIT vide ITA.No.2915/Del./2017, Dated 08.01.2018 reported in 2018-TIOL-74-ITAT-Del. The Ld. D.R. also relied upon decision of ITAT, Delhi Bench in the case of Shankar Tradex Pvt. Ltd., Delhi vs. Pr. CIT-8, New Delhi, vide ITA.No.2999/Del.2017 Dated 16.04.2018 in which similar issue was decided against the assessee. The Ld. D.R. submitted that A.O. has not taken into consideration the material seized during search in the case of Shri S.K. Jain. Therefore, Explanation-2 to Section 263 of the I.T. Act is applicable in this case. The Ld. D.R. relied upon decision of Hon'ble Supreme Court in the case of Deniel Merchants P. Ltd., vs. ITO & Another in SLP (C) No.23976/2017 Dated 29.11.2017 in which SLP have been dismissed where A.O. did not make any proper enquiry while making the assessment and accepting the explanation of assessee in so far as receipt of share application money is concerned. The Ld. D.R. also relied upon decision of Hon'ble Supreme Court in the case of

Rajmandir Estates (P.) Ltd., vs. PCIT (2017) 245 Taxman 127 (SC) and other decisions also on the same proposition that if A.O. did not make any enquiry on the issue, the proceedings under section 263 could be initiated. The Ld. D.R. submitted that no objection was raised before A.O. regarding the issues raised in the present appeal. The Ld. D.R. relied upon decision of Hon'ble Delhi High Court in the case of MAF Academy Pvt. Ltd., 361 ITR 258 and Navodya Castle Pvt. Ltd., 367 ITR 306 which is confirmed by the Hon'ble Supreme Court as well.

6. We have considered the rival submissions and perused the material available on record. The assessee filed original return of income on 20.10.2007. The A.O. issued notice under section 148 of the I.T. Act on 25.03.2014 after recording the reasons for reopening of the assessment. The copy of reasons recorded under sections 147/148 are filed at page 11 of the paper book. In the reasons the A.O. has mentioned that information/documents in the form of CD appraisal report along with relevant details have been received

from the O/o. CIT-3, New Delhi that the assessee has received accommodation entries provided by Shri S.K. Jain group of cases for a sum of Rs.22 lakhs. The A.O. accordingly formed an opinion that income of Rs.22 lakhs chargeable to tax has escaped assessment in the assessment year under appeal. The assessee in response to the said notice filed reply dated 10.04.2014 submitting therein that original return filed may be treated as return filed in response to the notice issued under section 148 of the I.T. Act and requested for copy of the reasons which were supplied and objections of the assessee have been disposed of separately. The A.O. in the re-assessment order did not mention if he has issued any notice under section 143(2) of the I.T. Act upon assessee before completion of the assessment. This issue was raised before Ld. Pr. CIT in the proceedings under section 263 of the I.T. Act that A.O. has not issued notice under section 143(2) of the I.T. Act at re-assessment proceedings. The Ld. Pr. CIT mentioned in the impugned order that assessee was intimated by notices

dated 11.06.2014 and 19.06.2014 that in the absence of requisite details assessment would be completed under section 144 of the I.T. Act. The Ld. Pr. CIT treated the same notices as notice issued under section 143(2) of the I.T. Act. The Ld. Pr. CIT, however, admitted that no formal notice under section 143(2) have been issued to the assessee before completion of the re-assessment proceedings. The Hon'ble Delhi High Court in the case of CIT vs. CPR Capital Services Ltd., (2011) 330 ITR 43 (Del.) held as under :

> *"The Tribunal held that no notice under section 143(2) of the Income-tax Act, 1961 was prepared and served upon the assessee. On appeal:*
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> *Held, dismissing the appeal, that mere noting in the order sheet would not suffice and the copy of the notice issued under section 143(2) of the Act was not available on record. Since the Department had failed to produce the copy the notice under section 143(2) of the Act there was no option but to agree with the findings of the*

Tribunal that no such notice was prepared and served upon the assessee. In the absence of this mandatory requirement of issuing statutory notice under section 143(2) of the Act, the Tribunal had rightly quashed the assessment as null and void."

6.1. The Hon'ble Delhi High Court in the case of Pr. CIT vs. Silverline (2016) 383 ITR 455 (Del.) held that *"Order of re-assessment cannot be passed without notice under section 143(2) of the I.T. Act. The jurisdictional error cannot be cured by Section 292BB of the I.T. Act".* It is, well settled Law that before passing the re-assessment order, A.O. shall have to prepare and serve notice upon assessee under section 143(2) of the I.T. Act. The Ld. Pr. CIT, however, observed that *"no formal notice under section 143(2) have been issued to the assessee".* Therefore, these facts clearly show that before framing the re-assessment order under sections 147/148 of the I.T. Act, no notice under section 143(2) have been prepared, issued and served upon the assessee. Therefore, re-assessment order is

illegal, invalid and bad in law and is liable to be set aside. It is well settled Law that assessee can challenge the validity of the re-assessment proceedings in the collateral proceedings (relating to examination of validity of Order passed) under section 263 of the I.T. Act. We rely upon the Order of ITAT, Mumbai Bench in the case of Westlife Development Ltd., vs. PCIT 49 ITR (Tribu.) 406 in which it was held *"allowing the appeal (i) that jurisdiction aspect of the Order passed in the primary proceedings can be examined in collateral proceedings also. Thus, the assessee could be permitted to challenge the validity of the Order passed under section 263 on the ground that the assessment order was non-est."* Since the re-assessment order itself is bad in law, therefore, Learned Counsel for the Assessee, rightly contended that the same cannot be revised under section 263 of the I.T. Act. Only valid re-assessment order can be revised under section 263 of the I.T. Act. On this ground itself the proceedings under section 263 of the I.T. Act are bad in law and liable to be quashed. We,

accordingly, set aside the Order of Ld. Pr. CIT passed under section 263 of the I.T. Act and quash the same. In view of the above, the remaining plea of the assessee are not required to be adjudicated. However, we may briefly note that A.O. examined entire seized material at the time of recording reasons and re-assessment stage. The assessee produced sufficient evidences at the re-assessment proceedings to prove the identity of the creditors, their creditworthiness and genuineness of the transaction. The A.O. also made direct enquiry by issuing summons under section 133(6) of the I.T. Act to the Investors who have also replied directly to the A.O. Therefore, A.O. rightly accepted the credits as genuine. In view of the above finding, there is no need to give a finding in detail on merits. In view of the above, we allow the appeal of assessee.

7. In the result, ITA.No.2269/Del./2017 of the Assessee is allowed.

ITA.No.2857/Del./2017 – M/s. SPJ Hotels Pvt. Ltd., New Delhi

8. This appeal by Assessee has been directed against the Order of the Ld. Pr. CIT-8, New Delhi, Dated 22.03.2017, for the A.Y. 2007-2008 under section 263 of the I.T. Act, 1961.

9. Briefly the facts of the case are that in this case similar information about entry operators and their beneficiaries of Delhi was received from the O/o. DIT, (Inv.)-II, Delhi, along with detailed report giving working of entry operators with a list of beneficiaries. After making inquiries, the Addl. DIT, Unit-VI of Investigation in his report has established large amount of tax evasion in the transactions between entry operators and the beneficiaries. It was revealed from the list that the assessee-company viz., M/s. SPJ Hotels Private Limited during the previous year relevant to the assessment year under appeal had taken accommodation entries from M/s. Hillridge Investments Ltd., and M/s. Vogue

Leasing & Finance Private Limited in a sum of Rs.5 lakhs each on 28.03.2017. The A.O. reopened the assessment under section 148 of the I.T. Act. Notice under section 148 was issued on 25.03.2014 after recording the reasons and taking prior approval of the Competent Authority. In response thereto, assessee submitted a letter stating therein that it was incorporated on 05.03.2007 and filed first return of income for A.Y. 2008-2009 for the period from 05.03.2007 to 31.03.2008 declaring NIL income. It was, therefore, submitted that NIL return may be treated as return having been filed for A.Y. 2007-2008 under appeal. The assessee asked for copy of reasons for reopening of the assessment. The assessee attended the proceedings before A.O. time to time and filed details of share capital received from 04 parties in a sum of Rs.5 lakhs each i.e., (1) M/s. Hillridge Investments Ltd., (2) M/s. Vogue Leasing & Finance Private Limited (3) M/s. Pelicon Finance & Leasing Limited, and (4) M/s. Pitambara Securities Pvt. Ltd., A.O. disposed of the objections of the

assessee. It is noted in the reasons that he has reason to believe that income chargeable to tax in a sum of Rs.10 lakhs on account of accommodation entries has escaped assessment. The A.O. after considering the evidences and material on record made the addition of Rs.20 lakhs in respect of four corporate entities under section 68 of the I.T. Act and made further addition of Rs.40,000/- on account of commission expenses for taking accommodation entries. The re-assessment order under sections 144/148 Dated 18.03.2015 was passed accordingly.

10. The Ld. Pr. CIT considered the aforesaid re-assessment order to be erroneous and prejudicial to the interests of the Revenue and noted that Investigation Wing has forwarded hard copy of appraisal report to show that assessee received accommodation entries. However, A.O. has taken it at Rs.10 lakhs only as against Rs.1 crore. Show cause notice under section 263 of the I.T. Act was issued stating therein that assessee has received Rs.50 lakhs each as

accommodation entries from Hillridge Investments Ltd., and M/s. Vogue Leasing & Finance Private Limited. Explanation of assessee was called for because the assessment order was erroneous in so far as it is prejudicial to the interests of the Revenue because the A.O. has not examined the seized material and has failed to tax the amount of Rs.1 crore as unexplained credit in the books of account of the assessee. The assessee filed reply in which it was briefly explained that the A.O. in the reasons for reopening of the assessment recorded that there is escapement of income of Rs.10 lakhs. Therefore, entire proceedings are based on non-application of mind by the A.O. The assessee requested for cross-examination to the statement of Shri S.K. Jain. The Pr. CIT noted that correct amount of accommodation entries from both these companies are Rs.50 lakhs each instead of Rs.5 lakhs. The Ld. Pr. CIT also noted that A.O. failed to consider the seized material found during the course of search in the case of Shri S.K. Jain, therefore, A.O. passed the re-

assessment order without proper verification and enquiries. Therefore, re-assessment order was set aside and A.O. was directed to pass the order afresh as per law.

11. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to PB-1 which is reasons recorded for reopening of the assessment in which A.O. found that income of Rs.10 lakhs has escaped assessment. However, the Ld. Pr. CIT noted that amount is Rs.50 lakhs each in both the cases, therefore, escapement of income is of Rs.1 crore. He has, therefore, submitted that reasons recorded for reopening of the assessment are invalid, incorrect and non-existing. Therefore, re-assessment order is invalid and bad in law. He has submitted that A.O. considered the seized material on record and that it is a non-application of mind by the A.O. to frame re-assessment order. In support of this contention, he has relied upon the Judgments of Hon'ble Delhi High Court in the case of CIT vs. Suren International (2013) 357 ITR 24 (Del.),

Judgment of Delhi High Court in the case of PCIT vs. RMG Polyvinyl (I) Ltd., (2017) 396 ITR 5 (Del.) and Judgment of Delhi High Court in the case of SNG Developers Ltd., (2018) 404 ITR 312 (Del.). He has submitted that since re-assessment order was invalid and bad in law, therefore, same cannot be revised under section 263 of the I.T. Act. No cross-examination have been allowed to the statement of Shri S.K. Jain, therefore, re-assessment order is bad in law and cannot be reviewed. He has, therefore, submitted that proceedings under section 263 of the I.T. Act may be quashed.

12. On the other hand, Ld. D.R. relied upon the Order of the Ld. Pr. CIT and submitted that figure in the reasons is wrongly mentioned. He has filed written submissions and relied upon some Judgments as relied in case of Supersonic Technologies Pvt. Ltd., (supra). Therefore, Ld. Pr. CIT rightly considered re-assessment order to be erroneous and prejudicial to the interests of the Revenue.

13. We have considered the rival submissions and perused the material available on record. It is well settled Law that validity of re-assessment proceedings is to be judged with reference to the reasons recorded under sections 147/148 of the I.T. Act. In the present case, A.O. has recorded reasons for reopening of the assessment on 25.03.2014, copy of which is filed at page-1 of paper book. Same reads as under :

> "Reasons for issue of notice u/s 148 of the I.T.Act, 1961 in the case of M/s. SPJ Hotels (PV Limited, PAN AAKCS7722C for the A.Y. 2007-08 - Reg.
>
> 25.03.2014 : Information about entry operators and their beneficiaries of Delhi has been received from the office of the DIT .(Inv.)-II, New Delhi vide letter F. No. DlT(Inv)-148/2011-12/7539 dated 21,03.2012 and F. No. DIT (Inv)-II/U/s 148/ 2012-13/196 dated 12.03.2013 along with detailed report giving working of entry operators with a list of beneficiaries. After making inquiries, the Addl. Directorate of Income Tax, Unit -

VI of Investigation, in his report has established large amount of tax evasion in the transactions between entry operators and the beneficiaries. It is revealed from the list that the assessee company M/s. SPJ Hotels (P) Limited (termed as beneficiary) during the previous year 2006-2007 relevant to Assessment. Year 2007-2008 had taken accommodation entries totaling Rs.l0,00,000/- from the persons/parties (termed as entry operators). These entries have been investigated by the Investigation Wing and found to be given as accommodation entries from entities operated and controlled by Surender Kumar Jain. The details of which are mentioned below :

Beneficiary's Name	Amount (Rs.)	Entry Provider	Cheque/ P.O.No.	Dated
M/s. SPJ Hotels (P) Limited	5,00,000/-	M/s. Hillridge Investments Limited.	011048	28.03.2007
M/s. SPJ Hotels (P) Limited	5,00,000/-	M/s. Vogue Leasing & Finance (P) Limited	011047	28.03.2007

I have very carefully considered the aforesaid piece of information and the modus operandi of the entry operator Surender Kumar Jain and its controlled entities. I find that the quantum of amount of such entries received by the assessee company M/s. SPJ Hotels (P) Limited as per details mentioned above is Rs.10,00,000/-. These accommodation entries taken by M/s. SPJ Hotels (P) Limited are earlier identified and examined by the Investigation Wing to establish that all these entry providing entities were tools in Surender Kumar Jain business of providing accommodation entries in lieu of cash/cheques through which he had drawn a long trail of bank transaction to impart a color of genuineness on these transactions.

In view of facts stated herein above, I am of the considered opinion & belief that the assessee company managed the above said transactions of accommodation entries out of its income from undisclosed sources. In this case, as per records available, the assessee has not filed its return of income

for the A.Y. 2007-08. In view of above, I have reason to believe that income of Rs.10,00,000/- has escaped assessment within the meanings of the provisions of Section 147 of the Income Tax Act, 1961. Therefore, a notice u/s. 148 of the Income Tax Act, 1961 is required to be issued to the assessee company to assess the income escaped as stated hereinabove. As the period to reopen the case exceeds four years and as per records no scrutiny assessment has been done in this case for the A.Y. 2007-08, approval from the Addl. Commissioner of Income Tax, Range-9, New Delhi has been obtained vide letter dated 25.03.2014 to issue notice u/s.148, as per the provisions of Section 151(2) of the I.T. Act.

Therefore issue notice u/s. 148 of the I.T. Act.

Sd/-Virender Kumar Rathee
ITO, Ward 9(2), New Delhi."

13.1. In the aforesaid reasons for reopening of the assessment, it is mentioned that assessee company received

share capital on account of accommodation entries of Rs.5 lakhs each from M/s. Hillridge Investment Pvt. Ltd., and M/s. Vogue Leasing & Finance Pvt. Ltd., based on information and seized material received from Investigation Wing. However, the assessee explained before A.O. that amount in question is Rs.20 lakhs from four parties. The A.O. in the re-assessment order made addition of Rs.20 lakhs on account of unexplained credit on account of accommodation entries received from four parties and also made addition of Rs.40,000/- on account of Commission paid to entry operators. On the basis of the same material, the Pr. CIT initiated the proceedings under section 263 of the I.T. Act on the reasons that amount in question is not Rs.10 lakhs received from these two companies, but, it is Rs.50 lakhs each i.e., Rs.1 crore. Thus, the facts mentioned in the reasons for reopening of the assessment are incorrect and non-existent. The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Atlas Cycle Industries (1989) 180 ITR 319 (P & H) held as under :

"Held (i) that the Tribunal was right in cancelling the reassessment as both the grounds on which the reassessment notice was issued were not found to exist, and, therefore, the Income-tax Officer did not get jurisdiction to make a reassessment."

13.2. Since the facts are totally different as A.O. had reason to believe that Rs.10 lakhs has escaped assessment on account of Rs.5 lakhs received from two companies referred to above, which was ultimately found to be incorrect and non-existent, therefore, there may not be any application of mind on the part of the A.O. to proceed to initiate the re-assessment proceedings. There is no other material available on record except the information received from the Investigation Wing. The A.O. on the basis of the information and material received from Investigation Wing has recorded reasons for reopening of the assessment which was ultimately found to be incorrect and non-existent. It is well settled law that when no new material other than examined by the A.O originally found on

record for the purpose of initiating the re-assessment proceedings, the proceedings under section 148 of the I.T. Act would be invalid and bad in law. We rely upon decision of Delhi High Court in the case of Atul Kumar Swamy 362 ITR 693, Consulting Engineers Services India Pvt. Ltd., 378 ITR 318, Nestle India Ltd., 384 ITR 334 and Priyadesh Gupta 385 ITR 452. The Hon'ble Delhi High Court in the case of SNG Developers Ltd., 404 ITR 312 held that when A.O. initiated the re-assessment proceedings without application of mind, such proceedings would be invalid. A.O. in the present case has failed to verify the information received from Investigation Wing. Therefore, it is non-application of mind on the part of the A.O. to record correct facts in the reasons for reopening of the assessment. In such circumstances, the re-assessment order could not be treated as valid and in accordance with law. Since re-assessment proceedings are invalid and bad in law, therefore, such proceedings could not be revised under section 263 of the I.T. Act. Following the reasons for decision in the

case of M/s. Supersonic Technologies Pvt. Ltd., (supra), we set aside the order passed by the Ld. Pr. CIT under section 263 of the I.T. Act and quash the same.

14. In the result, ITA.No.2857/Del./2017 of the Assessee is allowed.

ITA.No.2527/Del./2017 – M/s. Shiv Sai Infrastructure (P) Ltd., New Delhi.

15. This appeal by Assessee has been directed against the Order of the Ld. Pr. CIT-8, New Delhi, Dated 24.03.2017, for the A.Y. 2007-2008 under section 263 of the I.T. Act, 1961.

16. The facts of the case are that notice under section 148, dated 28.03.2014 was issued to the assessee after recording the reasons and obtaining approval of CIT-3, New Delhi. In compliance to the notice under section 148, the assessee has furnished return on 01.05.2014. The assessee stated before A.O. that the income declared in the ITR under section 148 remain the same as declared in the original return

of income filed under section 139 of the I.T. Act Dated 30.10.2007. It was further stated that income of Rs.33,79,596/- as declared in the return of income under section 139 has been accepted and assessed to tax under section 143(3) vide Order dated 27.11.2009. The A.O. after considering the material on record and summons issued under section 131(1) of the I.T. Act and notice under section 133(6) and other material on record, accepted the return of income and passed the re-assessment order under section 143(3) r.w.s. 147 of the I.T. Act, Dated 30.03.2015.

17. The Ld. Pr. CIT found the said re-assessment order to be erroneous in so far as it is prejudicial to the interests of the Revenue. It is noted that assessment was reopened under section 148 on the allegation of accommodation entries taken from Shri S.K. Jain group of concerns who were searched on 14.09.2010 by the Investigation Wing of the Income Tax Department. Some of the Assessing Officers did not examine the seized material in the form of cash book and the books

containing the details of cheques issued by such concerns seized from the premises of Shri S.K. Jain. Notice under section 263 of the I.T. Act was issued to the assessee which is reproduced in the impugned order in which it is noted that case was reopened on the basis of the allegation of accommodation entry on account of share capital/share premium/share application money from M/s. Hillridge Investments Ltd., and M/s. Vogue Leasing & Finance Pvt. Ltd., concerns of Shri S.K. Jain group of cases. The A.O. accepted the return of income on the basis of confirmations from the said investors. The evidences found during the course of search in the case of Shri S.K. Jain group of cases have not been examined by the A.O. Reply of the assessee was called for in which the assessee explained that the A.O. after examining the entire details and documentary evidences on record and making direct/independent enquiry from both the Investors under sections 131(1) and 133(6) of the I.T. Act, completed the assessment proceedings. The assessee filed all the

documentary evidences before A.O. i.e., confirmation letters from both the Investors, copy of their bank accounts, copy of ITR, copy of PAN, copy of audited balance sheet, copy of Master Data taken from Official website of MCA and assessment order under section 153C/153A in the case of M/s. Hillridge Investments Ltd., The seized papers are only rough papers and no details have been mentioned therein. The Ld. Pr. CIT however, did not accept the contention of assessee and noted that seized documents recovered during the course of search in the case of Shri S.K. Jain group of cases have not been examined and considered by the A.O. while framing the re-assessment order. The Ld. Pr. CIT also noted that verification of the seized documents shows the amount in question is Rs.2.20 crores but as per the details given in the notice under section 263 of the I.T. Act, the amount is mentioned as Rs.2.90 crores. The contention of the assessee that the seized material did not belong to the assessee was

rejected. The re-assessment order was set aside and restored to the A.O. for passing the order afresh as per law.

18. The assessee in the present appeal has challenged the Order under section 263 of the IT. Act. The assessee also moved an application for admission of the following additional ground.

> *"That having regard to the facts and circumstances of the case, Ld. CIT ought not to have revised re-assessment order under section 147/143(3) as the said re-assessment order was void and bad in law due to illegal assumption of jurisdiction."*

18.1. The Learned Counsel for the Assessee submitted that additional ground is legal in nature and no fresh facts are to be investigated. The additional ground goes to the root of the matter and therefore, prayed that the same may be admitted for disposal of the appeal. Learned Counsel for the Assessee relied upon the decision of Hon'ble Supreme Court in

the case of NTPC Limited vs. CIT (1998) 229 ITR 383 (SC) and CIT vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC) and decision of Hon'ble Punjab & Haryana High Court in the case of VMT Spinning Co. Ltd., vs. CIT, Ludhiana and another (2016) 389 ITR 326 (P & H).

19. On the other hand, Learned D.R. objected to the admission of additional ground of appeal.

20. Considering the facts of the case, we are of the view that additional ground is legal in nature and goes to the root of the matter. Therefore the same shall have to be admitted for the purpose of disposal of the appeal. We, accordingly, admit the additional ground of appeal. Learned Counsel for the Assessee contended that re-assessment order in this case under section 143(3)/147 is invalid and bad in law and as such, the same could not be revised under section 263 of the I.T. Act. He has submitted that in fact said issue can be raised in collateral proceedings as is held in the following judicial decisions.

(i) Classic Flour & Food Processing P. Ltd., vs. CIT, Kolkata ITA.No.764-766/Kol./2014, Dated 05.04.2017 of ITAT Kolkata Bench.

(ii) Krishan Kumar Saraf vs. CIT (2016) 46 ITR 387 (ITAT) (Delhi Bench).

(iii) Westlife Development Ltd., vs. Pr. CIT (2016) 49 ITR 406 (ITAT) (Mumbai Bench).

20.1. Learned Counsel for the Assessee referred to several documents in the paper book in support of the contention that entire documentary evidences were filed before A.O. at the original assessment stage as well as in the re-assessment proceedings to prove genuineness of the share capital money received from the Investors. PB-45 is confirmation of M/s. Hillridge Invesment Ltd. PB-46 is bank statement. PB-49 is ITR of M/s. Hillridge Invesment Ltd. PB-50 to 53 are Confirmation, Bank statement and ITR of M/s. Vogue Leasing & Finance Pvt. Ltd. PB-307 is order sheet of the A.O. All documentary evidences were filed before A.O. in both the proceedings. PB-68 is copy of the reasons recorded under section 148 of the I.T. Act in which the amount of Rs.2.90

crores as accommodation entries have been mentioned instead of Rs.2.20 crores. PB-60 is notice under section 148 Dated 28.03.2014. PB-57 is original assessment order under section 143(3) Dated 27.11.2009. He has, therefore, submitted that re-assessment done after four years and in the reasons as well as in the notice under section 148 of the I.T. Act, 1961, the A.O. has not mentioned anything if there was any failure on the part of the assessee to disclose fully and truly all material facts at every stage for the purpose of assessment and re-assessment. The assessee declared share application money received from two parties. However, in the reasons name of none of parties have been mentioned. In the original assessment proceedings an amount of Rs.2.20 crores have been mentioned. Therefore, in the reasons the facts have been wrongly mentioned. All the facts available on record were considered in the re-assessment proceedings, therefore, no new material has been brought on record for reopening of the assessment. All incorrect and non-existing facts have been

mentioned in the reasons for reopening of the assessment. The amount in question is also wrongly mentioned in the reasons. In the books of account of assessee, assessee has shown to have received share application money from two Investors in a sum of Rs.2.20 crores and not Rs.2.90 crores. Learned Counsel for the Assessee referred to various replies filed before A.O. at original assessment stage as well as in the re-assessment proceedings in which it was clearly highlighted that there is application of mind from the side of the A.O. to frame the re-assessment order. PB-300 and 301 is report of the Inspector to show that notice under section 133(6) have been served upon M/s. Vogue Leasing & Finance Pvt. Ltd. PB-319 is the report of the Investigation Wing which clarifies that summons under section 131 and notice under section 133(6) have been issued on the Directors of the assessee-company which have been complied with. Necessary enquiry have been conducted by the Inspector of the Office who has submitted his report without pointing-out any specific discrepancy. PB-

310-317 is order sheet. Learned Counsel for the Assessee relied upon decision of Hon'ble Delhi High Court in the case of Haryana Acrylic Manufacturing Company vs. CIT (2009) 308 ITR 38 (Del.) in which it was held as under :

> *"Conclusion :*
>
> *AO while making assessment under s. 143(3) having made specific queries with regard to share application money in response to which assessee furnished all relevant documents and after considering this material, AO having completed the assessment, it could not be said that income escaped assessment on account of failure on the part of assessee to disclose fully and truly all material facts necessary for assessment, hence reopening of assessment after expiry of four years from the end of the relevant assessment year was invalid."*

20.2. In the case of Well Intertrade (P) Ltd., & Another vs. Income Tax Officer (2009) 308 ITR 22 (Del.) (HC), the Hon'ble Delhi High Court has held as under :

"Conclusion :

Assessee having fully and truly disclosed all the material facts necessary for the assessment as required by the A.O, the precondition for invoking the proviso to Section 147 was not satisfied and therefore, A.O. acted wholly without jurisdiction in issuing notice under section 148 beyond the four year period mentioned in Section 147."

20.3. Learned Counsel for the Assessee submitted that there is totally non-application of mind by the A.O. while framing the re-assessment order, therefore, re-assessment is illegal and bad in law. In support of his contention, he has relied upon decision of Hon'ble Delhi High Court in the case of Pr. CIT vs. RMG Polyvinyl (2017) 396 ITR 5 (Del.), Pr. CIT vs. Meenakshi Overseas Pvt. Ltd., (2017) 99-CCH-28-Del.-HC, Pr. CIT vs. G & G Pharma India Ltd., (2016) 384 ITR 147 (Del.). He

has submitted that there is no approval for reopening of the assessment by the Competent Authority. He has submitted that all the seized papers were considered by the A.O, therefore, reopening of the assessment was bad in law, illegal and as such Ld. Pr. CIT should not assume jurisdiction under section 263 of the I.T. Act.

21. On the other hand, Learned D.R. reiterated the submissions made in the case of M/s. Supersonic Technologies Pvt. Ltd., Delhi. in ITA.No.2269/Del./2017 hereinabove. The Learned D.R. submitted that seized material was not considered by the A.O. Summons under section 131 were not complied with. All material facts were not disclosed. A.O. took the figure of Rs.2.90 crores in the reasons based on information received from Investigation Wing. Therefore, Ld. Pr. CIT correctly invoked jurisdiction under section 263 of the I.T. Act. Assessee cannot challenge validity of re-assessment proceedings under section 263 of the I.T. Act.

22. We have considered the rival submissions and perused the material available on record. It is well settled that the Ld. Pr. CIT while exercising power under section 263 of the I.T. Act could not revise the assessment order which was illegal, bad in law and non-est in the eye of Law. The assessee can challenge the validity of the re-assessment order referred to under section 263 of the I.T. Act being non-est and illegal. The case Laws relied upon by the Learned Counsel for the Assessee are squarely applicable to the facts and circumstances of the case. In the present case, A.O. passed the original assessment order under section 143(3) of the I.T. Act, Dated 27.11.2009. The A.O. has mentioned in the assessment order that details have been filed by assessee and after discussion of the case return of income have been accepted. The assessee in this case received share application money/premium from two parties and filed several documents on record to prove genuine credit in the matter which is accepted by the A.O. Thereafter, re-assessment proceedings

were initiated under section 148 of the I.T. Act. The A.O. in the notice under section 148 as well as in the reasons did not mention if there is any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Therefore, the decisions of Hon'ble Delhi High Court relied upon by the Learned Counsel for the Assessee in the cases of Haryana Acrylic Manufacturing Co. vs. CIT & Another (supra) and Well Intertrade (P) Ltd., and Another (supra), are squarely applicable to the facts of the case. Therefore, the re-assessment done after four years from the end of the relevant assessment year would be bad in law unless the income chargeable to tax has escaped assessment for such assessment year by the reason of failure on the part of the assessee to make return under section 139 or in response to notice issued under section 142(1) or Section 148 or to disclose fully and truly all material facts necessary for assessment for that assessment year. In the absence of any such details mentioned in the reasons or notice under section

148, the re-assessment order would be invalid and bad in law. Further A.O. recorded incorrect facts in the reasons for reopening of the assessment because the amount in question is Rs.2.20 crores but A.O. has mentioned in the reasons the amount of Rs.2.90 crores which escaped assessment. Further, no names of the parties have been mentioned in reasons under section 147 from whom the amount in question have been received by the assessee as accommodation entry. All the facts brought to the notice of the A.O. by the Investigation Wing have been considered by the A.O. while framing the re-assessment and accepted the return of income. Therefore, there was no new material available on record to justify reopening of the assessment or to invoke jurisdiction under section 263 of the I.T. Act, which would also show that there is totally non-application of mind on the part of the A.O. to reopen the assessment in the matter. These facts are sufficient to hold that reopening of the assessment was bad in law, illegal and non-est, therefore, such order could not be revised

in the proceedings under section 263 of the I.T. Act. We, accordingly set aside the Order of the Ld. Pr. CIT passed under section 263 of the I.T. Act and quash the same. In this view of the matter, there is no need to decide the issue on merit. However, we may note briefly that documentary evidences were filed before A.O. at original assessment stage as well as at the stage of re-assessment to prove genuine credit in the matter which have accepted by the A.O. after considering and examining the material on record and calling explanation from the Investors under section 133(6) of the I.T. Act. In this view of the matter, we allow the appeal of assessee.

24. In the result, ITA.No.2527/Del./2017 of the Assessee is allowed.

ITA.No.3301/Del./2017 – M/s. Superior Buildwell Pvt. Ltd., Delhi.

25. This appeal by Assessee has been directed against the Order of the Ld. Pr. CIT-8, New Delhi, Dated 17.03.2017, for the A.Y. 2009-2010 under section 263 of the I.T. Act, 1961.

26. Briefly the facts of the case are that original return of income was filed on 18.09.2009 declaring NIL income. On the basis of information received from Directorate of Investigation Wing of Income Tax Department, it was noticed that during the course of search in the premises of Shri Surendra Kumar Jain group of cases, it was found that assessee has obtained an entry of Rs.2 crores by way of share capital/share application money. The assessment was reopened under section 148 of the I.T. Act, 1961. Notice under section 148 was issued on 18.10.2013. The A.O. issued notice under section 142(1) Dated 22.05.2014 and the assessee in reply thereto, submitted that return already filed may be treated as return filed pursuant to notice under section 148 of the I.T. Act. The A.O. issued notice under section 133(6) to M/s. Supersonic Construction Ltd., and M/s. Oriental Bank of

Commerce for relevant information and verification. The assessee was asked to file details of addition to share capital with complete name, address, PAN and the amount received. The assessee submitted desired details before A.O. and also filed confirmations, audited bank statement, ITR and return of allotment filed with ROC. The A.O. verified the identity, creditworthiness and genuineness of the transaction in the matter and accordingly accepted the return of income vide order under sections 147/143(3) of the I.T. Act, 1961 Dated 30.06.2014.

26.1. The Ld. Pr. CIT found the re-assessment order to be erroneous in so far as it is prejudicial to the interests of the Revenue because information was received that assessee received accommodation entry from Shri S.K. Jain group of concerns and all the seized documents have not been verified by the A.O. Show cause notice was issued to the assessee seeking explanation of credit entry of Rs.1 crores received from Shalini Holdings Ltd. The assessee filed detailed reply which is

reproduced in the impugned order in which the assessee submitted that complete details were filed before A.O. and receipt of share capital money supported by the documents and confirmations. Therefore, re-assessment order is not erroneous in so far as prejudicial to the interests of the Revenue. The Ld. Pr. CIT noted the submissions of the assessee wherein the shares were originally issued to Shalini Holdings Ltd on 25.08.2008 were transferred on 25.03.2010 in favour of Frank Merchantile Private Limited. Seized documents are reproduced in the impugned order. The Ld. Pr. CIT noted that as against the entry in the name of assessee, an amount of Rs.2 crores have been mentioned. However, on verification of the seized material, it was found that total amount of Rs.1 crore as per details given in the show cause notice is there and not Rs.2 crores. It would show that A.O. did not verify and examine the seized material relating to assessee and accepted the explanation of assessee without examining the seized paper. The Ld. Pr. CIT, therefore, found that the seized

documents have not been examined and verified by the A.O. Therefore, re-assessment order was set aside and matter was restored to the A.O. for passing the Order afresh as per provisions of Law.

27. The assessee in the present appeal challenged the Order under section 263 of the I.T. Act as well as filed an application for admission of additional grounds which reads as under :

7.(a) On the facts and circumstances of the case, the learned Pr. CIT has erred, both on facts and in law, in holding that the legality of original assessment proceedings could not be challenged in the 263 proceedings, disregarding the various judicial pronouncements cited by the assessee in this regard.

7.(b) On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in

law in ignoring the fact that the order of the AO reopening the assessment under Section 147 of the Act, without complying with the statutory conditions and the procedure prescribed under the law, is bad and liable to be quashed, and thus, the same could not have been revised under Section 263 of the Act.

7.(c) On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in ignoring the fact that the order of the AO passed on the basis of reasons recorded for reopening of the assessment, which are incorrect on facts and bad in law, is illegal and liable to be quashed, and thus, the same could not have been revised under Section 263 of the Act.

7.(d) On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in

law, in assessing the jurisdiction under Section 263 of the Act, despite the fact that the original assessment having been made without issuing of statutory notice under Section 143(2) of the Act, being itself illegal, the same could not be revised under Section 263 of the Act."

27.1. Learned Counsel for the Assessee submitted that it is legal ground and goes to the root of the matter and without further investigation, same may be admitted for disposal of the appeal.

28. Learned D.R. however, objected to the admission of the additional ground of appeal and submitted that no such ground was taken in the original proceedings and that such ground cannot be taken in the present appeal.

29. Similar issue was considered by us in the above group of appeal in the case of M/s. Shiv Sai Infrastructure (P) Ltd., (supra) and additional ground have been admitted.

Following the reasons for decision of the same, we admit the additional grounds of appeal for the purpose of disposal of the appeal.

30. The Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that no notice under section 143(2) have been issued in the case of assessee. Copy of the order sheet of the A.O. is filed at page 279 of the paper book to show that no notice under section 143(2) have been issued. He has referred to PB-20 which is reasons for reopening of the assessment in which A.O. has mentioned wrong facts of taking accommodation entry of Rs.2 crores. However, assessee has received share capital/premium of Rs.1 crore only in assessment year under appeal. No name of the person from whom assessee received Rs.2 crores have been mentioned in the reasons. The show cause notice under section 263 have been issued for a lesser amount of Rs. 1 crore. If reasons were incorrect for reopening of the assessment, then, re-assessment proceedings would be

invalid and non-est, therefore, Ld. Pr. CIT has no power to review the same under section 263 of the I.T. Act. Learned Counsel for the Assessee referred to several replies filed before A.O. to show all documentary evidences were examined by the A.O. at re-assessment proceedings. There is no co-relation of the seized documents with the assessee. Since the A.O. recorded incorrect reasons for reopening of the assessment and that no notice under section 143(3) have been issued, therefore, re-assessment order is invalid and as such, same cannot be revised under section 263 of the I.T. Act. A.O. made enquiry of all the documents but Ld. Pr. CIT did not make any enquiry on the documentary evidences on record. Learned Counsel for the Assessee submitted that the issue is same as have been considered and decided in the cases of M/s. Supersonic Technologies Pvt. Ltd., M/s. SPJ Hotels Private Limited and M/s. Shiv Sai Infrastructure (P(Ltd., New Delhi (supra).

31. On the other hand, Learned D.R. reiterated the submissions already made in the case of M/s. Supersonic Technologies Pvt. Ltd., (supra) and also submitted that no ground was taken in original proceedings for illegality in the re-assessment proceedings. The issue of notice under section 143(2) is a disputed question and not relevant in the present proceedings. Seized papers are not considered and examined by the A.O. The amount in question is Rs.1 crore only. Therefore, the Order of the A.O. is erroneous in so far as prejudicial to the interests of the Revenue. He has, therefore, submitted that Order under section 263 may be confirmed.

32. We have considered the rival submissions. The issue is same as have been considered in the above three cases viz., M/s. Supersonic Technologies Pvt. Ltd., M/s. SPJ Hotels Private Ltd., and M/s. Shiv Sai Infrastructure (P) Ltd., (supra). In the present case, no notice under section 143(2) have been issued for completion of the re-assessment proceedings and that incorrect facts have been recorded in the

reasons for reopening of the assessment. Therefore, the re-assessment proceedings are invalid, bad in law and non-est and as such, liable to be quashed. We, therefore, following the reasons for decision in the cases of M/s. Supersonic Technologies Pvt. Ltd., M/s. SPJ Hotel Private Ltd., and M/s. Shiv Sai Infrastructure (P) Ltd., (supra), set aside the impugned Order of the Ld. Pr. CIT passed under section 263 of the I.T. Act and quash the same. Accordingly, appeal of the assessee is allowed.

33. In the result, appeal of the Assessee is allowed.

34. To sum-up, all the appeals of the Assessees are allowed.

Order pronounced in the open Court.

Sd/-	Sd/-
(PRASHANT MAHARISHI)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 10th December, 2018
VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.