In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi

Before : Shri Amit Shukla, Judicial Member And
Shri L.P. Sahu, Accountant Member

ITA No. 4861/Del/2015
Assessment Year: 2007-08

Income-tax Officer, Ward 13(12), New Delhi. **(Appellant)**	**vs.**	Jai Gajanan Enterprises Pvt. Ltd., E-292, IInd Floor, Old Double Storey Lane, Ramesh Nagar, New Delhi. PAN-AABCJ6528Q **(Respondent)**

Appellant by	Sh. Surender Pal, Sr. DR
Respondent by	Sh. D.C. Agarwal, Advocate

Date of Hearing	26.02.2019
Date of Pronouncement	15.03.2019

ORDER

Per L.P. Sahu, A.M.:

This appeal filed by the Revenue arises out of the impugned order dated 26.05.2015 of ld. CIT(A)-V, New Delhi for the assessment year 2007-08 on the following grounds :

"1. That the Ld. CIT(A) has erred in law and facts of the case in quashing the reassessment proceedings reopened u/s 148 of the Act holding that the re-opening in this case has not been made in accordance with the law.

2. That Ld. CIT(A) has erred in deleting the addition of Rs. 4,00,00,000/- made u/s 68 of the I.T. Act without appreciating the fact that the entry providers during the proceedings u/s 132 of the I.T. Act, have admitted that the assessee company had taken accommodation entries.

3. That the Ld. CIT(A) was not right in deleting the addition of Rs. 10,00,000/- made on account of commission paid to entry operators out of its undisclosed income.

4. That the Ld. CIT(A) has erred in facts of the case of assessee deserves initiation of penalty u/s 271(1)(c) of the I.T. Act, 1961.

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

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

2. The brief facts of the case are that in this case original assessment was framed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 08.12.2009 at an income of Rs.2,18,162/- as against returned income of Rs.1,08,405/-. Subsequently, after a lapse of four years, i.e., in the year 2013, information from Investigation Wing, New Delhi regarding some accommodation entry racket, operated by one Sh. Surender Kumar Jain group, was received along with list of beneficiaries of such accommodation entries. The name of the assessee-respondent was also reflected in the said list as one of the beneficiaries. The Assessing Officer, noting the modus operandi of entry provider, as reported by Investigation Wing, concluded that the assessee had taken such accommodation entries in the garb of share capital worth Rs.4,60,00,000/- during the year under consideration from various companies. Based on the aforesaid information/details received from Investigation Wing, the Assessing Officer reopened the assessment u/s. 147 by issuing notice u/s. 148 and after recording following reasons :

"The Commissioner of Income Tax-II, New Delhi has forwarded vide F.No. CIT-II/HQ/Misc. File/148/2012-13/ dated 15.03.2013 letter of the Director of

Income Tax Investigation-II, (Delhi)F.-No. DIT (Inv.)-II/ U/s 148/2012-13/197 dated 12.03.2013 giving information about an extensive accommodation entry racket being operated by Shri Surendra Kumar Jain groups of entry operators.

The name of the assessee, M/s JAI GAJANAN ENTERPRISES PVT LTD New Delhi appears in the list of beneficiaries who have taken accommodation entries in the garb of share application money, loan, gifts, bogus sales/purchases or some other ostensible business transaction through the bank accounts existing in the names of the paper/dummy concerns/entities operated by the entry-operators. The accommodation entries have been taken / provided in lieu of certain percentage of commission paid, mostly in cash by the beneficiaries of such entries.

I have perused the information received from the Wing. The report explains at length the modus operand of the entry operators along with the relevant evidence unearthed during the search and post-search investigations. The report brings out the fact that the flow of funds from/between these dummy entities/concerns and the beneficiaries do not represent any genuine or actual business transaction. These dummy entities are not carrying out any actual business, other than the activity of providing accommodation entries in the garb of some ostensible business transactions. The entries in the bank accounts through which the amounts are routed do not have any underlying or actual business transaction. The report of the' Investigation Wing contains comprehensive details comprising, inter alia the Beneficiary's Name, amount Of Entry Taken, Name of Account Holder of Entry giving Account, Bank details of the accounts from which entries are given, the dates of the entries etc. As per the details received, during the year the following entries have been taken by the assessee from the entry operators:-

Chqeue Book Date	From Company Name	To Company Name	Name of issuing Bank	Cheque / RTGS / PO No.	Cheque Date	Amount (In Rs.)	Name of the Middle man	Annexure No.	Page No.
20-03-2007	Nisha Holding Ltd.	Jai Gajanan Enterprise s Pvt. Ltd.	UTI	Ch. No. 068294	20-03-2007	6000000	Arun Ji	A-66	49
21-03-2007	Nisha Holding Ltd.	Jai Gajanan Enterprise s Pvt. Ltd.	UTI	Ch. No. 083775	21-03-2007	6000000	Arun Ji	A-66	49

21-03-2007	Mega Top Promotors Pvt. Ltd.	Jai Gajanan Enterprise s Pvt. Ltd.	UTI	Ch. No. 011213	21-03-2007	6000000	Arun Ji	A-66	49
21-03-2007	Nisha Holding Ltd.	Jai Gajanan Enterprise s Pvt. Ltd.	UTI	Ch. No. 083775	21-03-2007	6000000	Arun Ji	A-66	49
21-03-2007	Mani Mala Delhi Property Pvt. Ltd.	Jai Gajanan Enterprise s Pvt. Ltd.	UTI	Ch. No. 008517	21-03-2007	6000000	Arun Ji	A-66	49
24-03-2007	Euro Asia Venture Capital	Jai Gajanan Enterprise s Pvt. Ltd.	UTI	Ch. No. 050206	26-03-2007	8000000	Arun Ji	A-66	49
28-03-2007	Micro Land Developer s Pvt. Ltd.	Jai Gajanan Enterprise s Pvt. Ltd\	UTI	Ch. No. 009719	29-03-2007	4000000	Arun Ji	A-66	49
28-03-2007	SJ & AJ Buildtech & Town Pvt. Ltd.	Jai \ Gajanan Enterprise s Pvt. Ltd^	UTI	Ch. No. 009207	29-03-2007	4000000	Arun Ji	A-66	49

The total of the above accommodation entries taken by the assessee company comes to Rs.4,60,00,000/- Taking, on a conservative basis, the rate of commission paid to entry operators (AT THE RATE OF 2%), the assessee has also paid the said amount of commission (Rs.9,20,000/-) to the entry operators out of undisclosed sources. Having perused and considered the information received from the Investigation Wing, as discussed above and in the circumstances of the case, I have reason to believe that income of the assessee to the extent of Rs. 4,69,20,000/- has escaped assessment and the case is fit for issuing notice u/s 148 of the Income Tax Act, 1961.

5. Income Tax Return in the case for the A.Y. 2007-08 was filed by the assessee company on 30.10.2007 at Nil income. Assessment in the case was completed u/s 143(3) on 08.12.2009 at Rs.2,18,160/-.The information received from the investigation wing and the findings relating to the transaction were not available to the AO at the time of making assessment u/s 143(3) 08.12.2009.The assessee has intentionally avoided to furnish true and complete particulars of this transaction. Thus the income of the assessee has escaped assessment by reason failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment attracting the first proviso read with Explanation 1 to section 147 of the I T Act.

6. It is, therefore, requested that the necessary approval may kindly be accorded as per the provisions of section 151 of the Income-tax Act 1961."

Based on the aforesaid reasons recorded, the Assessing Officer, therefore, made an addition of Rs.4,00,00,000/- as bogus share capital u/s. 68 of the IT Act and addition of Rs.10,00,000/- on account of commission paid @ 2.5% for receiving alleged accommodation entries. The assessee carried the matter in appeal before the ld. CIT(A), who after considering the detailed submissions of the assessee and various case laws cited by the parties, deleted the addition by holding the reopening of case as void. Aggrieved by the impugned order, the Revenue is in appeal before the Tribunal, inter alia, on the grounds, mentioned herein above.

3. During the course of hearing, the ld. DR, relying upon the findings reached by the Assessing Officer, submitted that the ld. CIT(A) was not justified in holding the reassessment as invalid and consequently in deleting the additions made by the Assessing Officer. The assessee failed to produce any of the directors of companies, from whom share application money was received. Barring directors of three companies, no response was received from directors of other companies in compliance to summons u/s. 131. Therefore, only because the assessee had submitted some documents pertaining to the investing companies, would not go to discharge the onus that lay on the assessee under section 68 of the Act. Reliance is placed on the decision of Hon'ble Delhi High Court in the case of CIT vs. Nova Promoters & Finlease (P) Ltd., 342 ITR 169 (Del) and CIT v. NR Portfolio Pvt. Ltd., 263 CTR 456 (Del.) as also relied by the Assessing Officer. Various other decisions have also been relied by the ld. DR in support of the reassessment order.

4. The learned Authorized Representative, on the other hand, repudiating the contentions of the ld. DR submitted at the outset that the notice u/s. 148 has been issued on 29.03.2014 after expiry of four years from the relevant assessment year, i.e., 2007-08, but it does not mention that any sanction of competent authority was obtained as required u/s. 151 of the Act before issuing the notice u/s. 148. Therefore, only on the basis of this statutory lapse on the part of Assessing Officer, the re-opening of completed assessment is liable to rendered as void. For this proposition, the ld. AR has relied on the following decisions :

(i). CIT v. H.M. Constructions (2014) 43 taxmann.com 105 (Kar)

(ii). Maruti Clean Coal & Power Ltd. vs. ACIT (2018) 89 taxmann.com 340 (Chhattisgarh)

(iii). Reliable finhold Ltd. vs. UOI (2015) 54 taxmann.com 318 (Alld.)

(iv). Smt. Sonu Khandelwal vs. ITO (2018) 97 taxmann.com 431 (Jaipur-Trib.)

4.1 It was next contended that the assessment has been reopened on borrowed satisfaction, i.e., only on the basis of information of the Investigation Wing and no independent inquiry is made by Assessing Officer before forming the belief of escapement of income. Thus, the reassessment is void having been made only on borrowed satisfaction. For this proposition, reliance is placed on the following decisions :

- PCIT v. Meenakshi Overseas (P.) Ltd. [2017] 82 taxmann.com 300 (Delhi);
- Harikishan Sunderlal Virmani v. DCIT [2017] 88 taxmann.com 548 (Gujarat);
- Kothi Steel Ltd. v. ACIT [2016] 72 taxmann.com 252 (Gujarat)
- CIT v. SPL'S Siddhartha Ltd. [2012] 17 taxmann.com 138 (Delhi)

- DCIT, CIRCLE-3 (3), MUMBAI VERSUS M/S SHAPOORJI PALLONJI & CO. LTD. [2015(7) I Ml 447 HAT MUMBAI)

4.2 The next contention of the ld. AR has been that there is non-application of mind by Assessing Officer on the information received in as much as, it did not strike to the AO that the name of Nisha Holdings is mentioned twice in the information which was ad verbatim used for drawing satisfaction. Further, AO mentions that income tax return for the AY 2007-08 was filed on 30-10-2007 at NIL Income. The AO did not bother even to verify the return of income filed by the assessee which had showed returned income at Rs. 1,08,412/-. All this shows that there is non-application of mind and the AO was mechanically persuaded by the report of the investigation wing. Hence, such a re-assessment due to this reason too is not sustainable. Reliance on this point is placed on the following decisions :-

- Sarthak Securities Co. (P.) Ltd v. ITO [2010] 195 Taxman 262 (Delhi);
- Signature Hotels (P.) Ltd. v. ITO [2012] 20 taxmann.com 797 (Delhi);
- CIT v. Sfil Stock Broking Ltd. [2010] 325 ITR 285 (Delhi);
- CIT v. Suren International (P.) Ltd. [2013] 35 taxmann.com 398 (Delhi);
- Italica Floor Tiles Pvt. Ltd. and others v. ACIT 2015 (6) TMI 382 - ITAT RAJKOT

4.3 It has been next contended on validity of reopening of assessment has been that Proviso to Section 147 is not satisfied. The original assessment was done u/s 143(3). The factum of receipt of share capital is mentioned in the return as well as in the assessment order. The assessment is sought to be reopened after expiry of four years, which is against proviso to Section 147 according to which the

assessment cannot be not reopened after expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. It is submitted that merely mentioning of this expression in the satisfaction note is not sufficient unless the AO mentions, therein, any material fact which has not been disclosed by the assessee. In the present case, AO has not mentioned any fact or evidence which was required to be disclosed and which has not been disclosed by the assessee in assessment proceedings. Therefore, this Proviso is not satisfied and hence reopening is bad in law. For the proposition that if Proviso to Section 147 is not satisfied then reopening will be bad, the ld. AR has relied on the following authorities-

- Global Signal Cables (India) (P.) Ltd. v. DCIT [2015] 54 taxmann.com 114 (Delhi)
- Haryana Acrylic Manufacturing Co. v. CIT [2008] 175 Taxman 262 (Delhi)
- Swarovski India (P.) Ltd. v. DCIT [2014] 50 taxmann.com 57 (Delhi)

4.4 The AR also contended that since, the AO has reopened the assessment completed u/s 143(3) only on the basis of information received from Investigation wing, and there was no further material collected, then reopening will not be justified. For this proposition he placed reliance on following authorities:-

- A.P. Refinery (P.) Ltd. v. Addl. CIT [2017] 81 taxmann.com 362 (Chandigarh - Trib.); Pardesi Developers & Infrastructure (P.) Ltd. V. CIT [2013] 40 taxmann.com 9 (Delhi)]
- PCIT V. G & G Pharma India Ltd. [2017] 81 taxmann.com 109 (Delhi)

- PCIT V. RMG Polyvinyl (I) Ltd. [2017] 83 taxmann.com 348 (Delhi)
- CIT v. Insecticides (India) Ltd. [2013] 38 taxmann.com 403 (Delhi)
- CIT v. Atul Jain [2007] 164 TAXMAN 33 (DELHI)
- Hindustan Lever Ltd. v. R.B. Wadkar [2004] 137 TAXMAN 479 (BOM.)
- Varshaben Sanatbhai Patel v. ITO [2015] 64 taxmann.com 179 (Gujarat)
- ITO v. Lakhmani Mewal Das [1976] 103 ITR 437 (SC)
- Light Carts PVT LTD v. ITO 2016 (2) TMI 224 - ITAT DELHI

Based on the aforesaid contention, the ld. AR of the assessee submitted that the re-assessment proceedings have rightly been quashed by the ld. CIT(A). On merits also the ld. AR has made extensive arguments, but before dealing with them, we feel it appropriate to decide the appeal on legal aspects first.

5. We have heard the submissions of both the sides and have gone through the entire material available on record and we find no justification to interfere with the decision reached by the ld. CIT(A) on validity of reassessment. For ready reference, the findings reached by the ld. CIT(A) read as under :

> *"I have very carefully gone through the satisfaction note recorded by the AO as well as the written and oral submissions made by the appellant. The AO was present during the entire course of the hearing on 19th May 2015. It is settled now that the power under section 147 is not absolute and unbridled and the same have to be exercised within the four corners of law. It is also settled that the AO has no power to review his orders and what cannot be done directly can also not be done indirectly. Law enables reopening if the conditions for the same are satisfied and it cannot be on the basis of change of opinion. Conditions laid down by law for reopening are on several aspects like the time elapsed from the end of assessment year which is being sought*

to be reopened, whether the original proceedings were completed u/s 143(3) or not, how much is the income which has escaped assessment etc.

The law provides for reopening, if there are reasons to believe. Reasons to believe are the objective reasons before the AO and the sanctioning authority at the time of reopening. The AO is required to express the same through the reasons recorded. The sanctioning authority is also required to similarly express itself and only when the sanctioning authority is also objectively and expressly satisfied then only the reopening can be justified.

The examination of satisfaction note reveals the following;

1. *The reasons recorded do not indicate what evidences were available to the AO which enabled him to draw the conclusion that there was an accommodation entry racket operated by Surendra Kumar Jain group of entities.*

2. *As the evidences are not mentioned, quite obviously there is no application of mind by the AO in terms of appreciation of evidences, which were sufficient for the AO to have reasons to believe that there was an accommodation entry racket.*

3. *It seems very likely that the AO was mechanically persuaded by the report of the investigation wing.*

4. *There is no mention in the reasons recorded about any evidence which could lead the AO to the conclusion that the appellant was a beneficiary of the accommodation entry.*

5. *There is no mention of any confession of the alleged entry operator that the appellant had obtained any accommodation entry from any person.*

6. *On Page 2 of the note, the AO has reproduced a table which was apparently drawn and prepared by the DI (Investigation) - II. The*

perusal of the table indicates that the entries in Row no 2 and the row no 4 are totally identical. In both these rows same cheque nos. are mentioned for the same amounts allegedly received by the appellant. The table indicates the gross non-application of mind by the AO to the facts of the case and analysis of the same vis a vis the evidence on hand. This also suggests that the AO did not even look at the Balance Sheet of the appellant before issuing notice u/s 148. I agree with the argument of the appellant that the issue is not whether the correct figure is Rs 4 crore or Rs 4.6 crore but whether the AO has applied his mind or not before reopening the assessment which was completed u/s 143(3). The fact pointed out clearly evidences non application of mind by the AO.

7. *The AO has estimated the rate of commission to the entry operators at the rate of 2 %. This also indicates that the suspicion of the alleged accommodation entry operator and its connection with the appellant is not well founded.*

8. *Copy of the reasons given to the appellant do not indicate that the permission of sanctioning authority as stipulated under section 151 of the Act was taken and application of mind by the sanctioning authority was made before according the sanction.*

9. *Copy of the reasons given to the appellant does not indicate that the AO applied mind on various parameters fixing the statutory time limits as provided u/s 149 to the facts of appellant's case.*

10. *The appellant has been very emphatic on the fact that in the case of the appellant scrutiny u/s 143(2) was earned out and the assessment order u/s 143(3) was passed on 08.12.2009. During the course of scrutiny proceedings, all the details w.r.t. the share capital received including the confirmations from the relevant parties were filed. The AO in reasons has not mentioned what material fact was not disclosed fully and truly by the appellant. For this reason alone it was argued that the reopening was barred by limitation as more than four years had elapsed since the end of the assessment year.*

I have also carefully gone through numerous case laws relied upon by the appellant as well as various others available on the issue. I agree that the facts of several cases mentioned by the appellant are similar to the facts of the appellant's case. In most of the cases information was similarly received from the investigation wing and was apparently based upon similar investigations/evidences related to the entry operators. Notwithstanding the strong alleged evidences in those cases as well the Courts/Tribunals have been very consistent in their interpretation of law. Common propositions coming out of these ruling are as below;

1. It has to be independent and substantive satisfaction of the AO that he has reasons to believe that the income has escaped assessment,

2. Similarly, it has to be independent and substantive satisfaction of the sanctioning authority that he has reasons to believe that income has escaped assessment. He cannot simply write I agree/or I approve etc.

3. The AO cannot be mechanically persuaded by the report of any other income tax authority or for that matter any information/report from outside the income tax department.

4. If more than four years have elapsed from the end of the assessment year and the person was assessed earlier u/s 143(3) the assessment can be reopened only if the assessee has not fully and truly disclosed all the material facts. The reasons recorded by the AO must mention what are those material facts which have not been truly and fully disclosed.

5. The AO must clearly mention and make the relevant evidences part of the reasons recorded.

After having gone through the facts and circumstances of the case and going through the law including various case laws, as briefly summed up in the preceding paras, I am convinced that reopening in this case has not been made in accordance law. Reassessment made in consequence of the same is

therefore, quashed. Ground no 2&3 of the appeal are, therefore, decided in favor of the appellant.

GROUND NO. 4

"The Ld. AO has erred on facts and in law in holding that the appellant did not offer any explanation about the nature or source of the sum of Rs. 4,00,00,000/- and has further erred in adding the same to the income of the appellant in gross violation of the principles of nature justice. "

AND

GROUND NO. 5

"The Ld. AO has erred on facts and in law in making an addition of Rs. 4,00,00,000/- under section 68 of the Income Tax Act, 1961 without mentioning any evidence/ documents against the appellant which indicate that the explanation given by the appellant was incorrect. "

The appellant has argued that the AO has primarily made the additions for the reason that the directors of the investing companies did not appear before him. He has not mentioned any evidence, whatsoever, indicating the alleged entry operator racket and evidence pertaining to the appellant being related or beneficiary of that in any manner. The appellant has, therefore claimed that the reassessment is not at all based on any evidence. The AO has also not carried out any independent enquiry whatsoever and has taken the report of the investigation to be the gospel truth. If the AO had any evidence proving the appellant to be beneficiary he should have at least mentioned the same in the order. The appellant was never confronted with any of the evidence which apparently led the AO to re-open the case and on the basis of which he ultimately made the addition of Rs. 4,00,00,000/-.

The appellant got an investment of Rs. 400,00,000/- for issuing 8,00,000 equity shares during the relevant financial year. The appellant has given details of various documents filed before the AO to establish identity,

creditworthiness and genuineness of the transactions and have placed the copies of the same in the paper book and the same are not reproduced here for the sake of brevity. The appellant has emphatically stated that that though the investment in the share capital was made long back in the financial year 2006-07 all the investing companies were existing on the records of the ROC as well as tax department nothing adverse has been held or determined against them.

The appellant has argued that the AO issued summons to the old directors of the investing companies. The directors to whom summons were issued were not even directors at the time of issuing summons as can be gathered from the evidences made available on record. The AO has therefore, reopened the case and made the additions with an absolutely premeditated mind without carrying out any verification whatsoever according to the appellant. The only effort made by the AO was to call the directors for verification. Even this effort was totally misdirected and misconceived as the directors to whom the summons were issued were not even directors on the date on which the summons were issued.

Further, the appellant argued that notwithstanding the unsubstantiated allegation of the AO. the companies who were alleged to be run by the entry operate;' Surendra Kumar Jain were assessed by the Income Tax Department under section 153C of the Act and the ITR filed by these companies were accepted as late as March 2013 u/s 153C. Copy of the assessment order in the case of M/s Mani Mala Delhi Properties (P) Ltd for the AY 2007-08 under section 153C/ 153 A of the Income Tax Act mention nothing incriminating against the aforesaid company and the ITR has been duly accepted by the AO in the Central Circle- 23, New Delhi. The fact that proceedings initiated u/s 153C ultimately did not result into any addition/incriminating findings indicate that the department had no evidence against these companies. Similarly, M/s Hill Ridge Investment Ltd was also assessed under section 153C for the AY 2007-08 on 28.03.2013 by the same AO in the Central Circle- 23, New Delhi and the ITR filed by this company was duly and properly accepted by the department. M/s Mega Top

Promoters (P) Ltd was also assessed for the AY 2007-08 under section 143(3) on 04.12.2009 and the ITR of this company has been accepted by the AO.

The appellant has reemphasized the fact that that the assessment was originally completed u/s 143(3) after due verification of enhancement of the share capital.

The appellant has submitted that the issue with respect to investment through share capital etc. has been one of the most controversial issues in the recent times. Judicial interpretation on the same has considerably varied over a period of last 7/8 years. After lot of application of mind by the judicial authorities including the High Courts and the Tribunals, now there seems to be lot of consistency in the interpretation of law. Honorable Delhi High Court in the very recent judgment in the case of Gangeshwari Metal (P) Ltd has categorized the ground situation in two broad categories. One are the cases where the A.O. carries out detailed investigation and finds out that the ostensible investors are just the name lenders and there is second category where the AO makes no efforts to repudiate the claim of the assessee and absolutely on vague basis like non-appearance of directors etc. hold the investors to be fake or unreal and hold the transactions to be non-genuine. The aforesaid proposition of law clearly emerges from the cases mentioned below:-

1. *Gangeshwari Metal (P.) Ltd: [2013] 30 taxmann.com 328 (Delhi)*
2. *CIT V. Goel Sons Golden Estate (P) Ltd ITA No. 212/2012*
3. *CIT v. Lovely Exports (P.) Ltd. [2008] 216 CTR 195 (SC)*
4. *CIT v. Dwarkadhish Investment (P) Ltd [2010] 194 taxman 43 (Delhi)*
5. *CIT v. Divine Leasing & Finance Ltd. [2007] 158 Taxman 440 (Delhi)*

In this context the appellant has again asserted that it's case is not of a normal scrutiny under section 143(3). In fact, the appellant was originally assessed under section 143(3) as mentioned earlier in this submission and all the investors were duly verified. In the re-assessment proceedings, the AO has brought no evidence on record to suggest that the appellant was actually a beneficiary of accommodation entries. No evidence whatsoever allegedly referred to him by the investigation wing was marshaled or confronted with

the appellant. The AO has not even issued a show cause notice to the appellant seeking explanation w.r.t. the share capital investors. The directors allegedly summoned by the AO were not the directors of the company on the date of enquiry. No verification whatsoever was carried out by the AO w.r.t. the investing companies. All the investing companies exist on the income tax department records as well as ROC records. The details of the same were provided to the AO during the course of assessment proceedings. Some of the investing companies were assessed under section 153C of the Act by the officer in the Central Circles, New Delhi and nothing adverse has been recorded of those companies by the AO. Some of the companies were assessed u/s 143(3) and their affairs were duly accepted by the respective AO.

No evidence of any nature like any statement of the alleged entry operator Surendra Kumar Jain was confronted with the appellant. No evidence of any other nature which led the AO to re-open the assessment was ever brought to the notice of the appellant leave alone asking for any explanation on the same. The AO was duly given copies of the bank accounts of the investing companies and no cash deposit was found to have been made in those bank accounts which clearly lead to the conclusion that these entities had the credit worthiness and the source was fully explained.

Considering all these facts and circumstances of the case, it is submitted that the additions made by the AO u/s 68 of the Act are absolutely pre-mediated and have no merit whatsoever.

I have gone through entire facts and circumstances of the case. It is undisputed that the appellant was earlier assessed u/s 143(3) and this aspect of enhancement of the share capital was verified by the AO. It is also true that the appellant was never confronted with any evidence of accommodation entry racket or the appellant being a part of the same. As a matter of fact no such evidence has even been mentioned in the assessment order. On the contrary the Assessing Officer in the central circle in the cases of some of the investing companies have not stated anything incriminating against them in the assessments made u/s 153C of the Act. Some of the investing companies have also been assessed u/s 143(3). I also take note of the fact those directors

of investing companies who were apparently summoned by the AO and had ceased to be directors on the date of the attempted enquiry. It is also established that all the investing companies were very much existing on the records of the department as well as ROC. I have also noted that there is no cash deposit in the bank accounts of the investing companies before making the investments in the appellant company. I have also considered various cases on the issue of deemed income u/s 68 of the Act. It is true there have been judgments in favour of revenue as well as taxpayer. This perhaps happens because facts of the cases are different and more impcriantly investigation and appreciation of correct facts by the AO is different. This is the reason perhaps Hon'ble jurisdictional High Court in the case Gangeshwari Metal and Goel Sons (supra) divided the cases in two broad categories.

Considering all these compelling facts and propositions of law, I am of the considered opinion that the additions in the case of the appellant are bereft of any evidence and the same seems to have been made on assumptions. This is all the more unacceptable because it is second round of assessment after original assessment u/s 143(3). The action of the AO in treating these sums as deemed income u/s 68 holding the share capital investments received by it as unexplained for the allegation of the same being non genuine or not having creditworthiness or for not being able to establish identity of the investing companies are unsustainable and the same is deleted. Ground no 4&5 are, therefore, allowed.

GROUND NO. 6

"The Ld. AO has erred on facts and in law in assuming that a commission at the rate of 2.5 % on Rs. 4,00,00,000/- was paid to obtain accommodation entries without any evidence whatsoever or without identifying the person to whom the commission was paid. "

This ground is linked to the Ground No. 4 and Ground No. 5 & all the arguments made therein are applicable to this ground as well. In addition to the arguments given in the ground no. 4 & 5 the appellant submitted that the

AO has no evidence whatsoever for payment of commission at the rate of 2.5 % which he has estimated. It is all the more ironical that the A.O. has no clue about the recipient of the commission when the entire case was allegedly based upon evidences gathered from the alleged accommodation entry operator. The addition of Rs.10, 00,000/- therefore deserves to be deleted according to the appellant.

I have allowed ground number 4&5. This is directly connected and consequential to the same issue. This addition of Rs 10,00,000/- is, therefore also directed to be deleted."

6. We also find that the Assessing Officer has acted mechanically on the information of investigation wing about the alleged accommodation entries and has drawn his conclusions without applying his mind or making any enquiry in the matter before forming the belief of escapement. In the case of CIT vs. Meenakshi Overseas Pvt. Ltd. (supra) in the identical facts, similar reasons were recorded by the Assessing Officer on the basis of information of Investigation Wing where there was no independent application of mind to any tangible material which formed the basis of belief of escapement. In that case also, the information received contained (i) the names of beneficiaries (ii) bank name & branch of beneficiaries banks and entry giving banks, (iii) value of entries taken (iv) name of account holder of entry giving account and the Assessing Officer after going through the said information straightway derived its conclusion without application of his mind. In these facts, the Hon'ble Jurisdictional High Court after following various other decisions has held as under :

"A perusal of the reasons as recorded by the A.O. reveals that there were three parts to it. In the first part, the AO has reproduced the precise information he has received from the Investigation Wing of the Revenue. This information is in the form of details of the amount of credit received, the

payer, the payee, their respective banks, and the cheque number. This information by itself cannot be said to be tangible material.

20. Coming to the second part, this tells us what the AO did with the information so received. He says: "The information so received has been gone through." One would have expected him to point out what he found when he went through the information. In other words, what in such information led him to form the belief that income escaped assessment. But this is absent. He straightaway records the conclusion that "the abovesaid instruments are in the nature of accommodation entry which the Assessee had taken after paying unaccounted cash to the accommodation entry given (sic giver)". The AO adds that the said accommodation was "a known entry operator" the source being "the report of the Investigation Wing".

21. The third and last part contains the conclusion drawn by the AO that in view of these facts, "the alleged transaction is not the bonafide one. Therefore, I have reason to be believe that an income of Rs. 5,00,000 has escaped assessment in the AY 2004-05 due to the failure on the part of the Assessee to disclose fully and truly all material facts necessary for its assessment... "

22. As rightly pointed out by the ITAT, the 'reasons to believe' are not in fact reasons but only conclusions, one after the other. The expression 'accommodation entry' is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the Assessee on his paying "unaccounted cash" is another conclusion the basis for which is not disclosed. Who is the accommodation entry giver is not mentioned. How he can be said to be "a known entry operator" is even more mysterious. Clearly the source for all these conclusions, one alter the other, is the Investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow therefrom.

23. Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However,

something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.

24. The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the First part of Section 147 (1) of the Act.

25. At this stage it requires to be noted that since the original assessment was processed under Section 143(1) of the Act, and not Section 143 (3) of the Act, the proviso to Section 147 will not apply. In other words, even though the reopening in the present case was alter the expiry of Four years from the end of the relevant AY, it was not necessary For the AO to show that there was any Failure to disclose fully or truly all material facts necessary for the assessment.

26. The first part of Section 147(1) of the Act requires the AO to have "reasons to believe" that any 'income chargeable to tax has escaped assessment It is thus formation of reason to believe that is subject matter of examination. The AO being a quasi judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre-condition to the assumption of jurisdiction under Section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment.

27. Each case obviously turns on its own facts and no two cases are identical. However, there have been a large number of cases explaining the legal requirement that requires to be satisfied by the AO for a valid assumption of jurisdiction under Section 147 of the Act to reopen a past assessment.

28.1 In Signature Hotels (P.) Ltd. (supra), the reasons for reopening as recorded by the AO in a proforma and placed before the CIT for approval read thus:—

> *"11. Reasons for the belief that income has escaped assessment.- Information is received from the DIT (Inv.-l), New Delhi that the assessee has introduced money amounting to Rs. 5 lakh during the F.Y. 2002-03 relating to A.Y. 2003-04. Details are contained in Annexure. As per information _ amount received is nothing but accommodation entry and assessee is a beneficiary."*

28.2 The Annexure to the said proforma gave the Name of the Beneficiary, the value of entry taken, the „ number of the instrument by which entry was taken, the date on which the entry was taken, Name of the account holder of the bank from which the cheque was issued, the account number and so on.

28.3 Analysing the above reasons together with the annexure, the Court observed:

> *"14. The first sentence of the reasons states that information had been received from Director of Income-Tax (Investigation) that the petitioner had introduced money amounting to Rs. 5 lacs during financial year 2002-03 as per the details given in Annexure. The said Annexure. reproduced above, relates to a cheque received by the petitioner on 9th October, 2002 from Swetu Stone PV from the bank and the account number mentioned therein. The last sentence records that as per the information, the amount received was nothing but an accommodation entry and the assessee was the beneficiary.*
>
> *15. The aforesaid reasons do not satisfy the requirements of Section 147 of the Act. The reasons and the information referred to is extremely scanty and vague. There is no reference to any document or statement, except Annexure, which has been quoted above. Annexure cannot be regarded as a material or evidence that prima facie shows or establishes nexus or link which discloses escapement of income, Annexure is not a pointer and does not indicate escapement of income. Further, it is apparent that the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. The Assessing Officer accepted the plea on the basis of vague information in a mechanical manner. The Commissioner also*

acted on the same basis by mechanically giving his approval. The reasons recorded reflect that the Assessing Officer did not independently apply his mind to the information received from the Director of Income-Tax (Investigation) and arrive at a belief whether or not any income had escaped assessment."

7. In the instant case also, similar reasons along with similar wordings have been recorded and the Assessing Officer while concluding the accommodation entries in the garb of share capital, has failed to apply its mind in support of its belief. Here in this case, the reasons recorded do not refer any evidence or any confession /statements of entry operator, cash payment by assessee, payment of commission etc. so as to support its belief that the assessee was beneficiary of the entry operating racket. There is also no whisper in the reassessment order against the contention of the assessee that the Income-tax authorities themselves have assessed the alleged entry operator u/s. 153C of the Act and the Income-tax Return filed by these group companies have been accepted in March, 2013. The ld. AR of the assessee has submitted copies of assessment orders in the case of Mani Malal Delhi Properties (P) Ltd. for the assessment year 2007-08 u/s. 153C/153A where the ITR filed by this company stands accepted by ITO Central Circle 23 New Delhi resulting into no addition. Similar is the position with respect to other companies M/s. Hill Ridge Investment Ltd. and M/s. Mega Top Promoters (P) Ltd.

8. Thus, keeping in view the fact that there was reference in the notice of any satisfaction of competent authority as contemplated u/s. 151 even after issuance of notice after four years from the end of assessment year; that there is no reference of any evidence such as statement or confession of the alleged entry operator against the assessee; that there is absence of any particular fact which

the assessee failed to disclose fully and truly regarding the share capital at the time of original assessment; that the satisfaction note of the Assessing Officer is solely based on information of investigation Wing; and that in the assessments of alleged entry operator group u/s. 153C, the returns filed by them stood accepted by the department itself and after considering various Authorities cited by the ld. AR and the ld. CIT(A), we find no infirmity in the decision of the ld. CIT(A) while holding the reopening proceedings as void and illegal. Therefore, without going into the merits of addition, the decisions of ld. CIT(A) deserves to be upheld on the legal aspect of the case. The decisions cited by the ld. DR are found no applicable in the instant case, having been based on different set of facts.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 15.03.2019.

Sd/- Sd/-

(Amit Shukla) **(L.P. Sahu)**
Judicial member **Accountant Member**

Dated: 15.03.2019
aks

Copy of order forwarded to:

(1)	*The appellant*	*(2)*	*The respondent*
(3)	*Commissioner*	*(4)*	*CIT(A)*
(5)	*Departmental Representative*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi