

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 4365/Del/2015
Assessment Year 2006-07

ITO Ward-21(1), Room No. 220 C.R. Building New Delhi.	Vs.	Randeep Investment (P) Ltd. 2 Park Lane, Behind D-3, Vasant Kunj, Krishan Garh New Delhi – 110003 PAN AACCR0988D
(Appellant)		(Respondent)

ITA No. 4000/Del/2015
Assessment Year 2006-07

Randeep Investment Pvt. Ltd. C/o O.P. Sapra & Associates, Advocates, C-763, New Friends Colony New Delhi 110025 PAN AACCR0988D	Vs.	ITO Ward-21(1) New Delhi.
(Appellant)		(Respondent)

Department by:	Shri Surender Pal, Sr. DR
Assessee by :	Shri Sandeep Sapra, Advocate
Date of Hearing	26/02/2019
Date of pronouncement	26/03/2019

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid cross appeals filed by the assessee as well as by the revenue against impugned order dated 21.4.2015, passed by Ld. CIT (Appeals)-10, New Delhi for the quantum of assessment u/s 147/143(3).

2. We will first take up the assessee's appeal, wherein the assessee has challenged, *firstly*, the validity of proceedings u/s 148 and reopening of assessment u/s 147 on the ground that 'reasons recorded' are not in accordance with law; *secondly*, the approval granted by the Ld. CIT in terms of section 151 is purely mechanical; *thirdly*, the addition of Rs. 28 lacs as sustained by CIT (A) out of total addition of Rs. 1,53,50,000/- u/s 68; and *lastly*, addition of Rs. 28,000/- made u/s 69C on account of commission/premium allegedly paid by the assessee for getting the share capital.

3. The facts in brief are that assessee has filed its return of income on 29.3.2007 which was duly processed u/s 143(1). Thereafter a notice u/s 148 was issued on 16.3.2013. Before issuing of notice, AO has recorded following reasons: -

1.	Name and address of the assessee: _		M/s Randeep Investments P. Ltd. 202, Mohan Place, LSCC Block, Saraswati Vihar, Delhi-110014
2.	PAN		AACCR0988D
3	Status		Company
4.	Ward/Circle	:	Ward-15(2)
5.	Asstt. Year in respect of which it is proposed to issue notice u/s 148	:	2006-07
6.	The quantum of income which has escaped assessment		Rs.1,72,75,483/-
7.	Whether the assessment is proposed to be made for the first time	:	Yes
8.	If answer to item 7 is negative state		
(a)	Income originally assessed		NA
(b)	Whether it is a case of under assessment, at lower rate, assessment which has been made the subject of excessive relief or allowing excess loss/depreciation		NO

9.	Whether the provision of Sec. 150(1) are applicable. If the reply is in affirmative the relevant facts may be stated against Item No. 11 and 8 may also be brought out that the provisions of Sec. 150(2) would not stand in the way of initiating proceedings u/s 147.		NO
10.	Reasons for the belief that income has escaped assessment	:	

“The assessee filed return of income for the A.Y. 2006-07 on 28.3.2007 declaring total loss of (-) Rs. 29,340/-. The return was processed u/s 143(1) on 11.7.2007.

In this case, as per information received from the office of the ACIT Central Cir-22, New Delhi, survey under section 133A of the Income Tax Act, 1961 was conducted by the Investigation Wing, Delhi in the case of Shri Suresh Kumar Gupta (S.K. Gupta) on 20.11.2007. From the perusal of Survey Report, it is gathered that Sh. S.K. Gupta who is having his office at 308, Arunachal Building, Barakhamba Road, New Delhi is a Chartered Accountant and is carrying on the business of share broker, financial consultancy and providing accommodation entries in the form of loans, advances, share application money, issuing bogus expenses bills on commission basis. For this purpose, he had floated several companies/firms in which he and his family members as well as his employees were either directors or proprietors. Bank accounts were opened in the names of these companies/firms and individuals to create layer/layers before providing accommodation entries to the beneficiaries through banking channels to give the colour of genuineness to these accommodation entries.

During the course of survey, statement of Sh. S.K. Gupta was recorded on 20.11.2007 wherein he admitted the fact of controlling various entities and also the fact of being engaged in the business of providing accommodation entries to various parties through these entities. During the course of assessment proceedings in the case of Sh. S K Gupta, the Assessing officer recorded his statement on oath on 26-12-2008 u/s 131

of the Income Tax Act: 1961. In statement also, Sh. S K Gupta admitted more explicitly that he is controlling around 30 companies through which he used to carry out the business of providing accommodation entries to various beneficiaries for whom he used to charge commission. He also admitted that the details of various beneficiaries from whom cash was received and cheques were issued by various companies controlled by him were recorded in the computer impounded by the department on 20-11-2007 during survey at his premises.

In view of the above statements it is also clear that Sh. S. K. Gupta worked as an entry operator and provided accommodation entries to various beneficiaries through a large number of entities controlled and managed by him. Cash was received from the beneficiaries through mediators and was deposited in the bank accounts of these entities and thereafter it was transferred to the bank accounts of the ultimate beneficiaries through conduit / intermediary companies floated by Sh. Gupta.

Subsequently, Sh. S.K Gupta also filed petition before the Income tax Settlement commission, Delhi for the assessment year 2008-09 wherein he admitted an additional income Rs.68,76,755/- on account of commission/premium earned for providing accommodation entries to various beneficiaries. In the Statement of Facts (SOF) filed by Sh. S.K Gupta before Hon'ble Settlement Commission, he admitted that he used to provide accommodation entries through 32 companies and two individuals which were used as conduits/ routes from where cheques used to be given to be beneficiaries. This fact has also been endorsed by the Hon'ble Settlement Commission vide its order dated 22.06.2012 in settlement application number DL/DC53/2010-11/22-IT in the case of Sh. S.K. Gupta. The relevant portion of the order is reproduced below-

"After examining the facts of the case, we are of the considered view that the applicant is an entry provider. Therefore, in his case, only the amount of Premium / Commission received by the applicant after reducing expenses incurred will be his additional income. "

In view of the evidences found during the course of survey In the form of various ledger accounts in the laptop, further buttressed by the statements of Sh. S.K Gupta recorded on various occasions and his submissions made during the course of assessment. It is clear that Shri SK Gupta was providing accommodation entries to various beneficiaries through different mediators by charging commission. Further, the observation of the Hon'ble Settlement Commissions makes it clear that Sh. S K Gupta received cash from the beneficiaries in lieu of accommodation entries provided. Thus, the assessee had provided cash to obtain credit entry in the Name of the company controlled by Sh. S K Gupta which represents assessee's income from undisclosed sources.

The entire evidence coupled with the statements and submissions of Sh. S.K. Gupta admitting his role in providing accommodation entries clearly shows that it is a fit case for making additions in the hands of the beneficiaries. in respect of accommodation entries received by it from Sh. S.K. Gupta through the various companies controlled and managed by him to introduce its own unaccounted income from undisclosed sources.

It is noticed from the list of entries that the assessee M/s. Randeep Investments P. Ltd. has taken following accommodation entries from the following persons (beneficiary) as per details hereunder :-

Party to whom issued (beneficiary)	Date of entry in books	Ch.No./PO/DD Ch. and Date	conduit compnaies through which cheque issued	bank a/c of such conduit company issuing bank	Amount
Randeep Investment P. Ltd.	07.04.05	CH NO 765760 DTD	CHAMP FINVEST	SIB	1000000
Randeep Investment P. Ltd	18.04.05	CH NO 771505 DTD 28.03.05	CHAMP FINVEST	SIB	1000000
Randeep Investment P. Ltd	19.04.05	CH NO 766199 DTD 28.03.05	CHAMP FINVEST	SIB	1000000
Randeep Investment P. Ltd	23.04.05	CH NO 771507 DTD 28.03.05	CHAMP FINVEST	SIB	250000
Randeep Investment P. Ltd	23.04.05	CH NO 771506 DTD 28.03.05	CHAMP FINVEST	SIB	250000
Randeep Investment P. Ltd	23.04.05	CH NO 772488 DTD 29.03.05	OMNI FARMS	SIB	250000
Randeep Investment P. Ltd	23.04.05	CH NO 772489 DTD 29.03.05	OMNI FARMS	SIB	250000
Randeep Investment P. Ltd	27.04.05	CH NO 000031 DTD 22.04.05	ADVANTAGE	KOTAK	1000000
Randeep Investment P. Ltd	27.04.05	CH NO 000032 DTD 23.04.05	ADVANTAGE	KOTAK	500000
Randeep Investment P. Ltd	27.04.05	CH NO 000033 DTD 25.04.05	ADVANTAGE	KOTAK	400000
Randeep Investment P. Ltd	11.05.05	CH NO 754665 DTD 07.05.05	CENTRAL GUMS REGAL	SIB	850000
Randeep Investment P. Ltd	06.06.05	CH NO 219271 DTD 01.06.05	GIRASHO COMPANY	OBC	500000

Randeep Investment P. Ltd	06.06.05	CH NO 219272 DTD 01.06.05	GIRASHO COMPANY	OBC	300000
Randeep Investment P. Ltd	06.06.05	CH NO 219299 DTD 02.06.05	VISHRUT MARKETING	OBC	500000
Randeep Investment P. Ltd	13.06.05	CH NO 258955 DTD 11.06.05	GIRASHO COMPANY	OBC	500000
Randeep Investment P. Ltd	16.06.05	DO NO 063418 DTD 15.6.05 DRAWN	SINO CREDITS	SYNDICATE	175483
Randeep Investment P. Ltd	26.06.05	CH NO 239007 DTD 18.6.05	CHANDERPRABHU	OBC	500000
Randeep Investment P. Ltd	25.06.05	CH NO 258961 DTD 20.06.05	GIRASHO COMPANY	OBC	500000
Randeep Investment P. Ltd	25.06.05	CH NO 258962 DTD 20.06.05	GIRASHO COMPANY	OBC	500000
Randeep Investment P. Ltd	25.06.05	CH NO 239011 DTD 22.06.05	CHANDERPRABHU	OBC	200000
Randeep Investment P. Ltd	30.06.05	CH NO 717408 DTD 15.04.05	ZENITH ESTATES	IPSB	250000
Randeep Investment P. Ltd	30.06.05	CH NO 717407 DTD 15.04.05	ZENITH ESTATES	IPSB	250000
Randeep Investment P. Ltd	05.07.05	CH NO 258966 DTD 01.07.05	GIRASHO COMPANY	OBC	500000
Randeep Investment P. Ltd	08.07.05	CH NO 238976 DTD 04.07.05	CHANDERPRABHU	OBC	700000
Randeep Investment P. Ltd	12.07.05	PO NO 444503 DTD 12.7.05 D; AWN	GIRASHO COMPANY	OBC	500000
Randeep Investment P. Ltd	13.07.05	CH NO 238979 DTD 08.07.05	CHANDERPRABHU	OBC	400000
Randeep Investment P. Ltd	20.07.05	CH NO 258970 DTD 19.07.05	GIRASHO COMPANY	OBC	400000
Randeep Investment P. Ltd	20.07.05	CH NO 258969 DTD 19.07.05	GIRASHO COMPANY	OBC	400000
Randeep Investment P. Ltd	22.07.05	CH NO 242331 DTD 18.7.05 DRAWN	AGM HOLDINGS LTD	OBC	500000
Randeep Investment P. Ltd	22.07.05	CH NO 242330 DTD 18.7.05	AGM HOLDINGS LTD	OBC	500000
Randeep Investment P. Ltd	06.08.05	CH NO 242337 DTD 02.08.05	SINO CREDITS O/D A/C	OBC	500000
Randeep Investment P. Ltd	06.08.05	CH NO 238981 DTD 02.08.05	SINO CREDITS O/D A/C	OBC	500000
Randeep Investment P. Ltd	06.08.05	CH NO 775239 DTD 01.08.05	SINO CREDITS O/D A/C	OBC	500000
Randeep Investment P. Ltd	10.08.05	CH NO 238985 DTD 06.08.05	CHANDERPRABHU	OBC	200000
Randeep Investment P. Ltd	05.09.05	CH NO 137202 DTD 03.09.05	VISHRUT MARKETING	OBC	200000
Randeep Investment P. Ltd	22.03.06	CH NO 303253 DTD 14.03.06	VISHRUT MARKETING	OBC	250000
	29.03.06	CH NO 303186 DTD 27.03.06	CHANDERPRABHU	OBC	300000

In view of the reports received from the ACIT Central Cir-22 and the above facts and findings, it is clear that the assessee company has not disclosed fully and truly all material facts necessary for its assessment for the assessment year under consideration. I am in possession of material that discredits and impeaches the particulars furnished by the assessee company and also establishes the link with the self-confessed “accommodation entry providers”, whose business is to help assesses bring into their books of account their unaccounted money.

I have therefore, reasons to believe that income to the extent of Rs. 1,72,75,483/- has escaped assessment. Thus, the same is to be brought to tax under section 147/148 of the I.T. Act 1961.

Notice u/s 148 may be issued, if approved.”

4. AO on the basis of the aforesaid reasons observed that assessee company had obtained alleged accommodation entries from various companies for sums aggregating to Rs. 1,72,75,483/-. Before the Ld. AO, assessee raised objections challenging the validity of reopening on various counts, however, AO rejected most the objections, except for the fact that the assessee had pointed out that out of the sums mentioned in the reasons, sum of Rs. 19,25,483/- was never received by the assessee at all or the cheques have been returned unpaid, the details of which were given, which has been accepted by the AO. Ld. AO, while making the addition has mostly harped upon the fact that Shri S.K. Gupta during the course of the statement recorded on 20.11.2007 and again subsequently on 26.12.2008 had admitted to have provided accommodation entries to most of the people, and he has received cash from the beneficiaries which have been deposited and routed through various bank account of various companies for providing accommodation entries and thus, this factum of beneficiaries getting such entries gets confirmed. Accordingly, he made the addition u/s 68 on the basis of information received from Investigation wing and on same lines of reasons recorded.

5. Further, based on this allegation, Ld. AO held that, since assessee has received credit of Rs. 1,55,03,500/- by way of accommodation entry therefore same needs to be added back, also added 1% of commission paid for obtaining the accommodation entries added sum of Rs. 1,50,000/- u/s 69C.

6. Before the Ld. CIT(A) the assessee has challenged the validity of reopening u/s 147/148 stating that, *firstly*, there is no nexus between the reasons recorded and the income escaping assessment; *secondly*, reasons for issuance of notice u/s 148 have been recorded on the basis of information received from ACIT , Central Circle, New Delhi in

wake of survey conducted by Investigation Wing and copy of such report was never supplied or made available to the assessee despite request made to the AO and accordingly it was prayed that copy of the same may be supplied at this stage so as to enable the assessee to file further objections ; *thirdly*, AO has not applied his mind at all on the information received and has simply followed the forwarded list of alleged accommodation entries; and lastly, the sanction given by the Additional CIT on the reasons recorded is purely mechanical. The assessee also once again requested Ld. CIT (A) to supply documentary evidences on the basis of which adverse inference has been drawn against assessee which was not provided by the AO despite several request made from time to time. The material required by the assessee from the AO as per the letter were as under :-

- a) Copy of the report as received from ACIT, Central Circle 22, New Delhi as per the survey conducted by Investigation Wing of the Income Tax Department New Delhi on the basis of which reasons have been recorded and notice U/S 148 has been issued.*
- b) Copy of statement recorded of Sh. SK. Gupta by AD, Central Circle 22, New Delhi and also the Investigation Wing of Income Tax Dept. on the basis of which reasons have been recorded and notice U/S 148 has been issued.*
- c) It is further requested that the Assessee may be allowed to cross examine Sh. SK. Gupta.*
- d) Notice u/s 148 has been issued after obtaining the necessary satisfaction of the Addl. CIT, Range 15, New Delhi as mentioned in the said notice. Copy of such sanction may please be issued.*

It was stated that the rest of the details would be filed after the above-mentioned documents have been received by the Assessee so as to enable the Assessee to file further objections to proceedings-initiated

u/s 147/148 of IT Act. However, the AO without even making available all the documents asked has disposed off the objections, except for the statement of Shri S.K. Gupta recorded on 20.11.2007 and general note given by ACIT, Central Circle on accommodation entry provided by Shri S.K. Gupta. From the statement of Shri S.K. Gupta it was pointed out before the Ld. CIT(A) that: -

a) The name of the assessee company is not at all mentioned in above statement.

b) The following companies mentioned in the reasons recorded who have allegedly given accommodation entries to the assessee company are also not mentioned in such statement:

- i) Champ Finvest Pvt. Ltd
- i) Omni Farms Pvt. Ltd
- iii) Advantage Software Pvt. Ltd
- iv) Central Gum & ChemicalLtd
- v) Zenith Estates Ltd.

7. Thus, it was submitted that there was no nexus between information received from the office of ACIT Central Circle and reasons recorded before issuance of notice u/s 148. In the approval given by the Additional CIT(A) on the reasons, mentions "*approved in view of the above reasons*". Such an approval clearly shows that even Additional Commissioner has not applied his mind and has given the approval in a mechanical manner. It was further submitted and clarified that Assessee Company had not received any accommodation entry from Sh. S.K. Gupta or through his companies and no cash has been given by the assessee company for obtaining alleged accommodation entries in the form of share application money.

8. The assessee's detailed submissions and objections were forwarded to the AO to submit his remand report. The AO in his remand report which has been incorporated at page 17 of the appellate order has reiterated that assessment was reopened on the basis of information provided by Investigation wing, which in turn was based on statement given by Shri S.K. Gupta who was operating the racket of providing accommodation entries and request of assessee's counsel for cross examining Shri S.K. Gupta is nothing but putting undue onus upon the AO; and after the reopening u/s 147 the onus shift upon the assessee to prove the contents of the said statements as false or to prove that its business dealings were in the true spirit. However, on merits of the additions, the comments of the AO and his observation alongwith reasoning of Ld. CIT (A) shall be discussed by us in the later part of this order.

9. The assessee after getting the copy of remand report has given its rejoinder. Most importantly, the assessee pointed out various mistakes and errors in the list of companies contained in the reasons recorded. It was clarified that, some of the share application monies were received in the preceding assessment year i.e., A.Y. 2005-06, which were duly accounted for in the books of accounts and shares were also allotted on 31.3.2005. It was also brought to the notice that the share application monies received from M/s. Champ Finvest Pvt. Ltd., have been duly accepted by the AO, vide his assessment order dated 28.3.2013, passed u/s 143(3)/147 for the A.Y. 2005-06. Thus, addition on account these amounts cannot be made in this assessment year u/s 68. The details of these cheques received in the earlier assessment year i.e., 2005-06 were as under: -

<i>S. No.</i>	<i>Ch.No./PO/DD and Date</i>	<i>Conduit Companies through which cheques issued</i>	<i>Bank A/c of such conduit company issuing bank</i>	<i>Amount (Rs.)</i>
1	Ch. No. 765760 DTD 28.03.05	Champ Finvest	SIB	1000000
2	Ch. No. 771505 DTD 28.03.05	Champ Finvest	SIB	1000000
3	Ch. No. 766199 DTD 28.03.05	Champ Finvest	SIB	1000000
4	Ch. No. 771507 DTD 28.03.05	Champ Finvest	SIB	250000
5	Ch. No. 771506 DTD 28.03.05	Champ Finvest	SIB	250000
			Total	35,00,000

10. Apart from that, it was also pointed out that AO himself has admitted in the remand report that certain cheques have been considered in the assessment year 2005-06. The relevant portion of the remand report of the AO reads as under:-

<i>S. No.</i>	<i>Ch.No./PO/DD and Date</i>	<i>Conduit Companies through which cheques issued</i>	<i>Bank A/c of such conduit company issuing bank</i>	<i>Amount (Rs.)</i>
6	Ch. No. 772448 DTD 29.03.05	Omni Farms	SIB	2,50,000
7.	Ch. No. 772489 DTD 29.03.05	Omni Farms	SIB	2,50,000
			<i>Total</i>	5,00,000

11. Ld. CIT(A) in so far as assessee challenge for validity of reopening is concerned, the same was dismissed by him as per his finding given in pages 23 to 24 of his order, wherein he too has mainly harped upon the fact that assessment was reopened on the basis of information received from Investigation wing, hence reopening is valid. In support, he also referred to the judgment of the Hon'ble Punjab & Haryana High Court CWP No. 5926 of 2014.

12. However, on merits, after considering the various submissions and facts and material on record, Ld. CIT(A) has deleted most of the

additions. In sum and substance, the relevant observation and finding of the Ld. CIT(A) relating to various companies were as under: -

i) M/s. Champ Finvest Pvt. Ltd. – Rs. 35,00,000/-

Ld. CIT(A) held that, AO in his remand report has admitted that out of amount of Rs. 40 lacs received by assessee company as share application money, sum of Rs. 35 lacs were pertaining to Asstt. Year 2005-06 as the same was received prior to 31st March, 2005. Since this fact was admitted by the AO in his remand report, Ld. CIT(A) deleted the addition of Rs. 35,00,000/- in the case of Champ Finvest Pvt. Ltd.

ii) M/s Omni Farms Pvt. Ltd. – Rs. 10,00,000/-

Here in this case also, Ld. CIT(A) after referring to the remand report of the AO, wherein AO has admitted that amount of Rs. 11,50,000/- was received by the assessee company the assessment year 2005-06. But, Ld. CIT(A) has sustained addition of Rs. 5,00,000/- in this year on the ground that the amount of Rs. 11,50,000/- was added in A.Y. 2005-06 and AO has added once again sum of Rs. 10,00,000/- during this year. Such reasoning though itself is unsustainable as there is no finding that amount of Rs. 5,00,000/- was received in this year.

iii) M/s. Chander Prabhu Financial Services Pvt. Ltd. – Rs. 23,00,000/-

Ld. CIT(A) following the earlier year order in the assessment year 2005-06 has confirmed the said addition.

iv) Regarding balance amount of **Rs. 85,50,000/-** on account of share application money received from following parties the addition has been deleted by Ld. CIT(A): -

a)	Advantage Software Pvt. Ltd.	Rs 1900000
b)	Central Gum & Chemical Ltd	Rs 850000
c)	Girihaso Company Pvt. Ltd.	Rs 4100000
d)	Vishrut Marketing Pvt. Ltd.	Rs 700000
e)	Zenith Estates Ltd.	Rs 500000
f)	AGM Holdings Pvt. Ltd.	Rs 500000
		Rs.85,50,000

The relevant observation and finding of the Ld. CIT(A) are as under: -

“4.3 The addition on account of share application money has been made by the AO on the basis of statements of Sh. S.K. Gupta recorded on 20/11/2007 and 26/12/2008 by the Investigation Wing of the Income-tax Dept. in which he has admitted of providing bogus accommodation entries to various entities. However, the Appellant has submitted that addition could not be made on the basis of such statements as such statements had been recorded behind the back of the Appellant in some other proceedings not related to the Appellant Co. It has further been submitted that despite several requests made by the Appellant, the AO did not allow cross-examination of Sh. S.K. Gupta. The Appellant has also contended that it is nowhere mentioned in such statements of Sh. S.K. Gupta that accommodation entries have been given to the Appellant. Besides, the above submissions of the Appellant have not been controverted by the AO in the remand report.

4.4 Further, according to the AO in the remand report, the addition deserves to be sustained as the movement of the entries in the bank accounts of the alleged entry operators which shows that

equal amount of cash is deposited before issue of cheques to the Appellant Co. I have gone through the bank statements of the share subscribers placed on record and find that no cash has been deposited in the bank accounts of the share subscribers presented before me. Thus, the observations of the AO that cash has been deposited in the bank accounts of the share subscribers before cheques have been issued to the Appellant Co. for share application money is not verifiable.

4.5 I have perused the documents placed on record and find that the Appellant during the course of assessment proceedings had filed the requisite documentary evidence of the Share Applicants to justify the identity, genuineness and the creditworthiness with regard to the share application money received from the above parties. Summary of the documents submitted of each party is as under:

<i>Particular</i>	<i>Advantage Software Pvt. Ltd</i>	<i>Central Gum & Chemical Ltd.</i>	<i>Girihaso Company Pvt. Ltd.</i>	<i>Vishrut Marketing Pvt. Ltd.</i>	<i>Chander prabhu Financial Services Ltd.</i>	<i>Zenith Estates Ltd.</i>	<i>AGM Holding Pvt Ltd.</i>
<i>Share Application Money Form</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Board Resolution</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Confirmation.</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Bank Statements</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Print out of PAN</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Income Tax Returns.</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Balance Sheet, Profit & Loss A/c for Fy 2005- 06</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Memorandum of Association.</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes

<i>Company Master Data from ROC</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Form No. 18</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>List of Current Directors with addresses</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Thus, on the basis of material and evidences placed by the assessee which was not controverted by the AO, he has deleted the addition. Accordingly, he has reduced the addition made u/s 69 on account of commission/premium paid.

13. Before us, Ld. Counsel for the assessee Shri Sandeep Sapra has pointed out that, there were so much inherent mistakes and infirmities in the 'reasons recorded' itself that such a 'reasons' could not be sustained for reopening the assessment. Here in this case, firstly, cheques aggregating to Rs. 35,00,000/- were not received in the relevant assessment year as the same were received during the assessment year 2005-06 and shares were also allotted on 31.5.2005. This he pointed out that has been accepted by the AO in his remand report also. Secondly, in so far as cheques aggregating to Rs. 5,00,000/- received from Omni Farms, this again pertains to the earlier assessment year which again has been accepted by the AO in the remand proceedings. Thirdly, he pointed out that in case of following five companies as recorded in the 'reasons', assessee has not even received any cheque or amount: -

S.No.	Cheque No/PO/DD & date	Conduit Cos. through which cheque issued	Amount (Rs.)
16.	DD No.063418 Dt. 15.06.05	Sino Credits	1,75,483
17.	Ch. No.239007 Dt.18.06.05	Chanderprabhu	5,00,000
29.	Ch. No.242331 Dt.18.07.05	AGM Holdings Ltd.	5,00,000
30.	Ch. No.242330 Dt.18.07.05	AGM Holdings Ltd.	5,00,000
36.	DD No.303186 Dt. 27.03.06	Vishrut Marketing	2,50,000
Total			19,25,483

He submitted that with regard to the above entries, it was clearly stated before AO and the Ld. CIT(A) that assessee has not received any cheques from the companies and that is the reason why AO in the assessment order has not been made any addition. Lastly, the next discrepancy relates to cheques aggregating to Rs. 15,00,000/- from M/s. Sino Credit O/D a/c, for which assessee had pointed out before the AO that assessee company has not received the said sum from Sino Credit. This has been explained by him in the following manner :-

“Entry at S. No. 31 : *The amount of Rs. 5,00,000/- alleged to have been received by the assessee company vide Ch. No. 242337 dated 2.8.2005 from M/s. Sino Credit O/D a/c has actually been received from M/s. AGM Holdings Ltd. as is evident from the copy of the bank statement of "Oriental bank of commerce" of M/s AGM Holdings Ltd, copy of bank statement is placed at page 570 of the paper book. Therefore, the Reasons as Recorded with regard to such amount is erroneous.*

Entry at S.No.32: *The amount of Rs.5,00,000/- alleged to have been received by the assessee company vide Ch. NO.238981 dated 2-8-2005 from M/s Sino Credit O/D a/c has actually been received by it from M/s Chander Prabhu Financial Services Ltd as is evident from the copy of the bank statement of "Oriental bank of commerce" of M/s Chander Prabhu Financial Services Ltd, copy of bank statement is placed at page 457 of the paper book. Therefore, the Reasons as Recorded with regard to such amount is erroneous.*

Entry at S.No.33: *The amount of RS.5,00,000/- alleged to have been received by the assessee company vide Ch. NO.775239 dated 1-8-2005 of Oriental Bank of Commerce from M/s Sino Credit O/D a/c has actually been received by it from M/s Omni*

Farms Pvt. Ltd as is evident from the copy of the bank statement of "The South India Bank Ltd" of M/s Omni Farms Pvt. Ltd, copy of bank statement is enclosed at page 174 of the paper book. Therefore, the Reasons as Recorded with regard to such amount is erroneous."

14. Ld. Counsel thus submitted that, when there are numerous discrepancies in the 'reasons recorded', then it cannot be held that there is any independent application of mind by the AO or there is any live link nexus between the material coming on record and income escaping assessment. Such 'reasons recorded' at the outset, cannot clothe the AO with the jurisdiction to reopen the case u/s 147. In support of his various contentions, he has relied upon judgment of Hon'ble Delhi High Court in the case of i) **CIT vs. RMG Polyvinyl (I) Ltd. reported in 396 ITR 5;** and ii) **Principal CIT vs. SNG Developers Ltd. 404 ITR 312.**

14. On merits, Ld. Counsel submitted that the assessee has raised fresh share capital of Rs. 3,67,03,000/-, out of which AO has made addition of share capital of Rs. 1,53,50,000/- from 9 share subscribers. All the share subscription money were received through account payee cheques, and all the entities were income tax assesses and to prove the identity, genuineness and creditworthiness of share subscriber Companies, following documents were submitted: -

- i. Copy of Share Application Forms
- ii. Copy of Board Resolutions authorizing Investment in the assessee company.
- iii. Copy of Confirmation.
- iv. Copy of the Bank Statement of the share subscriber Cos.
- v. Copy of Income Tax Return and PAN

- vi. Copy of the Balance Sheet and Profit & Loss Account.
- vii. Copy of Memorandum of Association.
- viii. Company Master Data from ROC site evidencing current registered office of the company and the status of annual filing.
- (ix) Form No. 18 evidencing the current registered office of the company.
- (x) List of Current Directors with addresses as per MCA records and their income tax particulars
- (xi) Annual Return as per Form 23AC.”

15. Ld. CIT(A) has deleted the addition of Rs. 1,25,50,000/-, but has sustained addition of Rs. 28 lacs with regard to 2 share subscribers, namely Omni Farms (P) Ltd. and Chandra Prabhu Financial Services Pvt. Ltd. which was on the reasoning that Ld. CIT(A) has confirmed the said addition in the A.Y. 2005-06. Now such addition made with regard to these two Companies have been deleted by the Tribunal vide order dated 6.7.2018 in Asstt. Year 2005-06 and therefore, this issue now stands squarely covered by the judgment of Hon'ble Tribunal in assessee's own case. Not only, that the Hon'ble Tribunal has quashed the reopening based on exactly reasons recorded for the A.Y. 2005-06. Thus, in this year also the reopening u/s 147/148 should be quashed.

16. On the other hand, Ld. DR strongly relying upon the order of the AO, first of all, referred to the statement of Shri S.K. Gupta, wherein he has categorically stated that he is doing accommodation entry through its various companies and all the companies which are mentioned in the reasons recorded somehow were linked with Shri S.K. Gupta. Therefore, prima facie AO had 'reason to believe' to reopen the case u/s 147 and Ld. CIT(A) was justified in upholding the validity

of reopening the case u/s 147. Further in his support, he strongly relied upon the judgment of Hon'ble Delhi high Court in the case of **Pee Aar Securities Ltd. vs DCIT (2018) 96 taxmann.com 602**. On merits also, he submitted that AO has already accepted some of the contentions and except for the credit appearing in the earlier assessment year can be deleted, but balance needs to be confirmed.

DECISION

17. We have heard the rival submissions and also perused the relevant finding given in the impugned order as well as material referred to before us. It is a trite law that to acquire jurisdiction for reopening the assessment u/s 147, AO must have 'reason to believe' that income chargeable to tax has escaped assessment and such a 'reason to believe' should be based on tangible material having live link nexus with the income escaping assessment. Information or material received from Investigation Wing or any other wing of the department can constitute relevant material, however, based on such material AO has to first apply his mind on the facts and assessment records of the assessee and prima facie reach to a conclusion that there is some kind of link or nexus which such material/information, then he can clothe himself with the jurisdiction to reopen the case u/s 147. Here in this case, AO in his 'reasons recorded' has referred to information received from ACIT, Central Circle, 22, New Delhi, stating that during survey u/s 133A conducted by the Investigation Wing, Delhi in the case of Shri S.K. Gupta on 20.11.2007, it was gathered that he had floated several companies /firms in which he and his family members as well as employees were providing accommodation entries to the beneficiaries through banking channels to give colour of genuineness of the transactions. In a statement recorded u/s 131, Mr. S.K.Gupta has admitted that he is controlling around 30 companies

through which he was carrying out the business of providing accommodation entries to various beneficiaries. From the list of the entries, it was noticed that assessee company too has taken as much 37 accommodation entries. Nowhere from the details mentioned in the 'reasons recorded' it is borne out, what kind of benefit assessee has taken, i.e., whether it pertains to share application money or loan or any other credit entry. The assessee before the AO kept on requesting and asking the AO to provide the relevant material so that it can properly make representation and defend its case. The nature of documents requested by the assessee before the AO has been incorporated above. In response, the AO has only provided statement of Shri S.K. Gupta and some general note which is unsigned and undated of ACIT Central Circle on accommodation entries provided by Shri S.K. Gupta. From the perusal of the statement of Shri S.K. Gupta, it is seen that he has admitted that he was providing accommodation entries, although nowhere there is any mention of assessee's name as beneficiary nor there is any material found from his possession implicating the assessee company has given any money for taking any share application money. The note of ACIT, Central Circle, New Delhi forwarded to the AO was also on the nature of modus operandi adopted by Shri S.K. Gupta for providing accommodation entry. Material found from Shri S.K. Gupta alongwith his statement, can be said to be a relevant piece of material for entertaining reason to believe against the assessee. However, in this case Ld. AO after having received such information should have applied his mind on facts of the assessee company, that is, whether the credit entries pertain to the relevant assessment year; or whether assessee has received any such amount from the entities mentioned in the information. Before the Ld. CIT (A) and also before us, it has been brought on record that there were various defects and discrepancies in

the information mentioned in the 'reasons recorded' and the facts of the assessee's case. This implies that there has been absolutely no application of mind by the AO establishing any nexus with the information received and the facts and material pertaining to the assessee.

18. Coming to various mistakes/discrepancies in the 'reasons recorded' vis-à-vis the facts of the case, we find that assessee before the authorities below has demonstrated following defects: -

- Firstly, assessee pointed out that it has received Rs. 35,00,000/- from Champ Finvest in the earlier year, the details given were as under: -

S.No.	Ch.No./PO/DD and Date	Companies through which cheques issued	Amount (Rs.)
1	Ch. No.765760 DTD 28.03.05	Champ Finvest	1000000
2	Ch. No.771505 DTD 28.03.05	Champ Finvest	1000000
3	Ch. No.766199 DTD 28.03.05	Champ Finvest	1000000
4	Ch. No.771507 DTD 28.03.05	Champ Finvest	250000
5	Ch. No.771506 DTD 28.03.05	Champ Finvest	250000
<i>Total</i>			35,00,000

The aforesaid amounts were clearly received in the earlier assessment year 2005-06, which fact has been accepted by the AO and Ld. CIT(A) also. This shows that certain portion of the information received by the AO did not pertain to the assessment year in question, i.e., assessment year 2006-07. In fact, this amount of Rs. 35,00,000/- has been accepted by the AO in the scrutiny assessment passed u/s 143(3)/147 for the assessment year 2005-06. Thus, AO has not even examined the assessment record properly.

- The second glaring mistake is that cheques from Omni Farms aggregating to Rs. 5,00,000/- the details of which are as under: -

<i>S.No.</i>	<i>Cheque No/PO/DD & date</i>	<i>Conduit Cos. through which cheque issued</i>	<i>Amount (Rs.)</i>
6.	Ch. No.772448 DTD 29.03.05	Omni Farms	2,50,000
7.	Ch. No.772489 DTD 29.03.05	Omni Farms	2,50,000
<i>Total</i>			<i>5,00,000</i>

This amount too was received in the earlier assessment year i.e., 2005-06, which fact has been admitted in that year.

- The third discrepancy relate to following amount aggregating to Rs. 19,25,483/- which the assessee company has neither received any cheques from the above companies nor any such cheques have ever been cleared:

<i>S. No.</i>	<i>Cheque No/PO/DD & date</i>	<i>Conduit Cos. through which cheque issued</i>	<i>Amount (Rs.)</i>
16.	DD No.063418 Dt. 15.06.05	Sino Credits	1,75,483
17.	Ch. No.239007 Dt.18.06.05	Chanderprabhu	5,00,000
29.	Ch. No.242331 Dt.18.07.05	AGM Holdings Ltd.	5,00,000
30.	Ch. No.242330 Dt.18.07.05	AGM Holdings Ltd.	5,00,000
36.	DD No.303186 Dt. 27.03.06	Vishrut Marketing	2,50,000
<i>Total</i>			<i>19,25,483</i>

This fact too has been verified and accepted by the AO in the remand report and also by the Ld. CIT (A).

- Lastly, cheques aggregating to Rs. 15,00,000/- from Sino Credits O/D A/c as mentioned above, as pointed out has never been received by this company, in fact this amount was received from M/s. AGM Holdings Ltd. and from M/s. Chander Prabhu Financial Services Ltd.

Thus, out of 37 alleged accommodation entries aggregating to Rs. 1,72,75,483/- as mentioned in the 'reasons recorded' there were mistakes/discrepancies with regard to 15 entries, which indicates that AO has not applied his mind while recording the reasons.

19. Once AO receives any information or material from investigation wing or from elsewhere, then instead of recording the reasons from borrowed satisfaction, he has to independently apply his mind and verify the record of the assessee before forming his 'reason to believe' for reopening the case u/s 147. Formation of 'reason to believe' is a jurisdictional fact, which AO must spell while recording his 'reasons' and should be germane to the facts of the assessee and material or information coming on record. If jurisdictional fact has been recorded on wrong premise or on incorrect assumption of facts, whether fully or partially, then jurisdiction cannot be acquired to reopen the assessment. Thus, when any information dehors any live link nexus with the income escaping assessment, then it cannot be held to be valid information for reopening the assessment u/s 147.

20. Such kind of glaring errors in the 'reasons recorded' has been judicially frowned by the Jurisdictional High Court in many cases. In the case of, **CIT vs RMG Polyvinyl (I) Ltd.**, (reported in **396 ITR 5**) in the following manner: -

“9. The two glaring errors in the reasons in the present case are, in fact, unusual. What the AO might have done if he was aware, even at the stage of consideration of reopening of the assessment that a return had in fact been filed by the Assessee and that the extent of the accommodation entries was to the tune of Rs.78 lakh and not Rs.1.56 crore would be a matter of pure speculation at this stage. He may or may not have come to the same conclusion. But that is not the point. The question is of application of mind by the AO to the material available with him before deciding to reopen the assessment under Section 147 of the Act.

*10. In this context the following observations of this Court in **CIT v. Suren International (2013) 357 ITR 24 (Del)** are relevant:*

"...In the first instance, we do not find the reasons as recorded by the Assessing Officer to be reasons in law, at all. A bare perusal of the table of alleged accommodation entries included in the reasons as recorded, discloses that the same entries have been repeated six times. This is clearly indicative of the callous manner in which the reasons for initiating reassessment proceedings are recorded and we are unable to countenance that any belief based on such statements can ever be arrived at. The reasons have been recorded without any application of mind and thus no belief that income has escaped assessment can be stated to have been formed based on such reasons as recorded. "

11. There can be no manner of doubt that in the instant there was a failure of application of mind by the AO to the facts. In fact, he proceeded on two wrong premises - one regarding alleged non-filing of the return and the other regarding the extent of the so-called accommodation entries.

*12. Recently, in its decision dated 26th May, 2017 in ITA No.69212016 (**Principal Commissioner of Income Tax-6 v. Meenakshi Overseas Pvt. Ltd.**) (395 ITR 677), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a*

"borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report. "

13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.

14. To compound matters further the in the assessment order the AO has, instead of adding a sum of Rs.78 lakh, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crore. On what basis such an addition was made has not been explained.

15. For the aforementioned reasons, the Court is satisfied that no error was committed by the ITAT in holding that reopening of the assessment under Section 147 of the Act was bad in law."

20.1 Similarly, in the case of **Principal CIT vs. SNG Developers Ltd.** (reported in **404 ITR 312**) again the Hon'ble Jurisdictional High Court has held that, in wake of various discrepancies found in the reasons recorded and in the actual facts, the reasons for reopening assessment cannot be sustained. The relevant observation and finding of the Hon'ble High Court reads as under :-

"11 In the considered view of the Court, neither of the above two cases come to the aid of the Revenue in the present case where the facts speak for themselves. The reasons for reopening the assessment have already been set out hereinbefore. The Court

has again perused Annexure – B thereto. As already noticed by the ITAT, there is a repetition of at least five entries. In other words, the total amount constituting the so-called accommodation entries would therefore not work out to Rs.95,65,510. On the face of it, therefore, there is a non-application of mind by the AO. What is further unacceptable is that the AO persisted with his "belief" that the said amount had escaped assessment not only at the stage of rejecting the Assessee's objections but also in the re-assessment proceedings where he proceeded to add the entire amount to the returned income of the Assessee. This is a classic case of non-application of mind by the AO

12. In a recent decision in Principal Commissioner of Income Tax-6 v. Meenakshi Overseas (P) Ltd. [2017] 82 taxmann.com 300 (Delhi), this Court observed as under:

"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 after 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. "

13. In view of the said decision, the Court has no hesitation in concluding in the present case that the reasons recorded by the AO for reopening the assessment under Section 47 of the Act do not meet the requirement of the law. The ITAT was, therefore, perfectly justified in confirming the order, of the CIT(A) and holding the reopening of the assessment to be bad in law".

21. Accordingly, we agree with the contentions of the Ld. Counsel that, if there are such a huge amount of discrepancy and mistakes in the 'reasons recorded', divorced from the facts of the case, then such reasons cannot clothe the AO with the jurisdiction to reopen the assessment u/s 147. Here in this case AO in his remand report submitted before the Ld. CIT(A) and also in view of the observation

made by the Ld. CIT(A), it is amply established that there are various discrepancies and it is for this reason alone, Ld. CIT(A) has deleted the various additions. Hence, we hold that such 'reasons recorded' cannot be held to be in accordance with law, and because of such huge discrepancy and errors, it cannot be held that AO could have entertained 'reason to believe' based on borrowed satisfaction of someone else. Thus, the entire reopening is held to be invalid.

22. Not only that, we find that the Tribunal in assessee's own case in the appeal for the A.Y. 2005-06 has quashed the reopening u/s 147 as invalid based on similar set of 'reasons recorded', wherein there were similar types of errors and discrepancies in the 'reasons recorded' and actual facts of the case. While coming to the conclusion Tribunal has followed the law and principle laid down by the Hon'ble Jurisdictional High Court. For the sake of ready reference, the relevant observation and finding of the Tribunal is reproduced herein below: -

"We have considered the rival submissions of both the parties and have gone through the entire material available on record. As against the legal contentions of the assessee made by way of ground No. 1 in Assessee's appeal, the contention on behalf of the Revenue has been that the information received from the Investigation Wing of Income Tax Dept. was sufficient for the AO to initiate proceedings u/s 147/148 of LT. Act and also relied on the findings as recorded by the Ld. CIT(A).

9. Copy of reasons recorded is placed in the paper book from which it is evident that reasons have been recorded on the basis of information received from the Investigation Wing of the Income Tax Department, New Delhi that the Assessee has taken accommodation entries from the following persons:

<i>Date of Entry in the Books</i>	<i>From</i>	<i>To</i>	<i>Bank</i>	<i>Cheque/RTGS</i>	<i>Cheque Date</i>	<i>Amount</i>	<i>Through</i>
21.02.2005	Giriasho Co. P. Ltd.	Randeep Investment P Ltd.	OBC	210788	16 FEB,05	5,00,000	Deepak Jain
21.02.2005	Giriasho Co. P. Ltd.	Randeep Investment P Ltd.	OBC	210789	17 FEB,05	5,50,000	Deepak Jain
22.02.2005	Giriasho Co. P. Ltd.	Randeep Investment P Ltd.	OBC	21079Wrap 1	19 FEB,05	5,00,000	Deepak Jain

25.02.2005	S.J. Scurity Pvt. Ltd.	Randeep Investment P Ltd.	HDFC	271376	23FEB.05	5,00,000	Deepak Jain
12.03.2005	Vashudeva Farms Pvt. Ltd	Randeep Investment P Ltd.	SIB	766990	10 Mar,05	5,00,000	Deepak Jain
12.03.2005	S.J. Scurity Pvt. Ltd.	Randeep Investment P Ltd.	HDFC	271395	10 Mar,05	5,00,000	Deepak Jain
12.03.2005	S.J. Scurity Pvt. Ltd.	Randeep Investment P Ltd.	HDFC	271396	14Mar,05	5,00,000	Deepak Jain
14.03.2005	S.J. Scurity Pvt. Ltd.	Randeep Investment P Ltd.	HDFC	1667	12 Mar,05	5,00,000	Deepak Jain
16.03.2005	Vashudeva Farms Pvt. Ltd	Randeep Investment P Ltd.	SIB	766991	14 Mar,05	5,00,000	Deepak Jain
16.03.2005	Vashudeva Farms Pvt. Ltd	Randeep Investment P Ltd.	SIB	766992	23 Feb,05	5,00,000	Deepak Jain
11.03.2005	Chanderpra bhu Finvest P. Ltd.	Randeep Investment P Ltd.	SIB	806660	31 Mar,05	8,50,000	Deepak Jain
31.03.2005	Viagra Trading Co. P. Ltd.	Randeep Investment P Ltd.	SIB	772507	31 Mar,05	1,50,000	Deepak Jain
31.03.2005	Omni Farms P. Ltd.	Randeep Investment P Ltd.	SIB	772584	31 Mar,05	6,50,000	Deepak Jain
31.03.2005	Viagra Trading Co. P. Ltd.	Randeep Investment P Ltd.	SIB	772506	31 Mar,05	5,00,000	Deepak Jain

As per the AO, Assessee received accommodation entries aggregating to Rs. 72,00,000 from 6 parties as referred above, the summary of which is again given as under:

Name	Amount fRs.J
Giriasho	15,50,000
S.J. SEC	20,00,000
Vashudeva	15,00,000
Chanderprabhu	8,50,000
Viagra	6,50,00.0
Omni	6,50,000
Total	72,00,000

However, as per assessment order, assessee received share application money from the above mentioned 6 parties aggregating to Rs.73,50,000 as per details below:

Name of the Co.	Amount (Rs.)
Omni Farms P. Ltd.	11,50,000
Vasudeva Farms P Ltd.	16,50,000
Chander Prabhu Finvest P Ltd.	8,50,000
Griasho Co. P Ltd.	15,50,000
S.J. Security P Ltd.	15,00,000
Viagra Trading Co. P Ltd.	6,50,000
Total	73,50,000

From the above, it is evident that reasons have been recorded by the AO solely on the basis of information received from the Investigation Wing of the department without making any independent enquiries with regard to share application money received from the above 6 parties. On comparison of the reasons recorded before issuance of notice u/ s 148 with the assessment order, the following discrepancies are apparent in respect of the following 3 parties:

Name of the Co.	As per reasons recorded, bogus entries received by the Assessee (Rs.)	Actual amount of share capital received and addition made as per the assessment order (Rs.)	Difference (Rs.)
Omni Farms P. Ltd.	6,50,000	11,50,000	5,00,000
Vasudeva Farms P Ltd.	15,00,000	16,50,000	1,50,000
S.J. Security P Ltd.	20,00,000	15,00,000	(5,00,000)

In view of the above, it is clear that AO did not apply his mind and recorded the reasons purely on borrowed satisfaction without making any enquiries on his own and therefore the reasons as recorded are bad in law as held by ITAT Delhi Bench vide its order dated 14/08/2014 (ITA No. 4281/Delj2010) in the case of ITO vs. Comero Leasing & Financial Pvt. Ltd. which was rendered after relying on Jurisdictional High Court judgment in the case of CIT vs. Suren International Pvt. Ltd. reported in 357 ITR 24, relevant portion of such ITAT judgment is reproduced below:

"From the above, we find that at paragraph Nos.1, 2 & 3, the Assessing Officer has discussed the facts in general i.e., the investigation carried on by the Director of Income Tax (Investigation) and the finding of such investigation the modus operandi, how the entry operator worked. The facts relating to assessee's case begin in ITA-4281 & 4949/D/2010 from paragraph 4. If we peruse the chart given by the Assessing Officer in the reasons recorded by which he formed an opinion that there was escapement of income of Rs.53 lakhs, we find that several items have been considered twice. Item No.2 & 3, 4 & 5, 6 & 7, 8 & 9 and 10 & 11 are same. Thus, out of the total twelve items, five items have been considered twice by the Assessing Officer which is an apparent case of non-application of mind. We find that the identical case was considered by Hon 'ble Jurisdictional High Court in the case of Suren International P. Ltd. [supra], wherein at page 32 of the Report, their Lordships held as under: -

"13. We have heard counsel for the parties at length.

14. The learned counsel for the appellant contended that even though there is no specific allegation that the assessee

had failed to disclose all the material facts but the same can be gleaned from the reasons itself. We are unable to accept this contention. In the first instance, we do not find the reasons as recorded by the Assessing Officer to be reasons in law, at all. A bare perusal of the table of alleged accommodation entries included in the reasons as recorded, discloses that the same entries have been repeated six times. This is clearly indicative of the callous manner in which the reasons for initiating reassessment proceedings are recorded and we are unable to countenance that any belief based on such statements can ever be arrived at. The reasons have been recorded without any application of mind and thus no belief that income has escaped assessment can be stated to have been formed based on such reasons as recorded. "

8. The facts in the assessee's case are identical. In this case also, the Assessing Officer, except preparing the table of alleged accommodation entries from the details claimed to have been received from the Investigation Wing, has not at all applied his mind. From a bare perusal of the table of the alleged accommodation entries, it is evident that the same entries have been repeated five times. This is the clear indication of non application of mind by the Assessing Officer.

Therefore, the above decision of Hon'ble Jurisdictional High Court would be squarely applicable to the facts of the assessee's case".

Respectfully following the Jurisdictional Delhi High Court order, we quash/cancel the assessment order passed u/s 147/143(3) of I.T. Act dated 28/03/2013 as the initiation of proceedings u/s 147/148 is bad in law. Accordingly, ground No.1 of the

Assessee's appeal deserves thereby quashing the re-assessment made u/s. 147/148."

23. Thus, the aforesaid finding of the Tribunal will apply in the current year also and respectfully following the same and in view of our reasoning given above we quash the reassessment proceedings.

24. Further on merits also, as pointed out by the Ld. Counsel, in the case of two additions sustained by the Ld. CIT(A) i.e., amount of Rs. 5,00,000/- received from M/s. Omni Farms Pvt. Ltd. and amount of Rs. 23 lacs from M/s. Chandra Prabhu Financial Services Pvt. Ltd., the Ld. CIT(A) has followed the earlier year appellate order. The order of the Ld. CIT(A) has been reversed by the Tribunal and now these additions stand deleted by the Tribunal in the assessment year 2005-06. Whence, these additions are directly covered by the decision of the Tribunal, then respectfully following the same, we also delete the additions aggregating to Rs. 28,00,000/-

25. Apart from that, we find that assessee has submitted catena of documents before the AO and also before the Ld. CIT(A) which has also been placed in the book with regard to the each and every companies like:

- e) **M/s *Champ Finvest Pvt. Ltd. Rs.35,00,000-*** *The following documents were filed to prove the identity, genuineness and creditworthiness of such party:*
- *Copy of share application*
 - *Copy of Board Resolution*
 - *Copies of Income Tax Return*
 - *Copies of Bank Statement of the above party*
 - *Copies of Confirmations*
 - *Print out of assessment particular of their directors from income tax site*
 - *Copy of Assessee's letter dated 08/03/2013 alongwith latest income tax*

returns as filed by the above share subscriber for the following assessment years:

- Assessment Year 2012-13
 - Assessment Year 2011-12 (original and revised)
 - Assessment Year 2010-11
- Copy of notice issued by the AO u/s 133(6) dated 06/03/2013 to such party for confirmation of the above transaction for the assessment year 2005-06

Copy of reply of such party dated 18/03/2013 alongwith the following documentary evidences confirming the share application money paid by the said party to the Assessee Co.

f) M/s Omni Farms Pvt. Ltd. Rs.5,00,000 received in AY 2005-

06- The following documents were filed to prove the identity, genuineness and creditworthiness of such party:

- Copy of letter dated 01/03/2013
 - Copy of share application
 - Copies of Income Tax Return
 - Copies of Bank Statement of the above party
 - Copies of Confirmations Print out of assessment particular of their directors from income tax site
- Copy of latest income tax returns as filed by the above are subscriber for the following assessment years:
- Assessment Year 2012-13
 - Assessment Year 2011-12
 - Assessment Year 2010-11

- Copy of notice issued by the AO u/s 133(6) dated 06/03/2013 to such party for confirmation of the above transaction for the assessment year 2005-06.

g) M/s Omni Farms Pvt. Ltd. Rs.5,00,000 received during the year under consideration- The following documents were filed to prove the identity, genuineness and creditworthiness of such party:

- Copies of Share Application Money received.
- Copy of Board Resolution authorizing Investment in the assessee company.
- Copies of Confirmation
- Copies of Bank Statement of Oriental Bank of Commerce
- Print out of PAN from Income Tax Site.

- *Copy of the Balance Sheet, Profit & Loss A/c along-with schedules of the applicant company for the FY 2005-06. Copy of Memorandum of Association.*
- *Company Master Data from ROC site evidencing current registered office of the company and the status of annual filing. In the case of this share subscriber returns are updated up to 31-3-2013.*
- *Form No. 18 filed on 15-06-2010 evidencing the current registered office of the company*
- *List of Current Directors with addresses as per MCA records enclosed.*
- *Annual Return as per Form 23AC for the FY 2010-11 as filed with ROC, Delhi & Haryana.*

h) M/s Advantage Software Pvt. Ltd. Rs.19,00,000- *The following documents were filed to prove the identity, genuineness and creditworthiness of such party:*

Copies of Share Application Money received.

Copy of Board Resolutions authorizing Investment in the assessee company Copy of Confirmation

Copy of Bank Statement of Kotak Mahindra Bank Ltd, of the share applicant

Copies of Income Tax Returns & PAN.

Copy of the Balance Sheet, Profit & Loss A/c alongwith schedules of the applicant company for the FY 2005-06. Copy of Memorandum of Association.

Company Master Data from ROC site evidencing current registered office of the company and the status of annual filing. In the case of this share subscriber returns are updated up to 31-3-2013.

Form No. 18 evidencing the current registered office of 247-248 the company

List of Current Directors with addresses as per MCA 249 records enclosed.

Annual Return as per Form 23AC for the FY 2012-13 as 250-260 filed with ROC, Delhi & Haryana

Compliance Certificate from Qualified Company 261-267 Secretary alongwith its filing with ROC.

Income Tax particulars of Current Directors of the 268-271

company as per Income Tax Site.

i) M/s Central Gum & Chemicals Ltd. Rs.8,50,000- *The following documents were filed to prove the identity, genuineness and creditworthiness of such party:*

Copy of Share Application Money received

Copy of Board Resolution authorizing Investment in the assessee company

*Copy of Confirmation.
Copy of Bank Statement of South Indian Bank Ltd, of the share applicant*

Copies of Income Tax Return & PAN.

Copy of the Balance Sheet, Profit & Loss A/c alongwith schedules of the applicant company for the FY 2005-06.

Copy of Memorandum of Association.

Company Master Data from ROC site evidencing current registered office of the company and the status of annual filing. In the case of this share subscriber returns are updated up to 31-3-2010.

Form No. 18 evidencing the current registered office of the company

List of Current Directors with addresses as per MCA records enclosed.

Annual Return as per Form 23AC for the FY 2009-10 as filed with ROC, Delhi & Haryana.

Compliance Certificate from Qualified Company Secretary alongwith its filing with ROC.

Income Tax particulars of Current Directors of the company as per Income Tax Site.

j) M/s Girihaso Company Pvt. Ltd. Rs.41,00,000- *The following documents were filed to prove the identity, genuineness and creditworthiness of such party:*

Copies of Share Application Money received.

Copy of Board Resolution authorizing Investment in the assessee company

Copies of Confirmation.

Copies of Bank Statement of Oriental Bank of

Commerce, of the share applicant

Copies of Income Tax Returns & PAN.

Copy of the Balance Sheet, Profit & Loss A/c alongwith schedules of the applicant company for the FY 2005-06.

Copy of Memorandum of Association.

Company Master Data from ROC site evidencing current registered office of the company and the status of annual filing. In the case of this share subscriber returns are updated up to 31-3-2010.

Form No. 18 evidencing the current registered office of the company

List of Current Directors with addresses as per MCA records enclosed ..

Annual Return as per Form 23AC for the FY 2008-09 as filed with ROC, Delhi & Haryana

Compliance Certificate from Qualified Company Secretary alongwith its filing with ROC.

Income Tax particulars of Current Directors of the company as per Income Tax Site.

*k) **M/s Vishrut Marketing Pvt. Ltd. Rs. 7,00,000-** The following documents were filed to prove the identity, genuineness and. creditworthiness of such party:*

Copies of Share Application Money received

Copy of Board Resolution authorizing Investment in the assessee company

Copies of Confirmation

Copies of Bank. Statement of Oriental Bank of Commerce, of the share applicant

Copies of Income Tax Returns & PAN.

Copy of the Balance Sheet, Profit & Loss A/c alongwith schedules of the applicant company for the FY 2005-06

Copy of Memorandum of Association.

Company Master Data from ROC site evidencing current registered office of the company and the

status of annual filing. In the case of this share subscriber returns are updated up to 31-3-2010.

Form No. 18 evidencing the current registered office of the company

List of Current Directors with addresses as per MCA records enclosed.

Annual Return as per Form 23AC for the FY 2009-10 as filed with ROC, Delhi & Haryana.

Compliance Certificate from Qualified Company Secretary alongwith its filing with ROC.

Income Tax particulars of Current Directors of the company as per Income Tax Site.

I) M/s Chanderprabhu Financial Services Pvt. Ltd
Rs.23,00,000- *The following documents were filed to prove the identity, genuineness and creditworthiness of such party:*

Copies of Share Application Money received.

Copy of Board Resolution authorizing Investment in the assessee company.

Copies of Confirmation

Copies of Bank Statement of Oriental Bank of Commerce, of the share applicant

Copies of Income Tax Returns & PAN.

Copy of the Balance Sheet, Profit & Loss A/c alongwith schedules of the applicant company for the FY 2005-06.

Copy of Memorandum of Association.

Company Master Data from ROC site evidencing current registered office of the company and the status of annual .filing. In the case of this share subscriber returns are updated up to 31-3-2012. Form No. 18 evidencing the current registered office of the company

List of Current Directors with addresses as per MCA records enclosed.

Annual Return as per Form 23AC for the FY 2011-12 as filed with ROC, Delhi & Haryana.

Compliance Certificate from Qualified Company

Secretary alongwith its filing with ROC.

Income Tax particulars of Current Directors of the company as per Income Tax Site.

m) M/s Zenith Estates Ltd. Rs.5,00,000- *The following documents were filed to prove the identity, genuineness and creditworthiness of such party:*

Copies of Share Application Money received

Copy of Board Resolution authorizing Investment in the assessee company

Copies of Confirmation

Copies of Bank Statement of Indraprastha Sehkari Bank Ltd, of the share applicant

Copies of Income Tax Returns

Copy of the Balance Sheet, Profit & Loss A/c alongwith schedules of the applicant company for the FY 2005-06.

Copy of Memorandum of Association.

Company Master Data from ROC site evidencing current registered office of the company and the status of annual filing. In the case of this share subscriber returns are updated up to 31-3-2012. Form No. 18 evidencing the current registered office of the company

List of Current Directors with addresses as per MCA records enclosed.

Annual Return as per Form 23AC for the FY 2009-10 as filed with ROC, Delhi & Haryana.

Compliance Certificate from Qualified Company Secretary alongwith its filing with ROC.

Income Tax particulars of Current Directors of the company as per Income Tax Site.

n) M/s AGM Holding Pvt. Ltd. Rs.5,00,000- *The following documents were filed to prove the identity, genuineness and creditworthiness of such party:*

- Copies of Share Application Money received

- Copy of Board Resolution authorizing Investment in the assessee company.

- *Copies of Confirmation*
 - *Copies of Bank Statement of Oriental Bank of Commerce, of the share applicant*
 - *Copies of Income Tax Returns & PAN.*
 - *Copy of the Balance Sheet, Profit & Loss A/c alongwith schedules of the applicant company for the FY 2005-06.*
 - *Copy of Memorandum of Association.*
 - *Company Master Data from ROC site evidencing current registered office of the company and the status of annual filing. In the case of this share subscriber returns are updated up to 31-3-2010.*
 - *Form No. 18 evidencing the current registered office of the company*
 - *List of Current Directors with addresses as per MCA records enclosed.*
 - *Annual Return as per Form 23AC for the FY 2009-10 as filed with ROC, Delhi & Haryana.*
 - *Compliance Certificate from Qualified Company Secretary alongwith its filing with ROC.*
 - *Income Tax particulars of Current Directors of the company as per Income Tax Site.*
- 0) Copy of Punjab & Sind Bank state-wise Assessee Co. for the year under consideration.*

25. Once these documents were furnished before the AO, he did not carry out any sort of prima facie inquiry from these companies nor he has issued any notices u/s 133(6) to these companies to examine the veracity of assessee's claim that nature and source of credit has been proved and the identity, creditworthiness and genuineness of the transaction has been established. AO has to bring some material on record to dislodge the veracity of the evidences filed by the assessee. In absence of any inquiry, such a material or documents filed by the assessee cannot be discarded. AO has simply relied upon the

information received from Investigation Wing, without even carrying out any prima facie inquiry so as to show that assessee's contention or material filed by him cannot be relied upon. Even at the stage of Ld. CIT(A) no such inquiry has been done and most of the additions otherwise also stands deleted for the reasons that they were not received in this year but in the earlier years. We do not find any iota of evidence of material so as to confirm these additions on merits and therefore, we have no hesitation in deleting the entire addition, because assessee has been able to discharge its prima facie onus by proving the identity, creditworthiness and genuineness of the share application money received. In absence of any material or inquiry conducted by the AO that these are non-existing entities or a paper company and there being no rebuttal from the side of the department, addition made u/s 68 is directed to be deleted. Accordingly, in view of our finding in assessee's appeal is allowed.

26. In so far as department's appeal is concerned which is on merits of the additions deleted by the Ld. CIT(A), in view of the finding given above on legal issues as well as on merits entire addition deleted by the Ld. CIT(A) is upheld and department's appeal is dismissed, *firstly*, for the reason that, reopening u/s 147 has been quashed; *secondly*, as discussed above there is no merits in the addition made by the AO; and *lastly*, on similar set of facts the Tribunal has not only quashed the assessment u/s 147 but also has deleted the addition based on similar set of facts and circumstances.

27. In the result appeal of the assessee is allowed and revenue is dismissed.

Order pronounced in the open court on 26th March, 2019.

sd/-

sd/-

(L.P. SAHU)
ACCOUNTANT MEMBER

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 26/03/2019

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi