आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 1280 & 1281/JP/2018
निर्धारण वर्ष/Assessment Year : 2010-11 & 2011-12

Deputy Commissioner of Income Tax, Central Circle, Ajmer.	बनाम Vs.	M/s Kanchan India Pvt. Ltd., 19/20, Bhilwara Textile Market, Pur Road, Bhilwara.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCK 0452 C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

प्रत्याक्षेपण/C.O. No. 52 & 53/JP/2018
(Arising out of आयकर अपील सं./ITA No. 1280 & 1281/JP/2018)
निर्धारण वर्ष/Assessment Years: 2010-11 & 2011-12

M/s Kanchan India Pvt. Ltd., 19/20, Bhilwara Textile Market, Pur Road, Bhilwara.	बनाम Vs.	Deputy Commissioner of Income Tax, Central Circle, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCK 0452 C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by : Shri Varinder Mehta (CIT)
निर्धारिती की ओर से/ Assessee by : Shri O.P. Bhateja (ITP)

सुनवाई की तारीख/ Date of Hearing: 18/02/2019
उदघोषणा की तारीख/Date of Pronouncement : 01/04/2019

आदेश/ ORDER

PER: R.C. SHARMA, A.M.

These are the appeals filed by the revenue and the cross objections by the assessee against the order of ld.CIT(A)-2, Udaipur dated 05/09/2018 for the A.Y. 2010-11 and 2011-12 in the matter of order passed U/s 147/143(3) of the Income Tax Act, 1961 (in short the Act).

Grounds taken by the revenue in its appeal and by the assessee in its C.O. for the A.Y. 2010-11 are as under:

Grounds of revenue's appeal.

" 1. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition of Rs.15,59,00,000/- made by the AO u/s 68 of the I.T. Act on account of unexplained share capital allegedly obtained by the assessee from M/s Pashupati Vinimay Pvt. Ltd.

2. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition by observing that the identity, creditworthiness and genuineness of the transaction was established by the assessee without even considering the financial statements of the alleged share subscriber.*

3. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in ignoring the fact that the alleged share subscriber M/s Pashupati Vinimay Pvt. Ltd. was neither having any substantial business turnover nor having any funds of its own for making huge investment in the share capital of the assessee company.*

4. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition by concluding that the transactions have been done through Banking channels and there is no case of any cash deposition in the account of the immediate investors company.*

5. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in ignoring the undisputed findings of fact that cash was deposited in the account Bearing No.909020042572 with Axis Bank Ltd. Burrabazar Branch Kolkata of M/s Shiv Kali Trade and through a series of transactions the funds were immediately transferred to the account of alleged share subscriber, M/s Pashupati Vinimay Pvt. Ltd.*

6. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in observing that it is usual business practice, while making loans/investment to party, funds are required to be arranged by the lenders, and therefore, reflection of such entries in bank statement does not lead to draw any adverse inference against the assessee, completely ignoring the fact that the multi layering of the funds through a web of transactions as stated in the assessment order is not a usual*

business practice and has been done with the sole intent of obfuscating the source.

The appellant crave, leave or reserving the right to amend modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

(ii) On the facts and circumstances of the case, CIT(A) has erred in deleting the addition of Rs. 13,73,734/- made by the A.O. on account of difference in ITS data 26AS.

(iii) The appellant craves liberty to raise additional ground and to modify/amend the ground of appeal at the time of hearing.

Grounds of assessee's C.O.

That the Id. CIT(A) was fully justified in deleting the addition on merit. However, the Id. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant on the following legal grounds raised before him, treating them to be academic & infructuous.

1. (i) the Id. AO has grossly erred in law in completing the assessment u/s 148/143 (3) of the Act, without issuance and service of notice u/s 143(2) within the specified period as mentioned in proviso to sec. 143(2).

(ii) Notice u/s 143 (2) issued by the Id. AO on 14-11-2017 was beyond the specified period and thus barred by limitation. Assessment completed by the AO on the basis of such notice is bad in law and deserves to be quashed.

2. The Id. AO has issued notice u/s 148 on the basis of change of opinion which is not permitted in law. Therefore the same deserves to be quashed being bad in law.

3. Proceedings u/s 147/148 have been initiated after four years from the end of the relevant assessment year without fulfilling the mandate of proviso to sec. 147 of the Act. Therefore, the notice issued u/s 148 is bad in law, invalid, void ab initio and deserve to be quashed.

4. The Id. AO has issued notice u/s 148 on the basis of communication received from the DDIT(Inv.),Kolkata, purely for verification and for conducting enquiries etc. without there being any tangible material, on the basis of his suspicion and assumption. The notice issued on the basis

of such communication without any independent enquiries having been conducted by the AO and without application of mind is bad in law and deserves to be quashed.

5. *The Pr. CIT, Ajmer has accorded approval for issuing notice u/s 148 in a very routine, mechanical manner & without application of mind by simply putting her signatures below the rubber stamped 'Yes, satisfied'. Such mechanical approval does not fulfill the mandate of provisions of sec. 151 (1) of the Act. Notice issued u/s 148 on the basis of such approval is bad in law and deserves to be quashed."*

2. *The Id. CIT(A) was not justified in not upholding the ground of the appellant that interest under section 234B is chargeable on returned income and not on assessed income as held by the Hon'ble Jharkhand High Court in its decision dated 25.7.2012 in the case of Sh. Ajay Prakash Verma v. ITO in TA no.38 of 2010, reported in (2013)(1) TMI 140, being consistently followed by ITAT, Ranchi."*

2. For the A.Y. 2011-12, the revenue in its appeal as well as the assessee in its cross objection have taken following grounds of appeal:

<u>Grounds of revenue's appeal.</u>

" 1. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition of Rs.1,94,00,000/- made by the AO u/s 68 of the I.T. Act on account of unexplained share capital allegedly obtained by the assessee from M/s Pashupati Vinimay Pvt. Ltd.

2. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition by observing that the identity, creditworthiness and genuineness of the transaction was established by the assessee without even considering the financial statements of the alleged share subscriber.*

3. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in ignoring the fact that the alleged share subscriber M/s Pashupati Vinimay Pvt. Ltd. was neither having any substantial business turnover nor having any funds of its own for making huge investment in the share capital of the assessee company.*

4. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition by concluding that the*

transactions have been done through Banking channels and there is no case of any cash deposition in the account of the immediate investors company.

5. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in ignoring the undisputed findings of fact that cash was deposited in the account Bearing No.909020042572 with Axis Bank Ltd. Burrabazar Branch Kolkata of M/s Shiv Kali Trade and through a series of transactions the funds were immediately transferred to the account of alleged share subscriber, M/s Pashupati Vinimay Pvt. Ltd.*

6. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in observing that it is usual business practice, while making loans/investment to party, funds are required to be arranged by the lenders, and therefore, reflection of such entries in bank statement does not lead to draw any adverse inference against the assessee, completely ignoring the fact that the multi layering of the funds through a web of transactions as stated in the assessment order is not a usual business practice and has been done with the sole intent of obfuscating the source.*

The appellant crave, leave or reserving the right to amend modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

(ii) On the facts and circumstances of the case, CIT(A) has erred in deleting the addition of Rs. 13,73,734/- made by the A.O. on account of difference in ITS data 26AS.

(iii) The appellant craves liberty to raise additional ground and to modify/amend the ground of appeal at the time of hearing.

<u>Grounds of assessee's C.O.</u>

That the Id. CIT(A) was fully justified in deleting the addition on merit. However, the Id. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant on the following legal grounds raised before him, treating them to be academic & infructuous.

1. (i) the Id. AO has grossly erred in law in completing the assessment u/s 148/143 (3) of the Act, without issuance and service of notice u/s 143(2) within the specified period as mentioned in proviso to sec. 143(2).

(ii) Notice u/s 143 (2) issued by the Id. AO on 14-11-2017 was beyond the specified period and thus barred by limitation. Assessment completed by the AO on the basis of such notice is bad in law and deserves to be quashed.

2. *The Id. AO has issued notice u/s 148 on the basis of change of opinion which is not permitted in law. Therefore the same deserves to be quashed being bad in law.*

3. *Proceedings u/s 147/148 have been initiated after four years from the end of the relevant assessment year without fulfilling the mandate of proviso to sec. 147 of the Act. Therefore, the notice issued u/s 148 is bad in law, invalid, void ab initio and deserve to be quashed.*

4. *The Id. AO has issued notice u/s 148 on the basis of communication received from the DDIT(Inv.),Kolkata, purely for verification and for conducting enquiries etc. without there being any tangible material, on the basis of his suspicion and assumption. The notice issued on the basis of such communication without any independent enquiries having been conducted by the AO and without application of mind is bad in law and deserves to be quashed.*

5. *The Pr. CIT, Ajmer has accorded approval for issuing notice u/s 148 in a very routine, mechanical manner & without application of mind by simply putting her signatures below the rubber stamped 'Yes, satisfied'. Such mechanical approval does not fulfill the mandate of provisions of sec. 151 (1) of the Act. Notice issued u/s 148 on the basis of such approval is bad in law and deserves to be quashed."*

6. *The Id. CIT(A) was not justified in not upholding the ground of the appellant that interest under section 234B is chargeable on returned income and not on assessed income as held by the Hon'ble Jharkhand High Court in its decision dated 25.7.2012 in the case of Sh. Ajay Prakash Verma v. ITO in TA no.38 of 2010, reported in (2013)(1) TMI 140, being consistently followed by ITAT, Ranchi."*

3. Rival contentions have been heard and record perused. Facts in brief are that originally the assessments were made U/s 143(3) on 21/12/2012 for A.Y. 2010-11 and on 10/06/2013 for A.Y. 2011-12. Thereafter information were received by the Assessing Officer for both the

assessment years and the same were reopened U/s 148 on 29/03/2017. After giving opportunities to the assessee including disposing off the objections to reopening the assessments by written orders, the reassessments were completed U/s 147 r.w.s. 143(3) on 18/12/2017 at Rs. 2,41,80,860/- and Rs. 7,50,91,190/- after making additions of Rs. 15.59 crores and Rs. 1.94 crores for the A.Y. 2010-11 and 2011-12 respectively on account of the share application money U/s 68 of the Act.

4. Before the ld. CIT(A) the assessee was aggrieved of on several counts such as, reopening of assessments on the basis of change of opinion, reopening of assessments without fulfilling the mandate of proviso to sec. 147, reopening of assessments with the approval for issuing notice u/s 148 in mechanical manner & without application of mind, completing the reopened assessments without issuance and service of notice u/s 143(2) within the specified period as mentioned in proviso to sec. 143(2),completing the reopened assessments without any independent enquiries and making additions Rs. 15.59 crores and Rs. 1.94 crores for the A.Y. 2010-11 & 2011-12 respectively on account of the share application money u/s 68 of the Act.

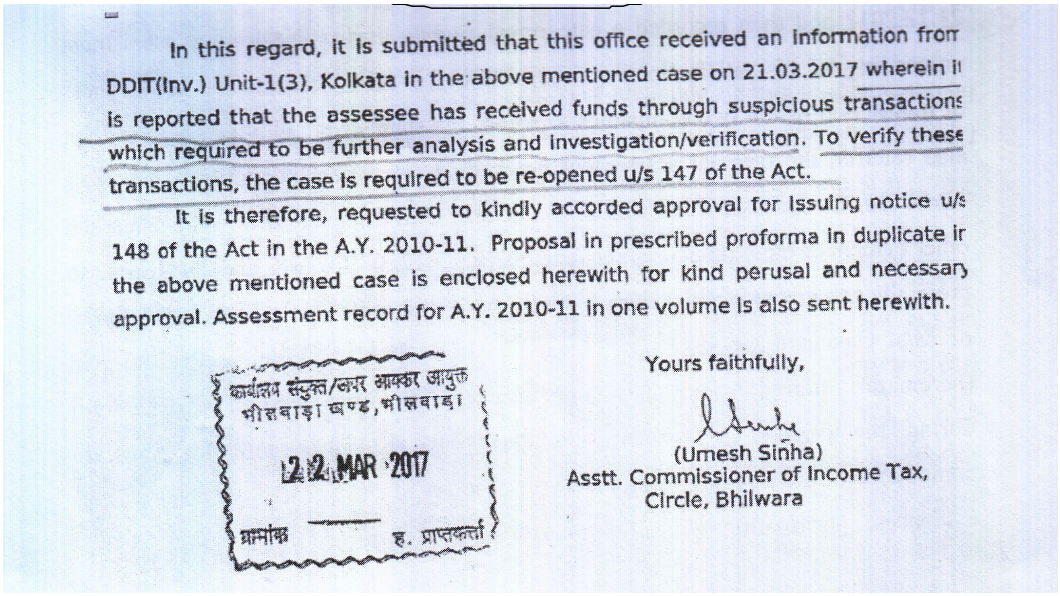
5. By the impugned order, the ld. CIT(A) has observed that facts in both the assessment years under consideration are same, accordingly all the grounds taken by the assessee in both the assessment years were

decided by the impugned consolidated order of the ld. CIT(A) dated 05/09/2018.

6. The addition made on account of share capital was deleted by the ld. CIT(A) after observing as under:

"4.1 I have considered the content of assessment order, the written submissions along with the respective paper books for A.Y. 2010-11 & 2011-12.

4.1 It is found that the AO seems to have initiated re-assessment proceeding to verify the transactions of the appellant company as mentioned in the report of DDIT(Inv.), Unit-1(3), Kolkata on 21/03/2017. However, while conducting re-assessment proceeding the AO did not focus on the verification intended and did not undertake any process u/s 133(6)/131(1), did not concentrate to gather/collect concerned documents and record relevant statements so as to translate the suspicion of DDIT(Inv.), Unit-1(3), Kolkata \on 21/03/2017 into conviction. Rather, the AO prefer to rely the same report of DDIT (Inv.), Unit-1(3), Kolkata on 21/03/2017 and considered the same as sufficient to make addition u/s 68 on account of share capital/share premium raised by the appellant. The above points are evident from the proposal for reopening the assessment and conclusion at Para 5 & 6 of the assessment as under:-



In this regard, it is submitted that this office received an information from DDIT(Inv.) Unit-1(3), Kolkata in the above mentioned case on 21.03.2017 wherein it is reported that the assessee has received funds through suspicious transactions which required to be further analysis and investigation/verification. To verify these transactions, the case is required to be re-opened u/s 147 of the Act.

It is therefore, requested to kindly accorded approval for issuing notice u/s 148 of the Act in the A.Y. 2010-11. Proposal in prescribed proforma in duplicate in the above mentioned case is enclosed herewith for kind perusal and necessary approval. Assessment record for A.Y. 2010-11 in one volume is also sent herewith.

कार्यालय संयुक्त/अपर आयुक्त
भीलवाड़ा अण्ड, भीलवाड़ा।
22 MAR 2017
ग्रामांक ह. प्राप्तकर्ता

Yours faithfully,

(Umesh Sinha)
Asstt. Commissioner of Income Tax,
Circle, Bhilwara

"5. The submissions of the assessee has been considered, but the same is found to be not acceptable. This is because as per information available with the department, it is clear that mostly cash has been deposited in the bank accounts of Shiv Kali Trade. That such credit has been immediately transferred to other accounts, mainly to S K Impex on the same day or the subsequent day. From S K Impex the money has been transferred to Accent Commerce and from Accent Commerce to M/s Cuckoo Merchandise Pvt. Ltd. Carnation Trade link Pvt. Ltd. and M/s Blackbird Tie-up Pvt. Ltd. From these entities fund has been transferred to RMB Finance and M/S. Pashupati Vinimay Pvt. Ltd.. From M/S. Pashupati Vinimay Pvt. Ltd. the fund has been transferred to the assessee M/s Kanchan India Limited. It is also seen that M/s Pashupati Vinimay Pvt. Ltd. is not having any business as such.

6. In view of the above facts, the transaction between M/s Pashupati Vinimay Pvt. Ltd. and M/s Kanchan India Limited cannot be held as genuine."

4.2 It was the submission of the appellant before the AO during the re-assessment proceeding that the genuineness of the share capital/share premium was thoroughly examined by the then AO who completed the original assessment u/s 143(3) on 21.12.2012 and then recorded a categorical finding during the original assessment proceeding for his satisfaction regarding identity, creditworthiness and genuineness of transaction of the two companies to whom the shares were allotted.The appellant also referred the original assessment proceedings in which incompliance of AO's directions, the assessee furnished all the details, confirmations, bank statements and other evidences etc. vide its replies dated 02/07/2012, 07/11/2012 and 29/11/2012 to prove the genuineness of the share capital /share premium subscriptions in the names of M/s. Gajanand Goods Pvt. Limited and M/s. Pasupati Vinimay Pvt. Limited (hereinafter referred as PVPL).The appellant referred all the submissions made by it during the original assessment and during the re-assessment

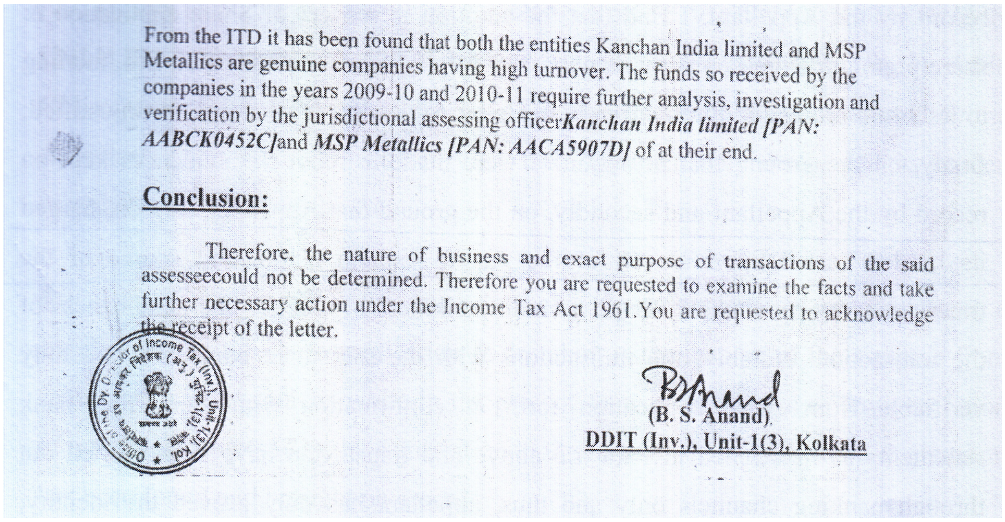
proceeding in compliance of the direction of the AO the assessee again filed all the documentary evidences, confirmations etc. before the AO on 28.11.2017 and 08.12.2017.

4.3 It is the submission of the appellant before me that in spite of all such overwhelming documents such as: the Form-2 of the respective allotments, all the details as filed with the Registrar of Companies, Jaipur, the Copy of Balance Sheet, Acknowledgement of Income Tax return of Gajanand goods Pvt. Ltd. and M/s Pasupati Vinimay Pvt. Ltd., the complete master data of M/s GAJANAND GOODS PVT. LTD. Ltd. (PAN-AAECSO181P) and M/s PASUPATI VINIMAY PVT LTD. (PAN-AADCP5869J) etc. the AO, without conducting any inquiry just choose to rely on the very same report DDIT(Inv), Unit-1(3), Kolkata on 21/03/2017 to make addition u/s 68.

4.4 It is the submission of the appellant the AO did not bother even to read the report of DDIT (Inv.), Unit-1(3), Kolkata on 21/03/2017 which itself reads number of favorable facts about the appellant as under.

v) From the account statement of Pashupati, it has been found that the fund has ultimately been debited to the account of ***Kanchan India Ltd.*** Kanchan India Limited, formerly known as Kanchan Wool-Tex Private Limited was incorporated on 10th June 1996 under the Companies Act and was converted into a Public Limited Company on 14th November 2008. Situated at 19/20, Bhilwara Textile Market, Pur Road, Bhilwara - 311001, Rajasthan, the company is a supplier, exporter and manufacturer of denim suiting cotton yarn, polyester yarn, carpet woollen.

The AO did not bother even to read the concluding remarks in the report of DDIT(Inv.), Unit-1(3), Kolkata on 21/03/2017 which is in no way adverse to the appellant as under.



From the ITD it has been found that both the entities Kanchan India limited and MSP Metallics are genuine companies having high turnover. The funds so received by the companies in the years 2009-10 and 2010-11 require further analysis, investigation and verification by the jurisdictional assessing officer***Kanchan India limited [PAN: AABCK0452C]***and ***MSP Metallics [PAN: AACA5907D]*** of at their end.

Conclusion:

Therefore, the nature of business and exact purpose of transactions of the said assesseecould not be determined. Therefore you are requested to examine the facts and take further necessary action under the Income Tax Act 1961.You are requested to acknowledge the receipt of the letter.

(B. S. Anand)
DDIT (Inv.), Unit-1(3), Kolkata

4.5 It is pointed out by the appellant against the name of the assessee transactions of Rs 14.64 crores have been mentioned in the aforesaid in the report of DDIT(Inv.), Unit-1(3), Kolkata on 21/03/2017 but the AO has added the total amount of Rs. 15,59,00,000/- for which the shares were allotted by the assessee company to PVPL, without any basis or discussion what so ever. It is argued from the above facts one can clearly infer that the AO has made addition purely on the basis of his suspicion without any evidence or basis at all.

4.6 The Appellant in discharge of its onus u/s 68 of the Act had filed confirmation of accounts as well as bank statement reflecting the transactions with other substantiating documents along with assessment orders in case of lender companies, as mentioned in Para 4.2 above. From these documentary evidences placed on record, identity, creditworthiness and genuineness of transactions was established. There is no gain saying that the onus squarely lies on the appellant to prove the identity, creditworthiness and genuineness of the cash credits. In the case of Addl. CIT v. Bahri Bros. (P) Ltd. [1985] 154 ITR 244 (Pat), the Hon'ble Patna High Court has held "if the loans are given by an account paying cheque, it amounts to identification of the parties and discharge of burden by the borrower." In view of the above, it is clear *that Appellant discharged its burden u/s 68 of the Act. Therefore, in the absence of any independent*

inquiry and any adverse findings to rebut the evidences kept on record by the Appellant, I find that the addition in respect of Share application & share premium from company namely, M/s M/s Pasupati Vinimay Pvt. Ltd. totaling to Rs 14.64 crores (addition wrongly made by AO of Rs. 15.59crores) is unjustified; firstly, on the ground that no inquiries were made to rebut the evidences kept on record by the Appellant and secondly, on the ground that Appellant duly discharged its burden casted upon u/s 68 of the Act to explain nature and source of the transactions by proving the identity, creditworthiness of creditor and genuineness of the transaction. Notably, the transactions with the said three companies are duly verifiable from share application form & confirmation with supporting bank statements as mentioned in Para 4.2 above and transaction have been carried out through banking channels only and thus, appellant has duly proved the identity, creditworthiness and genuineness of the transactions.

4.7 The reliance of the AO on some observations raising some suspect in the report of DDIT (Inv.), Unit-1(3), Kolkata on 21/03/2017 for necessary verification and investigation is clearly asking the appellant to prove not only the source over source but asking the appellant to prove source over source for several times without sharing single piece of evidence or causing any inquiry to disprove the evidence submitted by the appellant. With the filing of several documents as said in Para 4.2 above to prove the genuineness of the share capital /share premium subscriptions in the names of M/s. Gajanand Goods Pvt. Limited and M/s. Pasupati Vinimay Pvt. Limited (hereinafter referred as PVPL), the appellant has discharged its burden of proof u/s 68 and it is the AO who has to dis-prove those evidence or find something adverse. The AO has done nothing of this sort.

4.8 Furthermore, from the perusal of documentary evidences kept on record by the Appellant, it is seen that transactions have been done through banking channels and on the date of making of loans, there is balance available in the accounts of the companies, which proves the

creditworthiness and genuineness of the transactions. There is no case of any cash deposition in the account of the immediate investor company at the time of issuing cheques/RTGS in favour of the Assessee. Therefore, in view of the settled judicial precedent in case of CIT V/s VARINDER RAWLLEY [2014] 366 ITR 232 (PUNJAB & HARYANA), CIT V/s VIJAY KUMAR JAIN 221 TAXMAN 180. CIT v. Victor Electrodes Ltd. [2010] 329 ITR 271, Addl. CIT v. Bahri Bros. (P) Ltd. [1985] 154 ITR 244 (Pat) and others as referred by the Appellant, I am of the considered view that Appellant duly discharged its burden casted upon it u/s 68 of the Act.

4.9 In my considered view, mere not believing an explanation cannot lead to a conclusion that the share application & premium is the income of the assessee from some undisclosed sources while in the present case, no evidences of any generation of undisclosed income or their utilization in the form of share application & premium has been found and brought on record.

4.10 It is further seen that AO has not brought any specific defect/discrepancies in the direct evidence kept on record by the Appellant. Referring the report of DDIT (Inv.) Kolkata, the AO has observed to the effect that on the date of debit in the account statement of investor company, there is corresponding credit entry of equal amount, however, this observation of the AO is itself not sufficient to prove beyond doubt that Appellant routed its unaccounted income by these companies rather it proves the source in the hands of the Appellant. It is usual business practice, while making loans/investment to party, funds are required to be arranged by the lender, therefore, reflection of such entries in bank statement doesn't lead to draw any adverse *inference against the Appellant. Needless to say that Appellant is not required to prove source of the source u/s 68 of the Act in view of the settled judicial precedents.*

4.11 It is settled judicial precedents that under the income tax law primary burden u/s 68 of the Act is on the Appellant and once this burden is

discharged u/s 68 of the Act, no addition u/s 68 of the Act is justifiable in the hands of the Assessee in view of the judgments in case of Shree Barkha Synthetics Ltd. V/s Assistant Commissioner of Income-tax (2006) 155 TAXMAN 289 (RAJ.), COMMISSIONER OF INCOME-TAX, JAIPUR -II V. MORANI AUTOMOTIVES (P.) LTD. [2014] 264 CTR 86 (RAJASTHAN-HC), CIT v. Orissa Corpn. (P.) Ltd. [1986) 159 ITR 78/25 Taxman 80F (SC), Commissioner of Income-tax v/s Mark Hospitals (P.) Ltd. [2015] 373 ITR 115 (Madras)(MAG.), Commissioner of Income-tax, Ajmer v. Jai Kumar Bakliwal [2014] 366 ITR 217 (Rajasthan), CIT v/s. Creative World Telefilms Ltd (2011) 333 ITR 100 (Bom), Commissioner of Income-tax-I v. Patel Ramniklal Hirji [2014] 222 Taxman 15 (Gujarat)(MAG.), Principal Commissioner of Income-tax-4 v. G & G Pharma India Ltd. [2016] 384 ITR 147 (Delhi) referred above which have been also been followed recently by Hon'ble Delhi Tribunal in case of ITO vs. Softline Creations (P) Ltd. in ITA No. 744/Del/2012 vide its order dated 10.02.2016. Further, Hon'ble Apex Court as well as High Court has held that once the identity of creditor is established, the department is free to reopen the assessment of creditor and no addition can be made in the hand of borrower as rightly held in case of CIT v/s Lovely Exports Pvt. Ltd. [2008] 216 CTR 195 (SC), Commissioner of Income-tax v. Rock Fort Metal & Minerals Ltd. [2011] 198 TAXMAN 497 (Delhi), Divine Leasing & Finance Limited [2008] 299 ITR 268 (Delhi) CIT v. Orissa Corporation (P.) Ltd. [1986) 159 ITR 78/25 Taxman 80F (SC) and others on this question of law.

4.12 Under the above factual position the reliance is placed on the following landmark decisions on the issue.

i. Hon'ble Supreme Court in the case of CIT Vs Lovely Exports (P) Ltd. (2008) 216 CTR 295 (S.C.) has held as under:

"If share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the department is free to proceed to reopen their individual

assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company."

ii. *The Hon'ble Rajasthan High Court in the case of M/S Barkha Synthetics Ltd v/s ACIT, 283 ITR 377 (Raj) has held as under:*

"The principle relating to burden of proof concerning the assessee is that where the matter concerns the money receipts by way of share application from investors through banking channel, the assessee has to prove existence of person in whose name share application is received. Once the existence of shareholder is proved, it is no further burden of assessee to prove whether that person itself has invested said money or some other person had made investment in the name of that person. The burden then shifts on revenue to establish that such investment has come from Assessee Company itself."

iii. *CIT Vs. First Point Finance Ltd.[2006] 286 ITR 477,*

iv. *CIT Vs. Morani Automobiles Pvt. Ltd., [2014] 45 Taxmann.com 473*

v. *CIT Vs. Super Tech. Diamond Tools Pvt. Ltd., [2014] 44 Taxmann.com 460.*

vi. *CIT v/s Bhaval Synthetics (P) Ltd,(2013) 217 Taxman 23(Raj)*

vii *The ITAT, Jaipur in the case of Shalimar Buildcon Pvt. Ltd. Vs. ITO, [2011] 136 TTJ 701 decided similar issue as under:*

"Shareholder companies having admitted to have subscribed to the share capital of the assessee company and accounted for the source of funds in their books of accounts which is not shown to be incorrect or false, no case is made out for making addition under s. 68 in the absence of any evidence to show that the share capital represented accommodation entries ".

4.13 In view of the above discussion of relevant facts and following the several ratios on the subject from Hon'ble Apex Court, High Courts including jurisdictional High Courts, Tribunals including jurisdictional Tribunals, and in particular, under the fact non-rebuttal of host of evidence in favour of the appellant cited above, the additions made by the AO of Rs. 15.59 crores and Rs. 1.94 crores for the A.Y. 2010-11 & 2011-12 respectively on account of the share application money u/s 68 of the Act is not sustainable and stand deleted. With this ground no. 6 of both the appeal stand allowed. Consequently, the ground no 1 to 5 of both appeal regarding omissions in re-opening and completions of the reopened assessments are reduced to academic & infructuous and hence the same stand as dismissed. It may be mentioned here that in this case reopening is approved by Pr. CIT, whose decision I am not competent to adjudicate. However, the assessment is made by AO and therefore addition is adjudicated on merit only as discussed above."

7. The other grounds taken by the assessee before the ld. CIT(A) was disposed off by the ld. CIT(A) as under:

"5. The ground no. 7 in both these appeals is regarding charging o interest u/s 234B. The said ground reads as follows:-

7. The ld. AO has erred on facts and in law in charging interest of Rs. 57,52,050/- and Rs. 1,75,94,982/- u/s 234 B u/s 234 B of the Act, on the assessed income for the A.Y. 2010-11 & 2011-12.

5.1 The A/R of the Appellant attended proceedings and made submissions as follows:-

"11.1 Reliance is placed in this regard on decision of Hon'ble Jharkhand High Court in the case of Sh. Ajay Prakash Verma V/s 1TO vide its order dated 25-07-2012 in TA no. 38 of 2010, reported in (2013) (1) TMI 140.

11.2 The Hon'ble Ranchi ITAT has consistently followed this view in the following cases and several other cases-

(1) Sh. Girdhari Lal Sharma V. ITO, ITA No. 31/Ranchi/2013, AY 2009-10 DOJ 07-05-2013.

(2) Sunil Kumar Sawa V. ITO ITA No. 112-115/Ranchi/2017 AY 2007-08, 2008-09. 2011-12 & 2012-13 DOJ 30-05-2018.

(3) Durga Devi Gupta V. ITO ITA No. 156 Ranchi/2015 AY 2009-2010, DOJ 28-02-2018.

(4) ITO Vs. Anand Vihar Promoters & Developers ITA No. 159/Ranchi/2015 AY 2010-11, DOJ 28-02-2018

(5) M/s Cement supply agencies V. DCIT/1TA No. 304/Ranchi/2016 AY 2012-13 DOJ 28-02-2018

(6) ITO V. Shree Tirupati Minerals (P) Ltd. ITA No. 09/Ranchi /2016, AY 200--09 DOJ 05-12-2016

11.3 The Hon'ble Supreme Court in the cases of CIT V/s Vegetable Products Ltd. (1973) 88 ITR 192 (SC) and CIT V. Vatika Township (P) Ltd. (2014) 367 1TR 466 (SC) has held that when two views are possible on any issue, the view which is favourable to the assessee should be adopted.

In view of the afore said judicial pronouncements the interest charged u/s 234 B on assessed income may kindly be directed to be reduced to nil, as the assessee has nil returned income."

5.2 This ground being consequential in nature, therefore, AO is directed to give effect to findings of this appellate order in computation of total income and allow credit of taxes paid by the Appellant and set off or carry forward of losses which are allowable to assessee after verification of the same from record. As regards charging of interest u/s 234A, 234B & 234C of Income Tax Act it is stated that as held in case of Anjum MH Ghaswala (2001) 119 Taxman 352 (Supreme Court) and in case of Hari Narayan Soni (322 ITR 444) by Jurisdictional High Court) interest chargeable u/s 234A, 234B & 234C of Income Tax Act is compensatory and mandatory in nature. The same is of consequential nature and therefore the AO is directed to recompute the interest u/s 234A, 234B & 234C of Income Tax Act after giving effect to this appellate order. Thus, the ground no. 7 in both these appeals is allowed to the extent indicated above.

8. Against the above said order of the ld. CIT(A), the revenue is in further appeal before us with regard to merits of the addition deleted by the ld. CIT(A). However, the assessee is in cross objection had taken ground on account of legality of reopening by him but not decided by the ld. CIT(A).

9. The ld AR argued on behalf of the assessee and submitted that the original return filed by the assessee for both the years under consideration were selected for scrutiny and thereafter assessment order was framed U/s 143(3) of the Act wherein all the details with regard to share capital and share premium was called by the Assessing Officer. The Assessing Officer has required the assessee to prove the identity, creditworthiness and genuineness of the transaction relating to allotment of shares. Our attention was invited to the queries raised by the Assessing Officer vide letter dated 20/04/2013. In compliance to the same vide reply dated 06/5/2013, the assessee has filed all the evidences to prove the genuineness of the share capital/share premium, subscriptions in the names of M/s Gajanand Goods Pvt. Ltd. and M/s Pasupati Vinimay Pvt. Ltd.. As per the ld AR, being fully satisfied with the reply of the assessee, after examining the documents filed before the Assessing Officer, the assessment was completed U/s 143(3) of the Act. As per the ld AR, the Assessing Officer has received communication from DDIT (Inv.), Kolkata on 21/3/2017 regarding some verification carried out by him in connection

with some bank deposit of M/s Shiv Kali trade in Axix bank limited. On the basis of this letter of Investigation, the Assessing Officer has send the proposal to Pr.CIT seeking approval U/s 151(1) of the Act for initiating proceeding U/s 148 of the Act. Our attention was also invited to the reasons recorded for reopening. After reopening, the Assessing Officer issued notice U/s 143(2) and 142(1) of the Act and specific query letter dated 14/11/2017. The assessee had filed a written reply and evidences proving genuineness of the share capital so received. However, the Assessing Officer has made addition in respect of share capital/premium. Our attention was also invited to the fact that the notice issued U/s 143(2) of the Act was beyond the statutory time limit provided under the Act. As per the ld AR, notice was issued after six months from the end of the relevant assessment years. For this purpose, reliance was placed on the decision of the Hon'ble Supreme Court in the case of ACIT & Anr. Vs Hotel Blue Mood 321 ITR 362 and the decision of the Hon'ble Bombay High Court in the case of Sanjiv Goel Vs DCIT 2018, TIOL 1594 (Bom). Reliance was also placed on the various decisions of the Hon'ble Supreme Court, Hon'ble High Courts as well as Special Bench of the Tribunal in the case of Raj Kumar Chawla Vs ITO (2005) 94 ITD 1 (Delhi ITAT (SB).

10. As per the ld AR, even the proceeding U/s 147/148 of the Act was initiated after four years from the end of the relevant assessment year

without fulfilling the mandate of proviso to Section 147 of the Act. Accordingly, notice U/s 148 of the Act was bad in law.

11. As per the ld AR, it is clear from the facts of the case that during the original assessment proceedings, the Assessing Officer has specifically required the assessee to furnish various details to establish genuineness and creditworthiness of the share applicants and in compliance to the same, the assessee has filed details through letter dated 02/7/2012, 07/11/2012 and 29/11/2012. Being fully satisfied with the details so filed and after examining the same, the Assessing Officer has accepted the genuineness of the share capital/share premium in his scrutiny assessment framed U/s 143(3) of the Act. Under such facts and circumstances, it was contended that there was a change of opinion while reopening the assessment on the very same ground. In support of the proposition, reopening can be made for change of opinion.

12. The ld AR also argued that the reopening of the assessment which has been framed U/s 143(3) of the Act is also affected by proviso to Section 147 in so far as there was no failure on the part of the assessee to furnish details which is necessary for the assessment.

13. As per the ld AR, the Assessing Officer has reopened the assessment purely for verification and for conducting enquiries without there being any tangible material and only on the basis of suspicion and assumption after

inviting our attention to the reasons recorded for reopening and the communication received from DDIT (Inv), Kolkata, it was contended that the Assessing Officer has disturbed the completed assessment U/s 143(3) of the Act without any independent application of mind. As per the ld AR, it is clear from the letter dated 10/3/2018 issued by the DDIT (Inv.), Kolkata that he has not made any allegation of escapement of income in the case of assessee. He has also not given any specific co-relation of deposit of any cash in the account of M/s Shiv Kali trade (India) with the share application money given by PVPL to the assessee company.

14. As per the ld AR, even approval given by the Pr. CIT for issuing notice U/s 148 of the Act was in a very routine and mechanical manner which was without application of mind by simply putting her signatures below the rubber stamped 'Yes, satisfied'. As per the ld AR, such mechanical approval does not fulfill the mandate of provisions of Section 151(1) of the Act. Accordingly, notice issued U/s 148 of the Act on the basis of such approval is bad in law. For this purpose, reliance was placed on the proposition laid down by the Hon'ble Supreme Court in the case M/s Chuggamal Rajpal Vs SP Chaliha (1971), 79 ITR 603 (SC) and the decision of the Hon'ble Delhi High Court in the case of United Electrical Co. (P) Ltd. Vs. CIT 258 ITR 317.

15. With regard to the merit of the addition, it was contended by the ld AR that the addition was made merely on the suspicion and without

bringing any incriminating material on record to substantiate that the share application money emanated from the coffers of the assessee and there being no evidence directly or indirectly with the Assessing Officer that the assessee has routed its undisclosed money in the guise of share capital. Relying on the decision of the Hon'ble Delhi High Court in the case of Value Capital Services (P) Ltd. 307 ITR 334 (Del) wherein it was held that there is additional burden on the department to show that even if share applicants did not have the means to make investment of the share applicants, the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as undisclosed income of the assessee. Reliance was also placed on the decision of the NC Cables Limited (2017) 391 ITR 11 (Del) and the decision of the Hon'ble Madhya Pradesh High Court in the case of Pr.CIT Vs. Chain House International Pvt. Ltd. (2018) 408 ITR 561 (MP). The ld AR has further relied on the detailed findings recorded by the ld. CIT(A) so as to justify the identity, genuineness and creditworthiness of the share applicants.

16. On the other hand, the ld DR has argued that there was information with the Assessing Officer with regard to bogus share capital having been introduced by the assessee. He also invited our attention to the letter issued by the Investigation Wing, Kolkata. With regard to merit of the addition, the ld DR has contended that the assessee could not justify genuineness and creditworthiness of the share applicants, therefore, the

ld. CIT(A) was not justified in deleting the addition so made by the Assessing Officer U/s 68 of the Act.

17. We have considered the rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements referred by the lower authorities in their respective orders as well as cited by the ld. AR and ld. DR during the course of hearing before us in the context of factual matrix of the case. From the record we found that during the financial year 2009-10 relevant to the A.Y. 2010-11 the assessee company issued 17,84,000 shares of Rs. 10 each aggregating to Rs. 1,78,40,000/- at premium of Rs. 16,05,00,000/-, as reflected in Schedule: 1 & Schedule: 2 of the balance sheet filed before the ld. AO, on the basis of which the ld. AO required the assessee to furnish complete details to prove the identity, creditworthiness and genuineness of the transactions relating to allotment of shares. Relevant queries made by the ld. AO, vide his letter No. DCIT/Circle/BHL/2012-13 dated 04-09-2012 are reproduced as under:-

> "4. Furnish complete details of Share capital, Share application money, Cash creditors and squared up credit account holders if any, i.e. name and full address, total loan/capital taken, date and mode of deposits, received, sources of deposits by the creditors their, PAN No. and indicate ward, where they assessed to tax etc.. In this regard, please prove their identity, credit worthiness and genuineness of transaction with the help of documentary evidence i.e. copies of accounts, bank statements, copies of cash books, copies of balance sheet and return of income in respect of new creditors introduced in your books of account in the year under

consideration. Furnish name, complete address and PAN in respect of old creditors.

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13. In the assessment proceedings you have shown shares money/shares capital subscriptions in the name of M/s Gajanand Goods Pvt. Ltd., and M/s Pasupati Vinimay Pvt. Ltd., for verification the letters were issued to both concern the letters are returned by postal department with the remarks that Not Know (M/s Pasupati Vinimay Pvt. Ltd.), In sufficient address (M/s. Gajanand Goods Pvt. Ltd.,). Due to these reasons the genuineness of existence of both concern is doubtful,please furnish your explanation"

In compliance, the assessee furnished all the details, confirmations, bank statements and other evidences etc. vide its replies dated 02-07-2012, 07-11-2012 and 29-11-2012 to prove the genuineness of the share capital /share premium subscriptions in the names of M/S.Gajanand Goods Pvt.Limited and M/S.Pasupati Vinimay Pvt. Limited (hereinafter referred as PVPL). The relevant excerpts from the above replies are reproduced as under:

Reply Dated: - 02.07.2012

"Addition of Share Capital

During the year under review assessee Company has made an addition of capital amounting to Rs 178.40 Lacs by issuing 1784000 equity shares detail as to M/S GAJANAND GOODS PVT. LTD. Ltd. (PAN-AAECS0181P)-225000 Sahres and M/S PASUPATI VINIMAY PVT LTD.(PAN-AADCP5869J)-1559000 shares as below-

S. No	Date of allotment	Allotte's Name	Amount of Shares allotted
1.	20.07.2009	M/s Pasupati Vinimay Pvt Ltd M/s Gajanand Goods Pvt Ltd	253000 225000
2.	13.08.2009	M/s Pasupati Vinimay Pvt Ltd.	315000
3.	31.08.2009	M/s Pasupati Vinimay Pvt Ltd.	220000

4.	03.10.2009	M/s Pasupati Vinimay Pvt Ltd.	55000
5.	16.11.2009	M/s Pasupati Vinimay Pvt Ltd.	370000
6.	26.12.2009	M/s Pasupati Vinimay Pvt Ltd.	170000
7.	09.03.2010	M/s Pasupati Vinimay Pvt Ltd.	82000
8.	27.03.2010	M/s Pasupati Vinimay Pvt Ltd.	94000
	Total		**1784000**

We are enclosing herewith the Form -2 of the respective allotments evidencing them as well as all the details as filed with the Registrar of Companies, Jaipur in this regard.

Further we are also enclosing herewith the Copy of Balance Sheet, Acknowledgement of Income Tax return of Gajand goods Pvt. Ltd. and M/s Pasupati Vinimay Pvt Ltd, which reveals the sources & creditworthiness. ***Annexure-D"***

Reply Dated : - 07.11.2012

"4. Share Capital : -

As we have already mention in our previous reply dated 02.07.2012, that during the year under review assessee Company has made an addition of capital amounting to Rs 178.40 Lacs by issuing 1784000 equity shares detail as to M/S GAJANAND GOODS PVT. LTD. Ltd. (PAN-AAECS0181P)-225000 Sahres and M/S PASUPATI VINIMAY PVT LTD.(PAN-AADCP5869J)-1559000 shares as below-

S. No	**Date of allotment**	**Allotte's Name**	**Amount of Shares allotted**
1.	20.07.2009	M/s Pasupati Vinimay Pvt Ltd M/s Gajanand Goods Pvt Ltd	253000 225000
2.	13.08.2009	M/s Pasupati Vinimay Pvt Ltd.	315000
3.	31.08.2009	M/s Pasupati Vinimay Pvt Ltd.	220000
4.	03.10.2009	M/s Pasupati Vinimay Pvt Ltd.	55000
5.	16.11.2009	M/s Pasupati Vinimay Pvt Ltd.	370000
6.	26.12.2009	M/s Pasupati Vinimay Pvt Ltd.	170000
7.	09.03.2010	M/s Pasupati Vinimay Pvt Ltd.	82000
8.	27.03.2010	M/s Pasupati Vinimay Pvt Ltd.	94000
	Total		**1784000**

We are enclosing herewith the complete master data of M/S GAJANAND GOODS PVT. LTD. Ltd. (PAN-AAECS0181P) and M/S PASUPATI VINIMAY PVT LTD. (PAN-AADCP5869J) for your kind reference to resolve the matter of communication.

Further we are enclosing herewith confirmations in original, received from the above companies, stated & confirm the investment made to our company marked as **annexure-D**.

Reply Dated : 29.11.2012

1. "Share Capital confirmations : -

It has been brought to our knowledge that you are sending confirmation/query letters to M/s Gajanand Goods Pvt. Ltd and M/s Pasupati Vinimay Pvt. Ltd but those letters were returned as undelivered to your good office.

We would like bring your kind attention that you good office is sending confirmation/query letters to M/s Gajanand Goods Pvt. at 32, ERS Street, 6th Floor, Kolkata (WB) which was the previous address of the company. The new address is 159, Ravindra sarni 5th Floor Kolkata (WB)-700007. The master data as per ROC department of the companies containing the correct registered office addresses is enclosed herewith for your kind reference marked as **Annexure – A**, your good office may again sending confirmation/query letter to correct address as stated above.

Further the same case is in matter of M/s Pasupati Vinimay Pvt, the new & complete address is 692/1B, Patuli, Shibtolla, P.O. Abdalpur Madhyamgram, Kolkata (WB)-700153. The master data as per ROC department of the companies containing the correct registered office addresses is enclosed herewith for your kind reference marked as **Annexure – B**, your good office may again sending confirmation/query letter to correct address as stated above.

However, in response of our request to both the companies M/s Gajanand Goods Pvt. Ltd and M/s Pasupati Vinimay Pvt Ltd, in respect to justify share investment transactions, they send us the complete set of documents containing Confirmation with all detail of cheque no., date & amount, copy of Bank Statement, Copy of PAN Card, Copy of acknowledgement of Income Tax Return for the A.Y. 2010-11, Copy of Balance Sheet year ended 31.03.2010, Copies of Shares allotment letters, Copy of minutes book for extract of resolution permitting the company for investment in the share of Kanchan India Limited and copy Memorandum & Article of Association of company. The same has been enclosed herewith for kind reference, which reveals the sources & creditworthiness marked as ***Annexure-C*** for both the companies."

18. Being fully satisfied with the replies of the assessee, the ld. AO completed the assessment u/s 143(3) on 21.12.2012 accepting the share capital/shares premium as genuine, without making any addition on this point. The ld. AO discussed this issue in Para 4. of his assessment order, as under-

> *"4. It is also informed that during the year under consideration assessee company has made an addition of capital amounting to Rs. 178.40 Lacs by issuing 1784000 equity shares to M/s Gajanand goods Pvt. Ltd. (PAN – AAECS0181P)-225000 Shares and M/s Pasupati Vinimay Pvt. Ltd. (PAN-AADCP5869J)-1559000 shares. The assessee company has submitted all required papers, ROC forms and records to reveals the sources, creditworthiness and justifies the transaction.*
>
> *Complete set of documents containing Confirmation with all detail of cheque no., date & amount, copy of Bank Statement, Copy of PAN Card, Copy of acknowledgement of Income Tax Return for the A.Y. 2010-11, Copy of Balance Sheet year ended 31.03.2010, Copies of Shares allotment letters, Copy of minutes books of extract of resolution permitting the company for investment in the share of Kanchan India Limited and copy of Memorandum & Article of Association of both the companies are received, which are placed on record."*

19. Subsequently, the successor AO received communication from DDIT(Inv.), Unit-1(3), Kolkata on 21-03-2017 regarding some verification carried out by him in connection with some bank deposits in A/c No. 9090200425725 of some party M/s Shiv Kali Trade(India), in Axis Bank Ltd., Burrabazar. This report sent by the DDIT vide his letter dated 10-03-2017 received by the ACIT, Bhilwara on 21-03-2017.

20. The reasons so recorded for reopening of assessment reads as under:

"The assessee has filed its return of income for AY 2010-11 on 11.10.2010 declaring total loss of Rs.13,17,19,143/- and assessment u/s 143(3)completed on 21.12.2012 at total loss of Rs.12,64,02,743/-. The assessee issued 1559000 shares to M/s Pasupati Vinimay Pvt. Ltd. and received a sum of Rs.15,59,00,000/- during the year under consideration.

Information available with the undersigned it is observed that in the bank account bearing No.909020042572 in Axis Bank Ltd., Burrabazar branch, Kolkata of M/s Shiv Kali Trade, cash has been deposited directly or through clearing which was transferred on the same day or the subsequent day to M/s S.K. Impex. Further verification of bank accounts of M/s S. K. Impex revealed that the fund debited to Accent Commerce and then from there to M/s Cuckoo Merchandise Private Limited, M/s Carnation Trade Link Pvt. Ltd and M/s Blackbird Tie-up Pvt. Ltd. and from the above entities this fund debited to M/s Pasupati Vinimay Pvt. Ltd. who ultimately transferred the said fund to the assessee company i.e. Kanchan India Limited. The assessee company M/s Kanchan India Limited issued 15,59,000 shares to Pasupati Vinimay Pvt. Ltd against the aforesaid fund received. From the information available it is also seen that these above entities were not having any substantial business turnover and this fund was routed without economic rationale. After considering the whole scenario t have prima facie belief that assessee company received accommodation entry In the form of share application money.

I therefore, have reason to believe that the income to the extent of Rs.15,59,00,000/- has escaped assessment within the meaning of section 147 of the Act and this is a fit case for re-opening of assessment and issuing notice u/s 148 of the Act."

21. From the record we found that the AO issued notice u/s 148 of the Act to the assessee company on 29-03-2017 requiring it to furnish return of income for the A.Y. 2010-11 within 30 days of receipt of the said notice. In compliance, the assessee filed return u/s 148 on 30-03-2017 electronically showing the same income which was shown in the original return dated 11-10-2010. After filing the return the assessee requested the AO, to furnish the reasons for issuing notice u/s 148 which were furnished by the AO on 30-05-2017. The assessee vide its letter dated 14.07.2017 raised the following objections against the reasons recorded by the AO for reopening of the assessment completed u/s 143(3),which were disposed of by the AO on 26.10.2017 as under:-

> *(1). Assessee : That nowhere in the reasons recorded there has been any whisper of any failure on the part of the assessee company to disclose fully and truly all material facts necessary for assessment which is pre condition under proviso to sec. 147, where reopening is made after 4 years from the end of the relevant assessment year.*
>
> *Assessing Officer : This objection has got no force at all. The recording or non recording of the words "Failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment" would not itself bestow or oust jurisdiction. One would necessarily have to read the reasons as a whole to find out whether or not there has been a failure to disclose fully and truly all necessary facts for assessment*
>
> *(2). Assessee : That the issue of share capital was thoroughly examined by the AO in the original assessment proceedings u/s 143(3) and he recorded his categorical finding of satisfaction in para 4 of the assessment order. The present reopening is nothing but mere reappraised of the existing facts already on record, therefore, it is clearly a case of change of opinion, which is impermissible in law.*

Assessing Officer : *The contention of the assessee that present reassessment proceedings are just another opinion is also not acceptable. In the present case the material on the basis of which the belief has been formed is a report from the Investigation Wing of the department. This is certainly fresh material and cannot be considered to be the same material which was available with the then AO at the time of original assessment proceedings. In a case where information obtained during the original assessment proceedings is subsequently discovered as false, the question of change of opinion does not arise.*

(3). Assessee : There is no tangible material for reopening and the reasons recorded are vague and do not have any live link to the escapement of income.

Assessing Officer : The objection has got no force at all. At the time of issuing a notice u/s 148, it is not necessary for the AO to conclusively arrive at a finding that there has been escapement of income. At the stage of issue of notice the only requirement is to examine, whether on the available material a reasonable person could form a reasonable view to believe that income chargeable to tax has escaped assessment. He relied on the decision of the Hon'ble Supreme Court in the case of ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd., 291 ITR 502 (SC).

(4). Assessee : That proper sanction from the Higher Authorities has not been obtained before issue of notice u/s 148 as required under section 151 of the Act, since the notice has been issue beyond four years from the end of the relevant assessment year.

Assessing Officer : Notice u/s 148 of the Act has been issued as per due procedure of law after obtaining the sanction from competent authority Pr. CIT, Ajmer.

22. We also found that after disposal of objections of the assessee, the AO issued notice u/s 143(2), 142(1) of the Act and specific query letter on 14.11.2017. The assessee filed written replies and evidences proving genuineness of the share capital received. However, the AO ignoring the

submissions of the assessee completed the assessment u/s 148/143(3) on 18-12-2017 making addition of Rs. 15,59,00,000/-, observing as under:

> *"5. The submissions of the assessee has been considered, but the same is found to be not acceptable. This is because as per information available with the department, it is clear that mostly cash has been deposited in the bank accounts of Shiv Kali Trade. That such credit has been immediately transferred to other accounts, mainly to S K Impex on the same day or the subsequent day. From S K Impex the money has been transferred to Accent Commerce and from Accent Commerce to M/s Cuckoo Merchandise Pvt. Ltd. Carnation Tradelink Pvt. Ltd. and M/s Blackbird Tie-up Pvt. Ltd. From these entities fund has been transferred to RMB Finance and M/S. Pashupati Vinimay Pvt. Ltd..From M/S. Pashupati Vinimay Pvt. Ltd. the fund has been transferred to the assessee M/s Kanchan India Limited. It is also seen that M/s Pashupati Vinimay Pvt. Ltd. is not having any business as such.*
>
> *6. In view of the above facts, the transaction between M/s Pashupati Vinimay Pvt. Ltd. and M/s Kanchan India Limited cannot be held as genuine. Therefore, the fund received from Pashupati Vinimay in the guise of share/share premium amounting to Rs.15,59,00,000/- during the year under consideration cannot be held as genuine transaction. The fund received amount to Rs.15,59,00,000/- is therefore held as unexplained as per the provisions of section 68 of the I.T. Act. and added to the total income. Further, it is seen that M/s Pashupati Vinimay Pvt. Ltd. is not having business as such."*

23. We also found that in this case notice u/s 148 for the A.Y. 2010-11 was issued by the AO i.e. ACIT Circle, Bhilwara on 29-03-2017. In compliance the assessee filed its return on 30-03-2017 vide acknowledgment No. 722689431300317. A letter was also sent to the AO on the same day intimating him that the return originally filed on 11-10-

2010 may be treated to have been filed in compliance to the notice u/s 148 dated 29-03-2017.

24. On the basis of the said return dated 30-03-2017 the AO issued notice u/s 143(2) & 142(1) on 14-11-2017 and proceeded to complete the assessment u/s 148/143 (3) of the Act on 18-12-2017.

25. For completing an assessment u/s 143 (3) it is mandatory to issue and serve notice u/s 143(2) within six months from the end of the relevant assessment year, as per proviso to see 143(2). This mandatory requirement is also applicable to the reopened assessments u/s 148 also. (ACIT & Anr Vs. Hotel Blue Moon, 321 ITR 362 (SC) and Sanjiv Goel Vs. DCIT, ITA No. 730 to 732 of 2018, 2018 – TIOL-1594-HC-MUM-IT, DOJ 30.07.2018, Bombay High Court. In the case of the assessee the return in compliance to notice u/s 148 dated 29.03.2017 was filed on 30-03-2017 and as such notice u/s 143(2) was to be served within 6 months from the end of the year in which the return was filed i.e. by 30-09-2017. No Notice u/s 143(2) was issued & served by ld. AO by the specified date i.e. 30-09-2017. Therefore assessment completed by him u/s 148/143 (3) on 18-02-2017 is invalid, bad in law and deserves to be quashed. Notice issued by the AO u/s 143(2) on 14-11-2017 was beyond the specified date and hence barred by limitation. An assessment made on the basis of such notice is also without jurisdiction, invalid and bad in law and deserves to

be quashed. In this regard reliance is placed on the following judicial pronouncements-

(i) Raj Kumar Chawla V. ITO, (2005) 94 ITD 1, Delhi-ITAT (SB)
(ii) ACIT V. Greater Noida Industrial Corporation, ITA No. 142 of 2015. DOJ 04-08-2015 (Allahabad H.C.)
(iii) Ashed Properties & Investments (P) Ltd. V. ACIT (2015) 62 taxmann. Com 340 (Bangalore ITAT.)
(iv) Chandra R. Gandhi V. ITO, (2009) 120 TTJ 786 (Mumbai-ITAT)
(v) Alpine Electronics Asia Pte. Ltd. V. DGIT (2012) 341 ITR 247 (Delhi HC)
(vi) Zakia Begum V. ITO, ITA No. 3002/Delhi/2016, DOJ-09-01-2017
(vii) CIT V. M. Chellappan, 281 ITR 444, (Madras H C)
(viii) C. Ramaiah Reddy V. DCIT, ITA No. 121/ Bangalore/2011, DOJ 27-01-2012
(ix) ITO v. R K Gupta (2008) 115 ITD 384, (Delhi-ITAT)

26. We also found that the proceedings u/s 147/148 have been initiated after four years from the end of the relevant assessment year without fulfilling the mandate of proviso to Sec. 147 of the Act. Therefore, the notice issued u/s 148 is bad in law.

27. In so far as the contention of the ld AR with regard to change of opinion while reopening the assessment U/s 147 is concerned, we found that during original assessment proceeding the AO specifically required the assessee through his letter date 04-09-2012 to furnish the following details to find out the genuineness of the share capital/share premium.

> *"4. Furnish complete details of Share capital, Share application money, Cash creditors and*

squared up credit account holders if any, i.e. name and full address, total loan/capital taken, date and mode of deposits, received, sources of deposits by the creditors their, PAN No. and indicate ward, where they assessed to tax etc.. In this regard, please prove their identity, credit worthiness and genuineness of transaction with the help of documentary evidence i.e. copies of accounts, bank statements, copies of cash books, copies of balance sheet and return of income in respect of new creditors introduced in your books of account in the year under consideration. Furnish name, complete address and PAN in respect of old creditors."

In compliance, the assessee furnished the following details/ documents etc. through its letters dated 02-07-2012, 07-11-2012 and 29-11-2012 as discussed earlier.

(i) *Confirmation with all details of cheque No., date & amount, of PVPL*
(ii) Copy of Bank statement of PVPL
(iii) Copy of PAN Card of PVPL
(iv) Copy of Income Tax Return for the A.Y. 2010-11 of PVPL
(v) Copy of Balance-sheet of PVPL for the year ended on 31-03-2010
(vi) Copies of share allotment letters.
(vii) Copy of Minute's Book of PVPL for extract of resolution permitting the company for investment in shares of Kanchan India Ltd.
(viii) Copy of Memorandum & Articles of Association of PVPL
(ix) Complete Master Data of PVPLForm-2 of the respective allotments as well
(x) as all the details filed with the Register of Companies Jaipur, in this regard.

Being fully satisfied with the aforesaid details furnished by the assessee and independent, investigation carried out by him, the ld. AO accepted the genuineness of the aforesaid share capital/share premium in his assessment order u/s 143(3) dated 21-12-2011 stating as under:

"4. <u>It is also informed that during the year under consideration assessee company has made an addition of capital amounting to</u>

Rs. 178.40 Lacs by issuing 1784000 equity shares to M/s Gajanand goods Pvt. Ltd. (PAN – AAECS0181P)-225000 Shares and M/s Pasupati Vinimay Pvt. Ltd. (PAN-AADCP5869J)-1559000 shares. The assessee company has submitted all required papers, ROC forms and records to reveals the sources, creditworthiness and justifies the transaction.

Complete set of documents containing Confirmation with all detail of cheque no., date & amount, copy of Bank Statement, Copy of PAN Card, Copy of acknowledgement of Income Tax Return for the A.Y. 2010-11, Copy of Balance Sheet year ended 31.03.2010, Copies of Shares allotment letters, Copy of minutes books of extract of resolution permitting the company for investment in the share of Kanchan India Limited and copy of Memorandum & Article of Association of both the companies are received, which are placed on record." (Emphasis supplied)

28. It is an established position of law that when an issue or query is raised and answered by the assessee in original assessment and yet, the Assessing Officer does not make any addition in the assessment order, in such situations, it would have to be accepted that the issue had been examined but the Assessing officer did not find any ground or reason to make any addition or reject the stand of the assessee. When such an exercise is undertaken by the ld. AO, it can be regarded as a case where the Assessing Officer forms an opinion and that reassessment on the very same ground would be invalid because the Assessing officer having once formed an opinion in the course of the original assessment, although he did not record the reasons for the same, cannot be permitted to change his opinion through the reassessment proceedings. The case of the appellant is better placed than the above preposition as in its case the ld. AO has given a definite finding in Para 4 of his order. Reliance is placed in

this regard on Full Bench decision in - CIT V. Usha International Limited: (2012) 348 ITR 485 (Delhi) (FB) wherein it was, inter alia, held as under:

> *"Re-assessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The re-assessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons."*

In a recent decision dated 24.04.2018 in the case of ITO Vs. M/s Techspan India Pvt. Ltd. in civil appeal No. 2732 OF 2007 The Hon'ble Supreme Court has decided the issue of change of opinion with reference to reopening of assessment completed u/s 143(3), as under-

> "9) Section 147 of the IT Act does not allow the re-assessment of an income merely because of the fact that the assessing officer has a change of opinion with regard to the interpretation of law differently on the facts that were well within his knowledge even at the time of assessment. Doing so would have the effect of giving the assessing officer the power of review and Section 147 confers the power to re-assess and not the power to review.
>
> 10) To check whether it is a case of change of opinion or not one has to see its meaning in literal as well as legal terms. The word change of opinion implies formulation of opinion and then a change thereof. In terms of assessment proceedings, it means formulation of belief by an assessing officer resulting from what he thinks on a particular question. It is a result of understanding, experience and reflection.
>
> 11) It is well settled and held by this court in a catena of judgments and it would be sufficient to refer Commissioner of Income Tax, Delhi vs. Kelvinator of India Ltd. (2010) 320 ITR 561(SC) wherein this Court has held as under:-
>
> > "5….where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a

> schematic interpretation to the words "reason to believe"….. Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open.
>
> 6. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place.
>
> 7. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief."

12) Before interfering with the proposed re-opening of the assessment on the ground that the same is based only on a change in opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed re-assessment proceedings. Every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the re-assessment proceedings.

13) The fact in controversy in this case is with regard to the deduction under Section 10A of the IT Act which was allegedly allowed in excess. The show cause notice dated 10.02.2005 reflects the ground for re-assessment in the present case, that is, the deduction allowed in excess under Section 10A and, therefore, the income has escaped assessment to the tune of Rs. 57,36,811. In the order in question dated 17.08.2005, the reason purportedly given for rejecting the objections was that the assessee was not maintaining any separate books of accounts for the two categories, i.e., software development and human resource development, on which it has declared income separately. However, a bare perusal of notice dated 09.03.2004 which was issued in the original

> assessment proceedings under Section 143 makes it clear that the point on which the re-assessment proceedings were initiated, was well considered in the original proceedings. In fact, the very basis of issuing the show cause notice dated 09.03.2004 was that the assessee was not maintaining any separate books of account for the said two categories and the details filed do not reveal proportional allocation of common expenses be made to these categories. Even the said show cause notice suggested how proportional allocation should be done. All these things leads to an unavoidable conclusion that the question as to how and to what extent deduction should be allowed under Section 10A of the IT Act was well considered in the original assessment proceedings itself. Hence, initiation of the re-assessment proceedings under Section 147 by issuing a notice under Section 148 merely because of the fact that now the Assessing Officer is of the view that the deduction under Section 10A was allowed in excess, was based on nothing but a change of opinion on the same facts and circumstances which were already in his knowledge even during the original assessment proceedings."

Reliance is also placed on a recent decision dated 10.08.2018 of Hon'ble Karnataka High Court in the case of M/s TTK Prestige Ltd. Vs. DCIT, W.P. No. 30388/2015 (T-IT) in which the aforesaid judgement of Hon'ble Supreme Court has been followed. On the basis of the facts mentioned above and the decisions of Hon'ble Supreme Court and Delhi & Karnataka High Court mentioned above it is clearly a case of change of opinion which is impermissible in law.

29. In so far as applicability of proviso to Section 147 of the Act i.e. reopening after four years when assessment has been completed U/s 143(3) of the Act, we found that the assessee had disclosed each and every fact regarding the share capital /share premium in its balance sheet & produced all documents during the course of original assessment proceedings including confirmations, bank statements, copies of ITRs,

balance-sheet, share allotment letters, copies of Minute's Book etc. of PVPL as discussed earlier. In the case of the appellant notice u/s 148 has been issued for the A.Y. 2010-11 on 29-03-2017 i.e. after 4 years from the end of the relevant assessment year and as per proviso to sec. 147, in a case where assessment has been completed u/s 143 (3) no action shall be taken u/s 147 after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for that assessment year. In the case of Duli Chand Singhania V. ACIT: 269 ITR 192 (P & H), the Hon'ble Punjab and Haryana High Court had noted that the sine qua non for assuming jurisdiction under section 147 of the I.T. Act, in a case falling under the proviso thereto, was that there must be an allegation that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. When there is no such allegation in the reasons supplied to the assessee initiation of proceedings under the proviso to section 147 would be without jurisdiction. In the case of the assessee there is no such allegation of the AO in the reasons recorded by him. Accordingly, the case of the assessee is fully covered by the decisions of Hon'ble Delhi High Court in the case(s) of :

1. Shri Parasram Industries Pvt. Ltd. Vs. ITO, W.P. (C.) 9094/2014, DOJ 11.12.2015 and
2. Allied Strips Limited Vs. ACIT, WP (C) 2526/2015, DOJ 12.05.2016.

With regard to applicability of proviso to Section 147 of the Act, the case of the assessee is also covered by the following decisions:-

1. Kutch Textiles Pvt. Ltd. Vs. ITO, [2017] 77 taxmann.com 319 (Gujarat High Court).
2. Babu Lal Jug Raj And Co. Vs. ITO, (2007) 289 ITR 115 (Rajasthan High Court).
3. Haryana Acrylic Manufacturing Company Vs CIT, WP (C) 4074/2007, DOJ 03.11.2008
4. DCIT Vs. DSM Sinochem Pharmaceuticals Pvt. Ltd., ITA No. 1466/Chd. /2017 DOJ 28.05.2018

In view of the above discussion and judicial pronouncements it is abundantly clear that it is a case of change of opinion and the ld. AO has not fulfilled the mandatory requirement of proviso to section 147. Therefore, the notice issued by him is liable to be quashed being void ab initio.

30. We also found that the AO has issued notice u/s 148 on the basis of communication received from the DDIT (Inv.), Kolkata, purely for verification and for conducting enquiries etc. without there being any tangible material, on the basis of his suspicion and assumption. The notice issued on the basis of such communication without any independent enquiries having been conducted by the AO and without application of mind is bad in law and deserves to be quashed. The AO has initiated proceedings u/s 148 and completed assessment u/s 148/143(3) in the case of the appellant solely on the basis of communication dated 10-03-

2017 of DDIT, Unit 1(3), Kolkata received in the office of the AO on 21-03-2017, the contents of which have been reproduced earlier, without carrying out any further enquiry, verification or investigation etc.. The AO has reopened the assessment completed u/s 143(3) and disturbed the finality of assessment without any independent application of mind. On perusal of the aforesaid letter dated 10-03-2018 of the DDIT (Inv) Kolkata,as reproduced in para 4. above, it can be seen that he has not made any allegation of escapement of income in the case of the appellant. He has also not given any specific co-relation of deposit of any cash in the account of M/s. Shiv Kali Trade (India) with the share application money given by PVPL to the assessee company. He has simply forwarded a report of investigation carried out by him regarding the bank deposit in the case of M/s Shiv Kali Trade (India). The last 2 paras of his said letter are again reproduced here as under, even at the cost of repetition-

> "From the ITD it has been found that both the entities Kanchan India limited and MSP Metallics are genuine companies having high turnover. The funds so received by the companies in the years 2009-10 and 2010-11 require further analysis, investigation and verification by the jurisdictional assessing officer ***Kanchan India limited [PAN: AABCK0452J]*** and ***MSP Metallics [PAN: AACA5907D]*** of at their end.
>
> **Conclusion**
>
> Therefore, the nature of business and exact purpose of transactions of the said assessee could not be determined. Therefore, you are requested to examine the facts and take further necessary action under the Income Tax Act 1961. You are requested to acknowledge the receipt of the letter."

He has concluded that the nature of business and exact purpose of transaction of the said assessee (i.e. Shiv Kali Trade (India)) could not be determined, therefore, he requested the ld. AO to examine the facts and take further necessary action. He has also commented that M/s Kanchan India Ltd. (the assessee) and M/s MSP Metallics Ltd. are genuine companies having high turnover. The funds so received by the companies in the year 2009-10 & 2010-11 require further analysis, investigation and verification by the jurisdictional assessing officers of M/s Kanchan India Ltd and M/s MSP Metallics. The AO of M/s Kanchan India Ltd i.e. the assessee without carrying out any further enquiry, verification or investigation etc., initiated the reassessment proceedings u/s 148 on the very next day by sending the proposal u/s 151(1) to the Pr. CIT, Ajmer, vide letter No.ACIT /Circle /BHL/2016-17/3336 dated 22.03.2017 (reproduced earlier) in which he has clearly mentioned that the assessee has received fund through suspicious transaction which require further analysis and investigation/ verification and to verify these transactions the case is required to be reopened u/s 147 of the Act, 1961. It is an established position of law that proceedings u/s 147/148 cannot be initiated without any tangible material or credible information simply for the sake of carrying out any verification/ enquiry/verification/investigation etc.. This legal position has been affirmed by various courts time and again.

(i) The **Hon'ble Supreme Court in the case of Indian Oil Corporation V. ITO, (1986) 159 ITR 956, 970(SC)** has held that the "reason to believe is not the same thing as reason to suspect".

(ii) Pyramid Software & Technologies Vs. DCIT, (2007) 105 ITD 305 (Amritsar)

"8.1 The expression used in Section 147 is that if the AO has 'reason to believe' that any income chargeable to tax has escaped assessment. The expression "reason to believe" used in Section 147 has special significance. It does not mean 'reason to suspect'. It is reasonable belief of a honest and reasonable person based upon reasonable grounds. The expression used is not 'satisfied'. The 'reason to believe' requires higher level of evidence and material than the requirement of 'satisfaction' of the AO which essentially means the material which comes to the notice of AO must be a definite, specific and direct and not unspecific or vague. This issue was considered by the **Hon'ble Supreme Court in the case of ITO v. Lakhmani Mewal Dass** where the apex Court observed that "reason to believe" does not mean "reason to suspect". The reasons for the formation of the belief on templated under Section 147 necessary for reopening of an assessment must have a rational connection or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct, nexus or live link between the material coming to the notice of the ITO and the formation of his belief that there has been escapement of income of the assessee. The apex Court further observed that it was not every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to the escapement of the income of the assessee from assessment. Again this issue was considered by **the Hon'ble Supreme Court in the case of Ganga Saran & Sons (P) Ltd. v. ITO**, where the apex Court observed that expression "reason to believe" was stronger than the words 'satisfied'. The belief entertained by the AO must not be arbitrary or irrational. It must be reasonable or in other words, it must be based on reasons which are relevant and material. If there is no rationale and intelligible nexus between the reasons and belief, the reopening of the assessment would be without jurisdiction and bad in law.

1.2 The basis for initiating the reassessment proceedings is to be judged solely on the basis of reasons recorded by the AO and the material and information referred to by the AO in the reasons for initiating such action. It is settled law that AO cannot initiate the reassessment proceedings merely on the basis of suspicion or for the purpose of making verification. The AO cannot support the reopening of the assessment by collecting the material or by making enquiry subsequently after the date of initiation of the proceedings. Thus, the reopening of the assessment is to be seen on the date when the AO initiated action under Section 147." (Emphasis supplied)

(iii) Sheo Nath Singh Vs. AAC, (1971) 82 ITR 147 (SC)

"The belief must be of an honest and reasonable person based upon reasonable grounds. The officer may act on direct or circumstantial evidence; but his belief must not be based on mere suspicion, gossip or rumour. The Assessing Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the court" (Emphasis supplied).

(iv) **C M Mahadeva Vs. CIT, ITA No. 795/2009/ of Karnataka High Court, DOJ 24.08.0215**

"10. From a bare perusal of the aforesaid reasons recorded for reopening the concluded assessment for the assessment year 2004-05, what we notice is that the Assessing Officer was of the opinion that further investigation was required for proceeding to commence for the assessment year 2004-05, and on such basis he opined that he had reason to believe that source of Investment of purchase of property was not acceptable, and for which further investigation was necessary. As such, the Assessing Officer concluded that he had 'reason to believe' that income subject to tax had escaped assessment within the meaning of Section 147 of the Act. while forming such opinion, in the first paragraph the Assessing Officer has given details of the income of the assessee for the relevant assessment year, in which he had made a purchase of a residential house for Rs. 10 lacs.

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12. Section 147/148 of the Act is not meant for reopening an already concluded assessment by first issuing notice and then proceeding to investigate and find out if there was any lacuna in the accounts. If such further investigation, by reopening a concluded assessment, is permitted, it would give rise to fishing and rowing enquiries, because, in every case, the Assessing Officer can then issue notice for the purpose of investigation, and thus reopen any concluded assessment

13. An assessment which has attained finality can be reopened only on cogent grounds when the Assessing Officer has, on the basis of some evidence, 'reason to believe' that income assessable to tax has escaped assessment for the year in question. The purpose of the said section is not to reopen the

assessment for the purpose of investigation, and then find out the grounds or reasons for reassessment."

(v) <u>Bakulbhai Ramanlal Patel Vs. Income Tax Officer, (2011) 56 DTR (Gujarat) 212</u>

"Reading the reasons recorded in their entirety, there is nothing whatsoever to indicate as to which is the income that has not been disclosed by the petitioner or that any income chargeable to tax has in fact escaped assessment. The entire tenor of the reasons recorded indicates that on the basis of some unsubstantiated and vague information, the AO has reopened the assessment for the purpose of making a roving and fishing inquiry to verify as to whether any income has in fact escaped assessment which fact is borne out from the reasons recorded, wherein the AO has categorically recorded thus : "In view of the above facts and circumstances of the case, detailed investigation/ verification is required and it is also required to bring the assessee in tax net." Insofar as bringing the assessee in the tax net is concerned, the petitioner admittedly has filed return of income and has been assessed in respect thereof, the petitioner is, therefore, already within the tax net. Since the reasons recorded do not reflect the requisite belief that income chargeable to tax has escaped assessment, the basic requirements of s. 147 of the Act have not been satisfied. This Court in the case of Shankarlal Nagji & Co. & Ors. vs. ITO (supra) has held that a completed assessment cannot be reopened merely to make inquiries. That is the domain of regular assessment. From the reasons recorded it is apparent that the AO has reopened the assessment merely to make inquiries.

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In the case of Chhugamal Rajpal vs. S.P. Chaliha (supra), where the AO had while recording reasons mentioned "hence, proper investigation regarding these loans is necessary", the Supreme Court has held that his conclusion was there is a case for investigating as to the truth of the alleged transactions. The Court held that it was not the same thing as saying that there are reasons to issue notice under s. 148. Before issuing a notice under s. 148, the ITO must have either reason to believe that by reason of the omission or failure on the part of the assessee to make a return under s. 139 for any assessment year to the ITO or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on

the part of the assessee, the ITO has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of cl. (a) or cl. (b) of s. 147 are satisfied, the ITO has no jurisdiction to issue a notice under s. 148 of the Act.

In the present case also it is apparent that the case of the AO is that investigation is required to be made in relation to the vague transactions referred to in the reasons recorded.

In the case of CIT vs. Batra Bhatta Company (supra), the Delhi High Court held that the proceedings under s. 147 are not to be invoked at the mere whim and fancy of an AO and it has to be seen in every case as to whether the invocation is arbitrary or reasonable. In the facts of the said case, the Court held that merely because the AO felt that the issue required 'much deeper scrutiny', was not ground enough for invoking s. 147. The Court held that it is not belief per se that is a pre-condition for invoking s. 147 of the Act but a belief founded on reasons. The expression used in s. 147 is "If the AO has reason to believe" and not "If the AO believes". There must be some basis upon which the belief can be built. It does not matter whether the belief is ultimately proved right or wrong, but, there must be some material upon which such a belief can be founded.

In the case of Sheo Nath Singh vs. AAC (supra), the Supreme Court held that there can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the ITO may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The ITO would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court.

In the case of Sarthak Securities Co. (P) Ltd. vs. ITO (supra), the Delhi High Court held that at the stage of recording reasons, it is not necessary to have the established fact of escapement of income, but what is necessary is that there is relevant material on which a reasonable person could have formed the requisite belief. To elaborate, the conclusive proof is not germane at this stage, but the formation of belief must be on the base or

foundation or platform of prudence which a reasonable person is required to apply

In ITO & Ors. vs. Lakhmani Mewal Das 1976 CTR (SC) 220 : (1976) 103 ITR 437 (SC), the Supreme Court held that the powers of the ITO to reopen assessment, though wide, are not plenary. The words used by the statute are "reason to believe" and "not reason to suspect".

In the present case, as noticed hereinabove, from the reasons recorded, it is apparent that the AO did not have any material before him so as to satisfy the requirements of s. 147 of the Act in as much as, there is no material whatsoever before the AO on the basis of which a reasonable man would come to the conclusion that any income chargeable to tax has escaped assessment. The reasons recorded reflect that the AO feels that the matter requires detailed investigation and further verification. Thus, it appears that the AO has reason to suspect and not reason to believe that income chargeable to tax has escaped assessment. This, however, is not a valid ground for invoking the provisions of s. 147 of the Act. The reason to believe that income chargeable to tax has escaped assessment must be based upon material on record. In the facts of the present case, there is no such material. In the circumstances, in the absence of basic requirements of s. 147 of the Act being satisfied, the assumption of jurisdiction by the AO is invalid and as such, the impugned notice under s. 148 of the Act cannot be sustained."

(vi) <u>Pr. CIT V/s Manzil Dinesh Kumar Shah in ITA No 451 of 2018 with R/Tax Appeal No 457 of 2018 with R/Tax Appeal No 458 of 2018. (Gujarat High Court)</u>

"8. With this background, we may revert to the reasons recorded by the Assessing Officer. Information from the Value Added Tax Department of Mumbai was placed for his consideration. This information contained list of allegedly bogus purchases made by various beneficiaries from Hawala dealers. Assessee was one of them. As per this information, he had made purchases worth Rs.3.2 1 crores (rounded off) from such Hawala dealers during the financial year 2010-11. According to the Assessing Officer, this information 'needed deep verification'.

9. If on the basis of information made available to him and upon applying his mind to such information, he Assessing Officer had formed a belief that income chargeable to tax has escaped assessment, the

Court would have readily allow him to reassess the income. In the present case however, he recorded that the information required deep verification. In plain terms therefore, the notice was being issued for such verification. His later recitation of the mandatory words that he believed that income chargeable to tax has escaped assessment, would not cure this fundamental defect.

10. Learned counsel for the Revenue however urged us to read the reasons as a whole and come to the conclusion that the Assessing Officer had independently formed a belief on the basis of information available on record that income in case of the assessee had escaped assessment. Accepting such a request would in plain terms require us to ignore an important sentence from the reasons recorded viz. 'it needs deep verification'.

11. Before closing, we can only lament at the possible revenue loss. The law and the principles noted above are far too well settled to have escaped the notice of the Assessing Officer despite which if the reasons recorded fail the test of validity on account of a sentence contained, it would be for the Revenue to examine reasons behind it.''(Emphasis supplied). These observations of the Hon. High Court are exactly applicable to the fact of the case of the appellant.

Ashima Securities (P) Ltd. Vs. ITO, Ward – 2(2), New Delhi, ITA No. 3400 & 3401/Delhi/2013, DOJ 29.09.2017

"6. Ld. counsel for the assessee at the outset drew the attention of the Bench to the reasons recorded by the Assessing Officer and submitted that the Assessing Officer has reopened the assessment to make investigation of the investments made by the Assessing Officer on assets leased to it. Referring to the decision of Hon'ble Supreme Court in the case of Chhugamal Rajpal vs. S.P. Chaliha reported in 79 ITR 603 and the following decisions : (i) Madhya Pradesh Industries Ltd. vs. ITO reported in 57 ITR 637 (SC); (ii) Ranbaxy Laboratories Ltd. vs. CIT reported in 336 ITR 136 (Del); (iii) Vipan Khanna vs. ITA Nos.3400 & 3401/Del/2013 CIT reported in 255 ITR 220 (P&H) and (iv) Travancore Cements Ltd. vs. ACIT reported in 305 ITR 170 (Kerla), he submitted that the provisions of section 147 cannot be resorted to only to verify or to make further enquiry.

7. Referring to the decision of Hon'ble Bombay High Court in the case of Nivi Trading Ltd. vs. Union of India reported in 375 ITR 308, he submitted that the Hon'ble High Court in the said decision has held that where the assessee had shown gift of shares to a company, merely because assessee had been called upon by Assessing Officer for verification of value of shares in terms of section 47(iii), it would not enable revenue to resort to section 147 of the I.T. Act.
8. Referring to the decision of Hon'ble Gujarat High Court in the case of Krupesh Ghanshyambhai Thakkar vs. DCIT reported in 77 taxmann.com 293, he submitted that the Hon'ble High Court in the said decision has held that

where assessee explained that amounts transferred many times among group concerns were required for banking purposes and capital investment in shares were duly recorded in books, reopening could not be sustained when the Assessing Officer had no tangible material.

9. Referring to the following decisions, he submitted that no proceedings u/s 147 can be initiated merely on the basis of the report of the Investigation Wing :-

I. CIT vs. M/S. Indo Arab Air Services [2016] 283 CTR 92 (Delhi) II. Signature Hotels P. Ltd. Vs. Income Tax Officer reported in [2011] 338 ITR 51, III. Commissioner of Income Tax versus SFIL Stock Broking Limited, reported in [2010] 325 ITR 285 (Delhi) IV. Sarthak Securities Company Private Limited versus Income Tax Officer, reported in 329 ITR 110 (Delhi), ITA Nos.3400 & 3401/Del/2013 V. PCIT vs. ShriGovindKripa Builders P. Ltd (ITA 486/2015 dated 04.08.2015) VI. CIT vs. Ashian needles pvt.LtD. (ITA 226/2015 dated 24.08.2015) HC (Delhi) VII. CIT Vs. Insecticides (India) Ltd. 357 ITR 330 (Delhi) VIII. 299 ITR 383 (Del) CIT vs Atul Jain dated 23.5.2007 IX. 311 ITR 38 (P&H) CIT vs. PramjitKaur X. ITA No. 1395/2008 (Del) Smt. MeeraKapoor vs. CIT Xl. 357 ITR 24 (Del) CIT vs. Suren International (P) Ltd. XII. Commissioner of Income-tax v. Multiplex Trading & Industrial Co. Ltd. [2015] 378 ITR 351 (Delhi) XIII. M/s Laureate Educational Vs. Income Tax Officer (ITA No.1945/Del/2012 Assessment Year: 2004-05) dated 31.12.2013

10. Referring to the recent decision of Hon'ble Delhi High Court in the case of Pr.CIT vs. RMG Polyvinyl (I) Ltd. reported in 83 taxmann.com 348, he submitted that the Hon'ble High Court in the said decision has held that where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by Assessing Officer, said information could not be said to be tangible material per se and, thus, reassessment on said basis was not justified. Hon'ble High Court while deciding the issue has relied on its earlier decision in the case of Pr.CIT vs. Meenakshi Overseas (P.) Ltd. reported in 395 ITR 677. He accordingly submitted that the reassessment proceedings initiated by the Assessing Officer and upheld by the CIT(A) should be held as void ab initio.

11. Ld. DR on the other hand heavily relied on the order of the CIT(A) upholding the validity of the reassessment proceedings. Referring to para 18 of the decision of Hon'ble Bombay High Court in the case of Nivi Trading Ltd. (supra), he drew the attention of the Bench to the following paragraph :-

"18. The Hon'ble Supreme Court thus held that section 147 authorises and permits the Assessing Officer to assess or reassess the income chargeable to tax, if he has ITA Nos.3400 & 3401/Del/2013 reason to believe that income chargeable to tax has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. Thus, at that stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issuance of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite

belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. The substantive satisfaction in that case of the Assessing Officer was therefore wrongly interfered with by the Gujarat High Court is the view taken by the Hon'ble Supreme Court. All these legal principles are undisputed. They go to show, as Mr. Gupta emphasizes, that there should be a reason to believe that in the relevant assessment year income chargeable to tax has escaped assessment. We are of the view that in the present case, the reasons recorded fall short of this test."

12. He accordingly submitted the order of the CIT(A) sustaining the validity of the reassessment proceedings should be upheld.

13. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer on the basis of information received from the Directorate of Income-tax (Investigation), New Delhi reopened the assessment u/s 147 to investigate the source of investment made by the assessee in assets leased to it. We find the ld. CIT(A) while deciding the appeal dismissed the ground raised by the assessee challenging the validity of the reassessment proceedings. Ld. counsel for the assessee made two-fold submissions. The first plank of his argument is that the provisions of section 147 of the I.T. Act cannot be resorted only to verify or to make further enquiry.

The second plank of his argument is that no proceedings u/s 147 can be initiated merely on the basis of the report of the Investigation Wing. So far as the first plank of his argument that the reassessment proceedings cannot be initiated to make further enquiries is concerned, we find the Hon'ble Bombay High Court in the case of Nivi Trading Ltd. (supra) has held that where the assessee had shown gift of shares to a company, merely because the assessee had been called upon by the Assessing Officer for verification of value of shares in terms of section 47(iii), it would not enable the Revenue to resort to section 147 of the I.T. Act. We find the Hon'ble Gujarat High Court in the case of Krupesh Ghanshyambhai Thakkar (supra) has held that the reassessment cannot be initiated for the purposes of deep verification. The relevant observations of the Hon'ble High Court from para 11 to 14 of the order read as under :-

"11. At the outset, it is required to be noted that by the impugned notice, the assessment for AY 2009-2010 is sought to be reopened in exercise of power under Section 147 of the I.T Act. The reasons recorded to reopen the assessment are already produced hereinabove. Thus, as per the reasons recorded, the notice has been issued and assessment is sought to be reopened for deep verification of the claims. Even in the order disposing of the objections, it has been specifically stated that to verify whether all the criteria are met by the said transaction of Rs. 50 lakhs routed through the group and also to verify the claim of having recorded these transactions in the regular books of account, notice under Section 148 has been issued. Even with respect to investment in shares of M/s. Rushil Decor, it has been submitted that whether the investment in shares of M/s. Rushil Decor were acquired from the capital of the assessee and the same is duly recorded in the

books of account, needs to be verified and for that purpose, the assessment for A.Y 2009-2010 is sought to be reopened.

12. In case of Inductotherm [India] P. Limited v. M. Gopalan, Deputy Commissioner of Income-Tax [Supra], Division Bench of this Court has observed that for a mere verification of the claim, the power of reopening of assessment could not be exercised. It is further observed that the Assessing Officer under the guise of power to reopen an assessment, cannot seek to undertake a fishing or roving inquiry and seek to verify the claims, as if it were a scrutiny assessment.

12.1 Similar view has been expressed by the Division Bench in case of Deep Recycling Industries v. Deputy Commissioner of Income Tax - Circle 2 [Supra] wherein it has been held and observed that for mere scrutiny, reopening of the assessment would not be permissible. It is further observed that the reopening of the assessment could be made if the Assessing Officer had formed a belief that income chargeable to tax had escaped assessment. The Court has further observed that in order to do so, the Assessing Officer must have some tangible material having live link with the escapement of the income on the basis of which he can form a bona fide belief of escapement of income chargeable to tax. It has also been observed that reopening cannot be resorted to for fishing or roving inquiry on mere suspicion that income chargeable to tax may have escaped assessment.

13. Applying the aforesaid two decisions to the facts of the present two cases on hand and the reasons recorded to reopen the assessment, we are of the opinion that under the guise of reopening of the assessment, the Assessing Officer wants to have a roving inquiry; as observed hereinabove. Even as per the Assessing Officer in the reasons recorded has specifically mentioned that for the purpose of verification/ deep verification of the claim, it is necessary to reopen the assessment. Under the circumstances, it cannot be said that the Assessing Officer had any tangible material to form an opinion that the income chargeable to tax has escaped the assessment. Under the circumstances, the impugned action of reopening of the assessment in exercise of power under Section 148 of the I.T Act for the reasons recorded hereinabove cannot be sustained.

14. Resultantly, both these writ petitions succeed. Impugned Notice issued by the Assessing Officer under Section 148 of the Income-tax Act, 1961 in each case is hereby quashed and set-aside."

14. Similar view has been taken by various other High Courts relied upon by the ld. counsel for the assessee. Therefore, we hold that reassessment proceedings cannot be initiated for the purposes of making verification in absence of any valuable material available with the Assessing Officer to show that the income has escaped assessment. In view of the above discussion, we hold that the re-assessment proceedings initiated by the Assessing Officer and upheld by the CIT(A) are not justified. Since the assessee succeeds on this preliminary issue, the various grounds on merit are not being adjudicated being academic in nature. The appeal filed by the assessee is accordingly allowed."(Emphasis supplied)

In the following cases it has been held that the information received from the Investigation Wing cannot be said to be tangible material per se without a further

enquiry being under taken by the AO and without independent application of mind by him.

(i) Pr. CIT, Vs Meenakshi Overseas Pvt. Ltd. ITA 692/2016/ (Delhi High Court)

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.

(ii) PCIT Vs. RMG Polyvinyl (I) Ltd., 396 ITR 5 (Delhi High Court)
(iii) DCIT Vs. Zeco Aircon Ltd. ITA No. 5231/Delhi/2014, DOJ 31.07.2018
(iv) Pioneer Town Planners Pvt. Ltd. Vs. DCIT, ITA No. 132/Delhi/2018 DOJ 06.08.2018

In the case of the appellant also notice u/s 148 was issued for the purpose of verification, on the basis of information from Investigation Wing without any further enquiry and independent application of mind by the AO. Therefore, notice u/s 148 issued u/s 148 may kindly be quashed being bad in law.

31. The ld. AR has also alleged the approval given by the Pr. CIT for reopening. From the record we found that the ld. Pr. CIT, Ajmer has accorded approval for issuing notice u/s 148 in a very routine, mechanical manner & without application of mind by simply putting her signatures below the rubber stamped 'Yes, satisfied'. Such mechanical approval does not fulfill the mandate of provisions of sec. 151(1) of the Act. Notice issued u/s 148 on the basis of such approval is bad in law and deserves to be quashed. The ld. Pr. CIT, Ajmer has accorded approval for issuing notice

u/s 148 in a very routine, mechanical manner & without application of mind by simply putting her signatures below the rubber stamped 'Yes, satisfied'. The approval has been accorded by the ld. Pr. CIT, Ajmer simply for verifying the transactions mentioned in the letter of DDIT (Inv.), Kolkata received by the ACIT, Bhilwara on 21.03.2017.In his proposal the AO has not mentioned the fact that the reopening was being made after 4 years from the end of the relevant assessment year and in the original assessment proceedings this issue had been examined by the then AO. It is an established position of law that proceedings u/s 148 cannot be initiated for the purpose of verification or inquiry etc.. The reopening in the case of the assessee has been made after four years from the end of the relevant assessment year. Proviso to section 147 is clearly applicable in this case. There is no whisper of applicability of such proviso in the reasons recorded by the AO and approved by the ld. Pr. CIT, Ajmer. If she had read over the reasons and applied her mind she must not have accorded the permission under such circumstances in absence of any cogent material at all. The approval granted by her is clearly without application of mind and is not as per the mandate of the provision of section 151 of the I.T. Act, 1961. The notice issued u/s 148 on the basis of such approval and consequent assessment made on the basis of such notice are bad in law and deserve to be quashed.

(i) Further more reliance is placed on judgement of the Hon'ble Supreme Court in the case of M/s Chuggamal Rajpal Vs. SP Chaliha

[1971 79 ITR 603 (SC) where the Hon'ble Supreme Court has held as under: -

> "Reopening of assessment cannot be based on vague reasons and duty is cast upon the officer exercising jurisdiction under s. 151(2) of the Act to satisfy himself with the reasons and should not merely affix his signature without recording satisfaction. In the aforementioned case, assessment was originally completed for the asst. yr. 1960-61 after thorough scrutiny. Thereafter, AO issued notice under s. 148 of the Act. Assessee challenged validity of that notice, by filing a writ petition in the High Court. It was contended that the requirements of s. 151(2) of the Act were not complied with. Case of the AO was that certain communication was received from the CIT stating that the creditors in the instant case were name lenders and the loan transactions were bogus and that proper investigation regarding the loans taken by the assessee is necessary. He, however, did not mention in the report the material he had before him and his reason for coming to the conclusion that this was a fit case for issuing a notice under s. 148. The Court observed that the ITO had not even come to a prima facie conclusion that the loan transactions to which he referred were not genuine; ITO appears to have only a vague feeling that they might be bogus transactions. The CIT had mechanically accorded permission under s. 151(2) of the Act without noticing that the AO had not made any prima facie investigation before initiating proceedings and merely approved the vague reasons."

(ii) The Hon'ble Delhi High Court in the case of United Electrical Co. (P) Ltd. v. CIT [2002] 258 ITR 317/125 Taxman 775 has held that a power vested in a superior authority under s. 151 of the Act, to grant or not to grant approval to the AO to reopen an assessment, is coupled with a duty and an authority vested with such jurisdiction is required to apply his mind, to the proposal put up to him for approval, in the light of material relied upon by the AO. That power cannot be exercised casually and in a routine manner.

(iii) The Hon'ble Delhi High Court in its judgment dated 11.1.2017 in ITA No. 335/2015 in the case of Pr. CIT v. M/s N.C. Cables Ltd. while answering the following question of law.

> "(a) Did the Tribunal fall into error in holding that the Commissioner of Income tax (CIT) they did not in fact record satisfaction under Section 151 of the Income tax Act, 1961 for issuing notice under section 147, in the circumstances of the case?"

Held as under-

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

ranking officer. For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed.

12. The substantial questions of law framed are answered in favour of the assessee and against the Revenue. The appeal is dismissed."

(iv). The Hon'ble ITAT, Delhi in its decision dated 24.10.2017 in ITA No. 450/Del./2014 in the case of Metro Decorative (P) Ltd. v. ITO after considering the decision of Hon'ble Supreme Court & Madhya Pradesh High Court in CIT v. M/s Goyanka Lime and Chemicals Ltd. and considering other decisions on the subject held as under:-

"6.We have carefully gone through the record, the documents and decisions relied upon by either side. In so far as the challenge of the assessee as to the legality and validity of the reopening is concerned, assessee is placing reliance on the decisions reported in G&G Pharma India Ltd. (Del. High Court) (supra), N.C. Cables Ltd. (supra) and Meenakshi Overseas Pvt. Ltd. (supra). He also placed reliance on the decisions reported in Signature Hotels Pvt. Ltd. vs. ITO 338 ITR 51 (Del), Sarthak Securities Co. Pvt. Ltd. vs. ITO (2010) 195 Taxman 262 (Del), CIT vs. Kamdhenu Steels & Alloys Ltd. (2012) 119 Taxmann.com 26 (Del.). As could be seen from these decisions, it is consistently held that the reopening based on the information furnished by the Directorate of Investigation and the AO without making any further Investigation on his own, recording the reasons to believe that income escaped assessment are bad.

9. Now coming to the second limb of challenge made by the assessee to the effect that the reassessment proceedings initiated are bad in as much as the approval/sanction by Addl. CIT is without recording satisfaction and the same is not in accordance with the requirements of Section 151 of the Act, Ld. AR brought it to our notice that vide sl. no. 11 the Addl. CIT, Range 6, New Delhi recorded that "Yes, I am satisfied". On this aspect Ld. AR placed reliance on the decisions reported in Chhugamal Rajpal vs. S.P. Chaliha (1971) 79 ITR 602 (SC), Central India Electric Supply Co. Ltd. vs. ITO (2011) 10 taxmann.com 169 (Delhi), ITO vs. N.C. Cables Ltd. (Delhi ITAT) - Judgment dated 22.10.2014, ITO vs. M.B. Jewellers (P) Ltd. (Delhi ITAT) judgment dated 14.11.2014, Amar Lal Bajaj vs. ACIT (2013) 37 Taxmann.com 7 (Mum) (Trib), CIT vs. M/s S. Goyanka Lime and Chemicals Ltd. 2015 (5) TMI 217 and Pr. Commissioner of Income Tax vs. N.C. Cables Ltd. (ITA No. 335/2015), for the principle that where the authority to

grant/sanction merely recorded "Yes, I am satisfied", such an approval/sanction is not sustainable.

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

"7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down" - "The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material."

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

12. In the circumstances surrounding this case, in view of the decisions referred to above, we are of the considered opinion that the decisions reported in Sarthak Securities Pvt. Ltd. (supra), Signature Hotels (supra), Kamdhenu Steels & Alloys Ltd. (2012) 19 Taxman.com 26 (Del) & G&G Pharma India Ltd. (supra) are directly applicable to the facts of the case to hold that the reasons recorded by the AO in this matter solely basing on the information received from the Directorate of Investigation without any independent exercise of mental process cannot be construed as reasons to believe and the consequent proceedings of reopening are bad under law. Further, the approval/sanction of the Addl. CIT, Range 6, New Delhi is also not in accordance with the requirements of Section 151 of the Act, as is held in M/s S. Goyanka Lime and Chemicals Ltd. (supra) and this also vitiates the proceedings. For these reasons, we hold that the reopening proceedings are bad under law and are liable to be quashed. Since, we are

> quashed the proceedings on the questions of law, we do not deem it necessary to adjudicate the merits of additions made in this matter. For these reasons, we hold that the orders of the authorities below cannot be sustained and consequently, they are liable to be quashed. We do so."

32. With regard to the merit of the addition, we found that the detailed finding has been given by the ld. CIT(A) with regard to identity, genuineness and creditworthiness of the share applicants. The ld. CIT(A) also observed that the addition has been made by the Assessing Officer merely on suspicion and without bringing any positive material on record to substantiate that the share application money emanated from the coffers of the assessee, we found that the genuineness of the share capital/share premium was thoroughly examined by the then AO who completed the original assessment u/s 143 (3) on 21.12.2012 and he recorded a categorical finding of his satisfaction regarding identity, creditworthiness and genuineness of transaction of the two companies to whom the shares were allotted. Subsequently on the basis of report dated 10.03.2017 of the DDIT (Inv.) Kolkata, received by the ACIT Bhilwara on 21.03.2017, the successor AO initiated the reassessment proceedings. It has also been discussed earlier that there was nothing concrete against the assessee in the report and the DDIT (Inv) Kolkata had requested the jurisdictional AO i.e. ACIT Bhilwara to further investigate, analyse and verify the exact nature of transaction between the assessee company and M/s Shiv Kali Trade (India) in whose account some cash was introduced.. The DDIT (Inv) had clearly mentioned in his aforesaid letter that the

nature and exact purpose of transactions of the said assessee M/s Shiv Kali Trade (India) could not be verified. During the course of reassessment proceeding the AO again asked the assessee to prove the genuineness of the share capital and the assessee again filed all the documentary evidences, confirmations etc. before the AO on 28.11.2017 and 08.12.2017. Yet, the Assessing Officer has made addition of Rs. 15,59,00,000/-, without undertaking any further inquiry, investigation etc. and without bringing anything new on record. It is also interesting to note that against the name of the assessee transactions of Rs 14.64 crores have been mentioned in the aforesaid letter of the DDIT (Inv) but the ld. AO has added the total amount of Rs, 15,59,00,000/- for which the shares were allotted by the assessee company to PVPL, without any basis or discussion what so ever. From the above facts it has clearly been proved that the ld. AO has made addition purely on the basis of his suspicion without any evidence or basis at all which deserves to be deleted. The Hon'ble Supreme Court in the Case of CIT v/s Lovely Exports (P) Ltd., (2008) 216CTR 295 (S.C.) has held as under:-

> *"If share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company."*

Following the aforesaid judgement of the Hon'ble Apex Court, the Hon'ble Rajasthan High Court in the case of M/S Barkha Synthetics Ltd v/s ACIT, 283 ITR 377 (Raj) has held as under:

"The principle relating to burden of proof concerning the assessee is that where the matter concerns the money receipts by way of share application from investors through banking channel, the assessee has to prove existence of person in whose name share application is received. Once the existence of shareholder is proved, it is no further burden of ITO, Ward-7(3), Jaipur vs. M/s Dhanlaxmi Equipment Pvt. Ltd., Jaipur assessee to prove whether that person itself has invested said money or some other person had made investment in the name of that person. The burden then shifts on revenue to establish that such investment has come from Assessee Company itself."

The Hon'ble Jurisdictional High Court have given similar findings in the case of

CIT Vs. First Point Finance Ltd., [2006] 286 ITR 477,
CIT Vs. Morani Automobiles Pvt. Ltd., [2014] 45 Taxmann.com 473
CIT Vs. Super Tech. Diamond Tools Pvt. Ltd., [2014] 44 Taxmann.com 460.
CIT v/s Bhaval Synthetics (P) Ltd , (2013) 217 Taxman 23(Raj)

The ITAT, Jaipur in the case of Shalimar Buildcon Pvt. Ltd. Vs. ITO, [2011] 136 TTJ 701 decided similar issue as under:

"Shareholder companies having admitted to have subscribed to the share capital of the assessee company and accounted for the source of funds in their books of accounts which is not shown to be incorrect or false, no case is made out for making addition under s.68 in the absence of any evidence to show that the share capital represented accommodation entries".

The Hon'ble Delhi High Court in the case of Value Capital Services (P) Ltd 307 ITR 334 (Delhi High Court) held that there is additional burden on the department to show that even if share applicants did not have the means to make investment, the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as undisclosed income of the assessee."

33. The detailed finding so recorded by the ld. CIT(A) while deleting the addition has not been controverted by the revenue by bringing any positive material on record. Accordingly, we do not find any reason to interfere in the finding so recorded by the ld. CIT(A).

34. In the result, the appeal of the revenue is dismissed whereas the C.O. filed by the assessee is allowed in terms indicated hereinabove.

35. Now we take the appeal of the revenue and the C.O. of the assessee for the A.Y. 2011-12.

From the record we found that the assessee company filed its original return of income for the assessment year 2011-12 on 03-09-2011 showing loss of Rs. 9,66,21,653/-. The case was selected for scrutiny. The assessee filed copies of Balance-sheet, Manufacturing, Profit & Loss account etc. alongwith tax audit report u/s 44 AB in form No. 3CA & 3CD dated 21.07.2011, during the course of assessment proceedings. Notice u/s 143 (2) was issued on 03.08.2012. Notice u/s 142 (1) & query letter was issued by the AO on 22.04.2013 calling for details on various points. Sh. Sandeep Baldi CA attended before the AO from time to time and filed the requisite details. After considering the submissions of the assessee, the ld. AO completed the assessment u/s 143(3) on 10.06.2013, after making some disallowances etc. at loss of Rs. 8,55,87,742/-. During the financial year 2010-11 relevant to the A.Y. 2011-12 the assessee company issued 9,29,000 shares of Rs. 10 each aggregating to Rs. 92,90,000/- at premium of Rs. 8,36,09,999/-, as reflected in Schedule: 1 & Schedule: 2 of the balance-sheet filed before the ld. AO, on the basis of which the ld. AO required the assessee to furnish complete details to prove the identity, creditworthiness and genuineness of the transactions relating to allotment

of shares. Relevant queries made by the ld. AO, vide his letter No. DCIT/Circle/BHL/2013-14 dated 22.04.2013 are reproduced as under:-

> "4. Furnish complete details of Share capital, Share application money, Cash creditors and squared up credit account holders if any, i.e. name and full address, total loan/capital taken, date and mode of deposits, received, sources of deposits by the creditors their, PAN No. and indicate ward, where they assessed to tax etc.. In this regard, please prove their identity, credit worthiness and genuineness of transaction with the help of documentary evidence i.e. copies of accounts, bank statements, copies of cash books, copies of balance sheet and return of income in respect of new creditors introduced in your books of account in the year under consideration. Furnish name, complete address and PAN in respect of old creditors."

In compliance, the assessee furnished all the details, confirmations, bank statements and other evidences etc. vide its reply dated 06.05.2013 to prove the genuineness of the share capital /share premium subscriptions in the names of M/s Sunflower Merchants Pvt. Ltd. and M/s. Pasupati Vinimay Pvt. Limited (hereinafter referred as PVPL). The relevant excerpts from the above reply are reproduced as under:-

> "(4) <u>New addition of Share Capital & Cash Credit</u>: -
>
> Further during the year under review the company has also taken fresh loans from twenty persons and these transactions are justifiable. Loan amounts had been given by the said persons from their available funds and out of sources of income for the year under review.
>
> We are enclosing herewith the confirmations with full Name, PAN & Address, Acknowledgement of Income Tax Return, Bank Statement, Capital a/c and Balance Sheet, which reveals the sources & creditworthiness marked as ***Annexure-B***.
>
> **<u>Addition of Share Capital</u>**

During the year under review, assessee company has made an addition of capital amounting to Rs 92.90 Lacs by issuing 9,29,000 equity shares to M/s Sunflower Merchants Pvt. Ltd. (PAN-AALCS2570D)-7,35,000 Shares and M/S Pasupati Vinimay Pvt Ltd.(PAN-AADCP5869J)-1,94,000 shares as below-

S. No	Date of allotment	Allotte's Name	Amount of Shares allotted
1.	18.12.2010	M/s Pasupati Vinimay Pvt. Ltd. M/s Sunflower Merchants Pvt. Ltd.	194000 575000
2.	28.03.2011	M/s Sunflower Merchants Pvt. Ltd.	160000
	Total		**929000**

We are enclosing herewith the Form -2 of the respective allotments evidencing them as well as all the details as filed with the Registrar of Companies, Jaipur in this regard.

Further we are also enclosing herewith the Copy of Balance Sheet, acknowledgement of Income Tax return of M/s Sunflower Merchants Pvt. Ltd. as well as M/s Pasupati Vinimay Pvt. Ltd., which reveals the sources & creditworthiness marked as ***Annexure-C"***

Being fully satisfied with the reply of the assessee, the ld. AO completed the assessment u/s 143(3) on 10.06.2013 accepting the share capital/share premium as genuine, without making any addition on this point. Subsequently, the successor AO received communication from DDIT(Inv.), Unit-1(3), Kolkata on 21-03-2017 regarding some verification carried out by him in connection with some bank deposits in A/c No. 9090200425725 of some party M/s Shiv Kali Trade (India), in Axis Bank Ltd., Burrabazar. This report sent by the DDIT vide his letter dated 10-03-2017 received by the ACIT, Bhilwara on 21-03-2017.

36. On the basis of the aforesaid letter received from DDIT (Inv.), Unit-1(3), Kolkata on 21.03.2017, the ld. AO i.e. ACIT, Bhilwara on the very

next day i.e. 22.03.2017 sent the proposal to the Pr. CIT, Ajmer seeking approval u/s 151(1) for initiating proceedings u/s 148 in the case of the appellant company, for the A.Y. 2010-11, through his letter No. ACIT/Circle/BHL/2016-17/3337, dated 22.03.2017.

37. The reasons recorded by the Assessing Officer for reopening of assessment reads as under:

> *"The assessee has filed its return of income for AY 2011-12 on 03.09.2011 declaring total Nil and assessment u/s 143(3) completed on 10.06.2013 at Nil income after allowing set off of brought forward unabsorbed depreciation of earlier year amounting to Rs.6,14,08,702/- The assessee issued 194000 shares to M/s Pasupati Vinimay Pvt. Ltd. and received a sum of Rs. 1,94,00,000/- during the year under consideration.*
>
> *Information available with the undersigned it is observed that in the bank account bearing No.909020042572 in Axis Bank Ltd., Bumabazar branch, Kolkata of M/s Shiv Kali Trade, cash has been deposited directly or through clearing which was transferred on the same day or the subsequent day to M/s S.K. Impex. Further verification of bank accounts of M/s S. 1C impex revealed that the fund debited to Accent Commerce and then from there to M/s Cuckoo Merchandise Private Limited, M/s Carnation Trade Link Pvt. Ltd and M/s Blackbird Tie-up Pvt. Ltd. and from the above entities this fund debited to M/s Pasupati Vinimay Pvt. Ltd. who ultimately transferred the said fund to the assessee company i.e. Kanchan India Limited. The assessee company M/s Kanchan India Limited issued 1,94,000 shares to Pasupati Vinimay Pvt. Ltd against the aforesaid fund received. From the information available it is also seen that these above entities were not having any substantial business turnover and this fund was routed without economic rationale. After considering the whole scenario I have prima facie belief that*

Assessee Company received accommodation entry in the form of share application money.

I therefore, have reason to believe that the income to the extent of Rs.1,94,00,000/- has escaped assessment within the meaning of section 147 of the Act and this is a fit case for re-opening of assessment and issuing notice u/s 148 of the Act."

38. All the arguments with regard to validity of reopening and the justification for addition deleted by the ld. CIT(A), both by the ld AR and the ld DR are same as discussed above in the A.Y. 2010-11. Following the reasoning given hereinabove for the A.Y. 2010-11, the appeal filed by the revenue is dismissed whereas the C.O. of the assessee are allowed in part in terms indicated hereinabove.

39. In the result, both the appeals of the Revenue are dismissed whereas both C.Os of the assessee are allowed in terms indicated hereinabove.

Order pronounced in the open court on 01st April, 2019.

Sd/-	Sd/-
(विजय पाल राव)	(रमेश सी शर्मा)
(VIJAY PAL RAO)	(RAMESH C SHARMA)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 01st April, 2019
*Ranjan
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:
1. अपीलार्थी/The Appellant- The DCIT, Central Circle, Ajmer.
2. प्रत्यर्थी/ The Respondent- M/s Kanchan India Pvt. Ltd., Bhilwara.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1280 & 1281/JP/2018 & C.O. 52 & 53/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar