

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "E", NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.4811/Del/2015
Assessment Year: 2006-07

Income Tax Officer, Ward-3(1), New Delhi	Vs.	M/s. Aqua Holdings Pvt. Ltd., 308, Skipper Corner, 88, Nehru Place, New Delhi
		PAN :AADCA8650L
(Appellant)		(Respondent)

Appellant by	Ms. Rinku Singh, Sr. DR
Respondent by	Shri Mayank Mohanka, CA

Date of hearing	23.04.2019
Date of pronouncement	26.04.2019

ORDER

PER O.P. KANT, A.M.:

This appeal by the Revenue is directed against order dated 12/06/2015 passed by the Ld. Commissioner of Income-tax (Appeals)-I, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2006-07 raising following grounds:

- 1) *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in quashing the notice u/s 148 and the assessment thereof when the AO had recorded his satisfaction and this recording had been endorsed by the Addl. CIT as per provisions of I.T Act, 1961.*
- 2) *The Ld. CIT(A) erred in relying on the decision of the Hon'ble Delhi High Court's decision in CIT v/s M/S Suren International Pvt. Ltd. (ITA no. 289/2012) and CIT v/s M/S Viniyas Finance & Investment Pvt. Ltd. (ITA 271/2012) while quashing the assessment when the facts of the two cases are different from the facts of the instant case.*

- 3) *The appellant craves leave for 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.*

2. Briefly stated facts of the case are that the assessment under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') was completed on 03/10/2008 against the returned loss of Rs.7,79,560/- filed on 29/11/2006. Subsequently, based on the information received from the Investigation Wing that the assessee obtained accommodation entries, the Assessing Officer recorded the reasons that there was an escapement of the income attributable to the failure on the part of the assessee to truthfully disclose the nature of the financial transactions and issued notice under section 148 of the Act. The Authorized Representative of the assessee filed a letter dated 22/05/2013 requesting that the original return filed might be treated as return in compliance to notice under section 148 of the Act. The Assessing Officer issued statutory notices, but no compliance was made by the assessee. In view of no compliance by the assessee and the information received from the Investigation Wing about accommodation entries received from "Sh. Surendra Kumar Jain group", the Assessing Officer completed best judgment assessment in terms of section 144 read with section 147 of the Act and the sum of Rs.89,00,000/- received as accommodation entry was held as unexplained cash credit under section 68 of the Act. In the assessment order, the Assessing Officer has brought facts in detail regarding the accommodation entries received from the entity controlled by Sh. Surendra Kumar Jain and Sh. Virender Kumar Jain. Aggrieved, the assessee filed appeal before the Ld. CIT(A) and challenged the reopening of the assessment was on

the grounds of change of opinion and without application of mind. The assessee further submitted that the Assessing Officer must record his finding and give reasons as how the assessee failed to disclose fully and truly all material facts necessary for the assessment and in absence of which the action of reopening of assessment cannot be justified. In view of the submissions of the assessee, the Ld. CIT(A) quashed the reassessment proceeding holding that the Assessing Officer has not established that there was an escapement of income due to failure on the part of the assessee to disclose all relevant material facts fully and truly. The relevant finding of the Ld. CIT(A) is reproduced as under:

“6.2 I find that the case of the appellant is squarely covered by the judgment of Hon’ble Jurisdictional High Court in the case of CIT Vs. Suren International Pvt. Ltd. (supra) reproduced above as in the reasons recorded for issue of notice u/s 148, the AO has not established that there was escapement of income due to the failure of the assessee to disclose all relevant material facts fully and truly. I further find that similar views were expressed by Hon’ble Delhi High Court in the case of CIT Vs. Viniyas Finance and Investment Pvt. Ltd. (supra). I find that the assessment has been reopened after 4 years of completion of assessment u/s 143(3) of the Act. In view of the above facts and circumstances of the case, I in the submission of the Id. AR that as there was no failure on the part of the assessee to disclose all material facts, the reopening was bad in law and notice u/s 148 of the Act requires to be quashed. Respectfully following the judgment of Hon’ble Jurisdictional High Court in the case of CIT Vs. Suren International Pvt. Ltd. (supra) and in the case of CIT Vs. Viniyas Finance and Investment Pvt. Ltd. (supra), I hold that the notice u/s 148 of the Act issued by the AO was bad in law and the same is quashed. Ground of appeal no. 1 and 2 are allowed.”

2.1 The Ld. CIT(A) did not decide the issue of addition on merits. Aggrieved with the above finding of the Ld. CIT(A), the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us, the Ld. DR referred to paper-book containing pages 1 to 143 filed by the assessee and submitted that in the

detailed reasons recorded, the Assessing Officer has clearly brought on record that there was a failure on the part of the assessee in disclosing the material facts fully and truly. According to her, the Ld. CIT(A), without appreciating the facts of the instant case, has decided the issue in dispute without application of the mind. She submitted that order of the Ld. CIT(A) need to be restored back for deciding a fresh both on jurisdictional grounds as well as on merit of the addition.

4. The Ld. counsel, on the other hand, relied on the order of the Ld. CIT(A) and submitted that same might be upheld.

5. We have heard the rival submissions of the parties and perused the relevant material on record including the paper book filed by the Ld. counsel of the assessee. A copy of the reasons recorded was provided to the assessee vide letter dated 07/11/2013 of the Assessing Officer. In the paper-book, the assessee has filed a copy of those reasons recorded from pages 64 to 67. It is relevant to reproduce those reasons recorded as under:

“As per the report of the Investigation wing of the Department, Delhi, sent by Sh. Manav Bansal, ADIT, Unit-VI(2), Sh. S.K. Jain and Sh. Virendra Jain provided the accommodation entries to various parties.

A Search & Survey action was carried out at the residential and business premises of Sh. S.K. Jain and Sh. Virendra Jain on 14.9.2010. During the course of search proceedings, it was found that a number of companies were running from the residential as well as business addresses related to Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain. However, all the books of accounts and other relevant papers of these companies were found from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain itself and nothing was found at the other addresses, which were mentioned in the statutory records of these companies.

This clearly shows that these companies are run by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain and they control these companies through dummy directors/principal officers of these companies. This could be established by a careful examination of seized material, including the computer hard discs and tally data, which contain the books of accounts of these companies, alongwith other important and confidential documents of these companies. These documents should have not been in the possession of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain had they not been the actual controller of these companies.

1.6 The seized material includes blank unsigned as well as blank signed cheque books, Acknowledgement of filing of Returns of these companies, User Ids and password of all companies for e-filing of their returns, Bank A/c Opening & Closing letters, Authorization letters for attending the assessment proceedings, books of account in tally format as well as in the format required for filing a return, proof of the use of mobile nos. of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain in Bank A/c opening forms where option of mobile banking was required etc. Thus, all these companies are tools in his business of providing accommodation entries in lieu of cash/cheques through which he had drawn a long trail of bank transactions to impart a color of genuineness on these transactions.

1.7 There are more than enough evidences on record which evidently establish that Sh. S. K. Jain and his brother Sh. Virendra Jain are known entry providers. These evidences/records found during the course of a simultaneous search held on Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain are discussed in detail in the appraisal report of Sh. S. K. Jain Group, however, some of these evidences are described below in brief for a ready reference in the matter:

a. Passbooks and cheque books in the names of approximately 200 persons/firms/companies were found and seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain containing undated blank signed cheques.

c. Computer Hard Discs seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain contain confidential details of user name, passwords and IDs of the various companies required for filing of e-returns of these companies, authority letters of these companies authorizing to represent these companies in various Govt. Departments.

a. Details of funds transferred through cheque/RTGS to various entities/persons through these dummy companies maintained by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain in excel sheets found and seized during the course of search on them.

b. Maintenance of books of accounts in tally format as well as in the format required for preparing Income Tax Return of these companies in the Computer Hard Discs found and seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain.

c. Daily cash books, balance sheet and cheque books found and seized from Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain wherein details of cash received from different companies/persons through various middlemen/agents in lieu of accommodation entries provided to them on different dates have been recorded.

d. Statement of a mediator Sh. Rajesh Aggarwal admitting that he arranged accommodation entries for a group through a person named Sh. Ravinder Goel through various companies directly controlled by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain and also accepted the fact that he knew since long that Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain are engaged in the business of providing the accommodation entries in lieu of cash charging a certain amount of commission for the same.

e. These companies are running their activities from the residential and the business premises of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain.

f. Existence of third party correspondence with these companies in the custody of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain.

g. *S.K. Jain/Virendra Jain/Priti Jain director in may of these companies presently or at one point of time in the past.*

2. *Various paper companies with dummy director used for providing accommodation entries:*

During the course of pre search investigation proceedings, it has been identified that three addresses were appearing as the address of most of the dummy companies floated by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain. It has also been gathered during the course of pre search investigation that Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain 'have been using these companies to provide accommodation entries to various persons/companies in lieu of cash received from the recipient clients through RTGS/Cheque, transaction made in the name of these companies. These two addresses are as under:

- i. *106, Palco House, T-10, Main Patel Road, Patel Nagar, Delhi*
- ii *3198-15, 4th Floor, Gali No 1, Sangatrashan, Paharganj, New Delhi*
- iii *209, Bhanot Plaza, 3, D. B. Gupta Road, Paharganj, New Delhi*

To verify the genuineness and the existence of these companies at the above mentioned addresses, a simultaneous survey action u/s 133A of the I.T. Act, 1961 was carried out on 14.9.2010 on these companies. However, when the survey parties reached at this addresses, they found that no proper offices of those companies exist there. Neither the books of accounts of those companies had been maintained there nor were any books of accounts pertaining to those companies lying at those premises.

2.1 At 106, Palco House, T-10, Main Patel Road, Patel Nagar, Delhi the survey party only found one person named Sh. Mukesh Kumar, S/o Sh. Satyender Kumar, R/o Village Gazera, Distt. Pauri Gadhwal. He told the survey party that his employer and owner of that place is one Sh. Virendra Jain R/o somewhere in Rajender Nagar, Delhi and provided his telephone NO. as 9891095232. It has already been proven from the call records that this number pertains to Sh. Virendra Jain R/o 221/, New Rajinder Nagar, New Delhi. Further, it was also told by him that Sh. Virendra Jain used to visit once in a while at 106. Palco House, T-10, Main Patel Road, Patel Nagar, Delhi.

He has also told that no books of account of any company are present at 106, Palco House, T-10, Main Patel Road, Patel Nagar, Delhi.

2.2 Similarly premise NO. 3198-15, 4th Floor, Gali No 1, Sangatrashan, Paharganj, New Delhi was covered under Survey operation along with the Search operation at the residence of Sh. Surendra Kumar Jain on 14.09.2010. During the course of the survey, it was found that this premise is a small room, which is incapable of accommodating so many companies and persons.

2.3 The third at address (209, Bhanot Plaza, 3, D. B. Gupta Ro'ad, Paharganj, New Delhi) was also covered under a survey u/s 133A of the I.T. Act, 1961 along with a simultaneous search action conducted at the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain. However, when the survey team reached there, this address also came out as one of the addresses used by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain only for communication purpose for their various paper companies.

As reported by the survey team, there was single room office occupied by one Sh. Jaikishan Tikku S/o late Sh. Prem Nath Tikku, who is running his courier business from there in the

name and style of M/s Linkers Couriers since Aug. 2006. Mr. Tikku had told the survey team that he was a tenant of Sh. Surinder Kumar Jain and was paying him monthly rent of Rs. 3000/- in cash every month.

Thus, it is clearly seen that the various companies which shown their registered office at the above mentioned three addresses found to be not existing at those addresses. Neither any books of account, stock or staff related to those companies were found at those addresses.

As discussed above, various documents, including cash books and bank pass books, pertaining to many companies were found and seized during the course of search action at the residential premises of Sh. Surendra Kumar Jain. Subsequently, post search enquiries were conducted by this unit, wherein the bank details, of these companies like account opening forms, introducers' forms and statements of accounts for last few years were called for on test check basis from the banks, where the accounts of these companies were opened.

3. Introduction of Cash in the system and modus operandi:

The receipt of cash by Sh. Surendra Kumar Jain and Sh. Virendra Jain has already been established by seizure of several hand written cash books from their residence during the course of search action. These cash books are maintained on daily basis to keep a record of their daily transactions of receipt and payment of cash as well as to keep them aware in respect of entries provided as well as entries pending in lieu of the cash' which they have received. However, this cash being recorded by them in hand written cash books is not recorded in their regular books of accounts. To introduce and channelize this unexplained cash in their books, they have shown the sales of various items including Rice etc., made through the bogus proprietary/partnership firms directly controlled by them.

Thus, the cash received from the recipient parties for providing the accommodation entries was first deposited in the accounts of these dummy firms/companies in the disguise of the cash received against the bogus sales, duly shown in the books of accounts. From there, this cash was transferred to the different paper companies floated by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain through a complex trail of transactions, so as to hide the actual sources of funds of the last set of recipient companies of Sh. Surendra Kumar Jain and sh. Virendra Kumar Jain.

In this way, the reserve & surpluses and the capital account of a specific set of companies are enhanced with the help of the unexplained cash received by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain, which is routed to these companies through their dummy firm/companies. Once the funds of these companies have been enhanced sufficiently, accommodation entries through RTGS/Cheque in the shape of the share capital, capital gains or loans as per the specific requirement of the recipient clients were provided them in lieu of the cash received from them. In this way, the chain for providing an accommodation entry gets completed. This contention gets credibility with seizure of documents providing evidence to the above mentioned process used by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain for providing accommodation entry. These documents are discussed in detail in the appraisal report of Sh. Surendra Kumar Jain.

4. Evidences of charging of commission for providing accommodation entries by issuing cheques in lieu of cash:

There are various specific seized documents which evidently establish that Sh. S.K. Jain and Sh. Virendra Jain were engaged in the business of providing accommodation entries by

issuing cheques in lieu of cash through several paper companies controlled by them by charging a certain amount of commission. A few of them are described below for a ready reference:

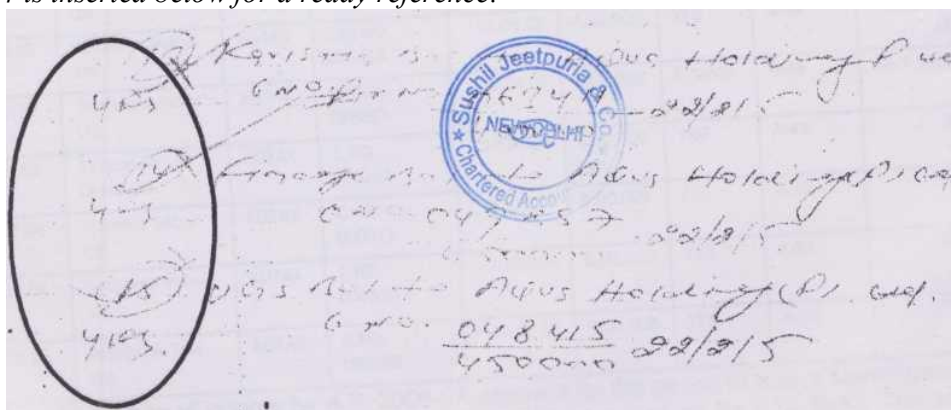
Pages NO. 1 to 13 of the Annexure A-150 found and seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain contain one account in respect of one Sh. Satish Garg for a period spread to three Financial Years i.e. from April 2007 to March 2010. Below the printed table on page NO. 2, the consolidated amount of commission on an aggregate amount of accommodation entries of Rs. 816702000/- provided to different companies through this above mentioned person Satish Garg is calculated at Rs. 14292285/- @1.75%.

The report contained therein the following accommodation entries received by the assessee during the year under consideration:-

6.1. On perusal of cheque book written by Sh. S.K. Jain for 21.2.2005 it is seen that on the back side of page NO. 16 of the seized annexure, A-34 details of entries of three cheques amounting to Rs.4,00,000/-, Rs.4,50,000/- and Rs.4,50,000/- respectively in favour of M/s Aqua Holding Pvt. Ltd. through Jain Group companies are found recorded as per detailed chart given below:’

Bank Book Date	From	To	bank	Cheque / RTGS	Cheque Date	Amount	Through
21-Feb-05	KARISHMA	AQUA HOLDINGS P. LTD.	BOI	063411	22-Feb-05	4,00,000	YKG
21-Feb-05	FINAGE	AQUA HOLDINGS P. LTD.	BOI	049857	22-Feb-05	4,50,000	YKG
21-Feb-05	UGS	AQUA HOLDINGS P. LTD.	KOTAK	048415	22-Feb-05	4,50,000	YKG

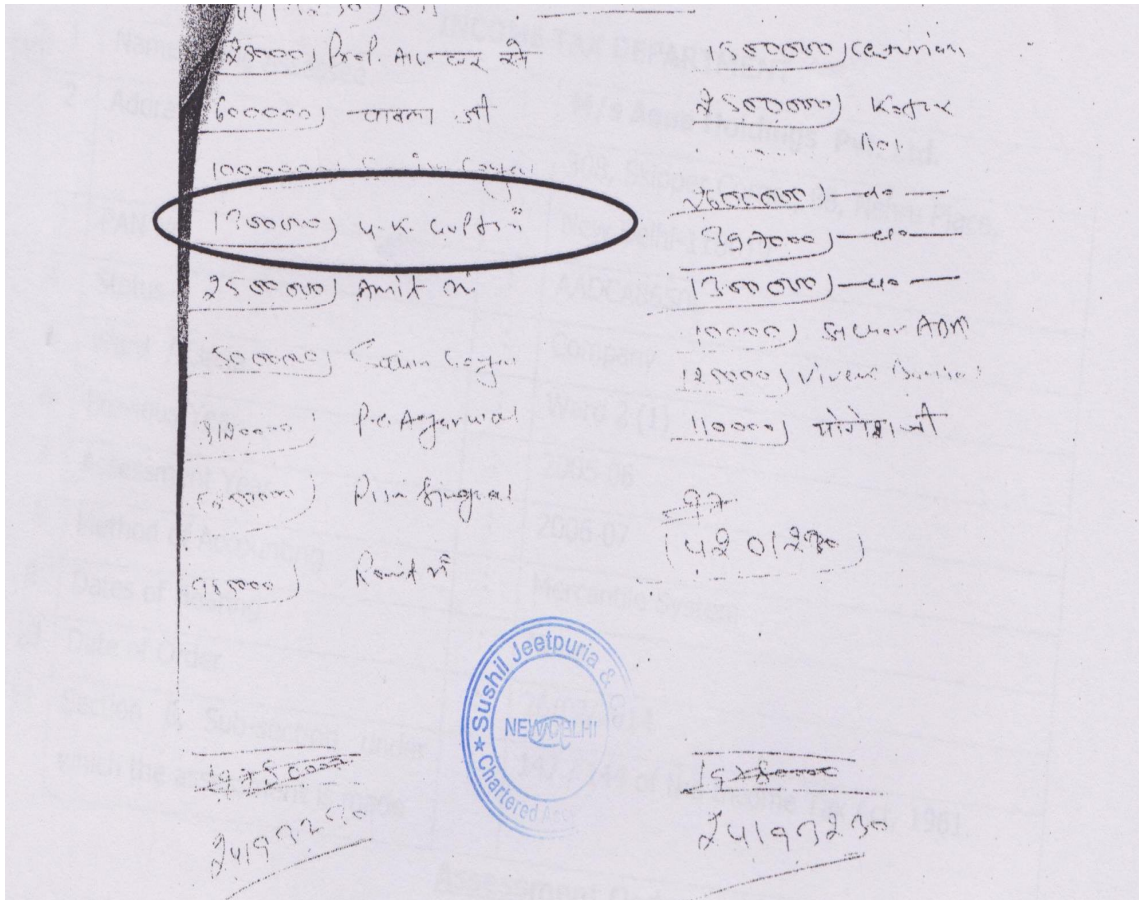
The scanned images of the relevant portions of the back side of page NO. 16 of annexure, A-34 is inserted below for a ready reference:



The perusal of the above page shows a name written in front of the entries recorded in the name of M/s Aqua Holding Pvt. Ltd. as "YKG" (shown encircled). It is learnt during the course of post search investigation that this person named "YKG or Y.K. Gupta" is the mediator for arranging accommodation entries to M/s Aqua Holding Pvt. Ltd. from Sh. Surendra Kumar Jain through his various paper companies.

Now to verify the receipt of cash by Sh. S.K. Jain in lieu of the cheques provided to M/s Aqua Holding Pvt. Ltd., we peruse the left hand side of the hand written daily cash books

seized from the residence of Sh. Surendra Kumar Jain for the corresponding period which reflects the amount of cash received from the beneficiaries through the respective mediator.



From the perusal of above seized page of the hand written cash book for 21.2.2005, it could easily be seen that on 21.2.2005 an amount of Rs. 13,00,000/- was received by Sh. Surendra Kumar Jain. By the side of this amount name of the mediator is also recorded as "YK Gupta or say YKG". Thus, from the above mentioned evidences it is abundantly clear that on 21.2.2005 the company M/s M/s Aqua Holdings Pvt. Ltd. had obtained accommodation entries by way of cheques issued through the various dummy companies controlled and managed by Sh. Surendra Kumar Jain and his brother Sh. Virendra Jain in lieu of cash amounting to Rs.13,00,000/- through a mediator named "YKG or Y K Gupta".

In all the following transactions, totaling to Rs.42,00,000/-, which are mentioned in the report,

Bank Book Date	From	bank	Cheque/RT GS	Cheque Date	Amount I	Through	Annexure NO.	Page no.
23.06.05	Pelicon Fin. & Lease Ltd.	KOTAK	Chq.no. 036312	23.06.05	4,00,000	YKG	A-44	Back Pg. 13
23.06.05	Windsor Pet Plast India Ltd.	KOTAK	Chq.NO. 036313	23.06.05	4,00,000	YKG	A-44	Back Pg. 13
23.06.05	Hillridge Invest. Ltd.	KOTAK	Chq.NO. 036314	23.06.05	4,50,000	YKG	A-44	Back Pg. 13
23.06.05	Karishma Indus. Ltd	KOTAK	Chq.NO. 036315	23.06.05	4,50,000	YKG	A-44	Back Pg. 13

13.06.05	Karishma Indus. Ltd	KOTAK	CH.NO. 036687	13.06.05	5,00,000	Chawla	A-45	Back Pg. 7
14.06.05	Pelicon Fin. & Lease Ltd	KOTAK	C.NO. 036392	14.06.05	5,00,000	YKG	A-45	8
20.03.06	Piambra Sec. P. Ltd.	KOTAK	C.NO. 000011	20.03.06	5,00,000	YKG	A-53	32
20.03.06	Karishma Indus. Ltd	KOTAK	C.NO. 000320	20.03.06	6,00,000	YKG	A-53	32
20.03.06	Worldlink Tele. Ltd.	KOTAK	C.NO. 000060	20.03.06	4,00,000	YKG	A-53	32

The return of income for A.Y. 2006-07, relevant for th'e period of above shown transactions, was filed by the assessee company on 29,11.2006 at a loss of Rs.7,79,560/-. The same was assessed U/s 143(3) of the Act, on 24.12.2008, at the returned loss. In the wake of the investigations done by the investigation wing, which a integral part of the department, it is apparent that the assessee company's has taken an amount of Rs.42,00,000/- from the entry operators which remains unexplained . Further, the assessing officer was not in possession of the information passed on by the investigation wing. The assessee has not disclosed fuui and correct disclosure of its income in the original return filed and owing to this the case was under assessed. I have a strong reason to, believe that income of Rs.42,00,000/- as detailed above has escaped assessment in the case of assessee relevant to A.Y. 2006-07 , therefore it is a fit case for issue of notice U/s148 of the I.T. Act, 1961."

6. We find that while quashing the assessment, the Ld. CIT(A) has only relied on the decision of the Hon'ble jurisdictional High Court in the case of CIT Vs Suren International Private Limited (supra) without looking into the facts of the instant case where the Assessing Officer in the reasons to believe has specifically recorded the accommodation entries obtained by the assessee. The Ld. Assessing Officer has brought on record the name of parties from whom the assessee obtained accommodation entries, bank account of those parties, cheque number and other incriminating materials found from the premise of Sh. S.K. Jain. In these circumstances the Assessing Officer was of the opinion that the escapement of income was due to failure on the part of the assessee to disclose all relevant material facts fully and truly.

7. The Ld. CIT(A) has not brought on record how the factual information in respect of the relevant credit entries which has been highlighted by the Assessing Officer in the reasons recorded,

was disclosed by the assessee to the Assessing Officer in the return of income filed or in regular assessment proceeding. In this case regular assessment under section 143(3) has been completed. The Ld. CIT(A) has not given any factual finding about the documents filed in respect of the credits under dispute to substantiate the claim of the assessee that all material facts related to those credits were disclose fully and truly. Before us, neither the assessee nor the Revenue has filed any evidences, on the basis of which, we could decide this question. As the Ld. CIT(A) has failed to appreciate the facts available on record and has adjudicated the matter without application of mind, we feel it appropriate to restore the issue of examining validity of the reassessment proceeding as well as addition on merit to the file of the Ld. CIT(A) for deciding afresh after affording adequate opportunity of being heard to both the parties. In the result, the grounds of the appeal are allowed for statistical purposes.

8. In the result, the appeal of the Revenue is allowed for statistical purposes.

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

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 26th April, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi