

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

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

**ITA No. 6676/Del/2018  
Assessment Year: 2008-09**

M/s. Seven Heaven Constructions Pvt. Ltd., E-11, Arya Nagar Apartments, Plot No. 90, Indraprastha Extn., New Delhi. PAN- AAKCS6532J <b>(Appellant)</b>	<b>vs.</b>	Income-tax Officer, Ward 23(1), New Delhi  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Mushtaq Ahmad, C.A.
<b>Respondent by</b>	Sh. S.S. Rana, CIT/DR

<b>Date of Hearing</b>	22.05.2019
<b>Date of Pronouncement</b>	28.05.2019

**ORDER**

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

This is an appeal filed by the assessee against the order dated 19.07.2017 of Id. CIT(A)-28 , New Delhi for the assessment year 2008-09 on the following grounds :

- 1. On the facts and circumstances of the case, the authorities below erred both on facts and in law in initiating, sustaining the concluded the proceedings u/s. 147148/151 of the Act, all of which being improper, erroneous and not in accordance with law must be quashed.*
- 2. That the Ld. CIT(A) has erred in law and facts in sustaining the addition of Rs.3,39,38,525/- on account of unexplained cash credit u/s. 68*

*of the I.T. Act, 1961 as made by the Assessing Officer. Such action being palpably wrong and grossly unjust must be quashed.*

*3. The Ld. CIT(A) erred in sustaining the action of the Assessing Officer in charging interest u/s. 234B of the Act in a sum of Rs.1,10,54,788/- which being wrong illegal and unjustified and in any case highly excessive must be annulled.”*

2. The brief facts of the case are that an information from the office of Addl. CIT, Range-5 Firozabad , was received by the Assessing Officer to the effect that the assessee company had made investment of Rs.3,19,00,000/- in purchase of property at Aligarh from M/s. Tiger Hardware and Tools Ltd and M/s. Ansal Properties and Industries Ltd. It was also informed that the assessee company had made payment of purchase consideration of this property through its bank A/c. 0010002100071628/- with Punjab National Bank, Aligarh, which was credited with sizable entry before making transfer of money. Based on this information, the Assessing Officer issued notice to the assessee u/s. 148 after seeking approval of the competent authority, to reopen the case of the assessee. The reasons recorded for reopening the case read as under :

*Information/documents along with relevant details has been received from the office of **Addl. Commissioner of Income Tax, Range- 5, Firozabad** vide letter F.No. AIR-2008-09/Addl. CIT-R-5-Firozabad/2014-15 dated 18.11.2014 states that the above assessee, M/s Seven Heaven Construction Pvt Ltd has made an investment of Rs. 3,19,00,000/-in buying a Property at Aligarh. As per information received Sh. Digvendra Pratap Singh of Distt. Firozabad in the capacity of power of attorney holder on behalf of M/S Tiger Hardware & Tools Limited, Marris Road, Aligarh and M./s Ansal Properties & Industries Ltd, 115, Ansal Bhawan-16, Kasturba*

*Gandhi Marg, New Delhi transferred a property to M/s Seven Heaven Construction PVT. Ltd., New Delhi. The ITO, Ward-5(1), Firozabad had made extensive enquiries which reveals that a property measuring 9551 Sq. Yards situated at Centre Point, Aligarh was transferred on 14.07.2008, 24.07.2008 & 26.07.2008 in three parts each covering an area of 3779 Sq. Yards, 3309 Sq. Yards & 2463 Sq. Yards for consideration of Rs. 1,00,00,000/-; 50,00,000/- and 1,69,00,000/- respectively through sale deeds executed in the office of Sub Registrar- 1, Aligarh. Director of purchasing company, M/s. Seven Heaven Constructions Pvt Ltd., Sh. Sudish Kumar Singh S/o Sh. Sughad Pal Singh operates his business network vibrantly in Aligarh. The bank account of the above purchaser company where from sale consideration in respect of three plots transferred is 0010002100071628 at Punjab National Bank at Railway Road Aligarh (UP). It has been further stated that this bank account has been credited with sizeable entries immediately before the transfer of purchase amount against all the three plots of land. Funds of Rs. 3,78,93,361/- credited in the above PNB account have been routed through the bank accounts of the family members of Sh. Sudhish Kumar Singh by depositing cash in their respective bank accounts.*

*Requisite investigation under the law is required because the company was incorporated on 23.06.2006 and in the very next year it purchase a land measuring 9551 Sq. yards at prime location in Aligarh and managed funds of Rs. 3,78,93,361/-. It is also worthwhile to mention that the case seems to belong to F.Y. 2008-09" relevant A.Y 2009-10 however, the physical possession of the property under consideration and also the consideration thereof passed on during the F.Y. 2007-08 relevant to A.Y. 2008-09.*

<i>Name of the Company</i>	<i>Amount</i>
<i>M/s. Seven Heaven Construction Pvt. Ltd.</i>	<i>3,78,93,361</i>
<b>Total</b>	<b>3,78,93,361</b>

*In view of the additional information/documents received from the office of Addl. Commissioner of Income Tax, Range- 5, Firozabad I have reason to believe that the assessee has willfully and knowingly concealed its particulars of **income to** avoid tax and that income of Rs. 3,78,93,361/- chargeable to tax has escaped assessment for A.Y. 08-09, within the meaning of section 147 of the Income-tax Act, 1961.*

3. In the reopening proceedings, the assessee was asked to explain the source of investment, which he explained to have been made out of share application money received from 34 share applicants to whom the shares of Assessee Company stood allotted, the list of which is given in the assessment order. The assessee also filed requisite documents to support genuineness of its claim. From the bank statements of the investor companies, the Assessing Officer observed that the cash deposit preceded the issuance of cheques and that since the authorized capital of the assessee company was only Rs.10 Lakhs, the receipt of share application money worth Rs.3.40 crores becomes doubtful without increasing the authorized capital. On being asked for explanation, the assessee explained that the payments were received through banking channel, some of the share applicants were income-tax assessee and some of them were capable agriculturists, the evidences of which were filed before the authorities below. However, the Assessing Officer after discarding the reply of the assessee and after relying upon various case laws, considered the impugned share transactions as sham and treating the sum of Rs.3,39,38,525/- as unexplained credits u/s. 68 of the Act, made addition thereof to the total income of the assessee.

4. The assessee carried the matter in appeal before the Id. CIT(A), where he filed detailed written submissions and relied on various judicial pronouncements. The impugned assessment order was challenged both on legal ground regarding validity of reopening proceedings as well as the merits of the addition. The Id. CIT(A), after considering the submissions of the assessee and various decisions, treated the reopening proceedings as legally valid and upheld the addition made by the Assessing Officer. Aggrieved by the impugned order, the assessee is in appeal before the Tribunal.

5. Before us, the Id. Counsel for the assessee, reiterating the detailed submissions made before the Id. CIT(A), also filed a written synopsis, stating as under :

May it please your honour

Ground No 1.

A) REASONS RECORDED

**Reason recorded** : The Ld. Assessing officer has recorded reason which is totally vague in nature and therefore does not seem the reason recorded for escapement of income but has concerted the information received from the office of Addl. Commissioner of Income Tax, Range - 5, Firozabad. The reasons recorded are as under:-

***"As per information received Sit. Digvendra Pratap Singh of Distt. Firozabad in the capacity of power of attorney holder on behalf of M.s Tiger Hardware & Tools Limited, Marris Road, Aligarh and M/s Ansa! Properties & Industries Ltd., 115, Ansal Bhawan- 16, Kasturba Ghandi Marg, New Delhi transferred a property to M/s Seven Heaven Construction Pvt Ltd. New Delhi. The ITO, ward-5(I),Firozabad had made extensive enquiries which reveal that a property measuring 9551 Sq. Yards situated at Centre Point, Aligarh was transferred on 14.07.2008, 24.07.2008 & 26.07.2008 in three parts each covering an area of 3779 Sq. yards, 3309 Sq. yards & 2463 Sq. Yards for consideration of Rs. 100,00,000/-, 50,00,000/-, and 1,69,00,000/- respectively through sale deeds executed in the office of Sub Registrar-1, Aligarh. Director of purchasing***

***company, M/s seven Heaven Construction Pvt Ltd, Sh. Sudish Kumar Singh S/o Sh. Sughad Pal Singh operates his business network vibrantly in Aligarh. The bank account of the above purchaser company where from sale consideration in respect of three plots transferred is 0010002100071628 at Punjab National Bank at Railway Roads Aligarh (UP). It has been further stated that this bank account has been credited with sizeable entries immediately before the transfer of purchase amount against all the three plots of land. Funds of Rs.3,78,93,361/- credited in the above PNB account have been routed through the bank accounts of the family members of Sh. Sudhislt Kumar by depositing cash in their respective bank accounts.***

***Requisite investigation under the law is required because the company was incorporated on 23.06.2006 and in the very next year it purchase a land measuring 9551 Sq. Yards at prime location in Aligarh and managed funds of Rs. 3,78,93,361/-. It is also worthwhile to mention that the case seems to belong to F.Y. 2008-09 relevant A.Y. 2009-10 however, the physical possession of the property under consideration and also the consideration thereof passed on during the F.Y. 2007-08 relevant to A. Y. 2008- 09.***

The assessing officer has received information from Addl. Commissioner of Income Tax, Range - 5, Firozabad and makes belief that the amount paid as share application money is the undisclosed income of the appellant when the appellant has received from 34 application to whom shares are subsequently allotted.

Therefore the assessing officer has created this belief that too a false by relying on the advise of Addl. Commissioner of Income Tax, Range - 5, Firozabad and not applying his own mind to the issue involved. The non application of mind of the assessing officer is also apparent from the fact that a total of 3,19,00,000/- is the amount involved in the process when an amount of Rs, 74,00,000/= detailed as under is invested by Mr. Sudesh Kumar Singh one of the promoters directors of the Company. The amount has been paid vide account payee cheques out of his saving account No. 010000103020454 maintained with Punjab National bank. The money in the account was raised as loan. Detail of which is as under:-

DATE	AMOUNT
31/08/2007	23,00,000.00
31/08/2007	50,00,000.00
01/01/2008	1,00,000.00
Total	74,00,000.00

This clearly indicate that the Ld. Assessing officer has totally acted on the advise of Addl. Commissioner of Income Tax, Range - 5, Firozabad and has totally not applied his mind and making an assumption the share application money received is bogus

by not creating a belief as provided under provisions of section 148 of the income Tax Act 1961 but simply the wish of the assessing officer to reopen the assessment which is bad in law.

Further para 2 of the reasons recorded reads as under: ***“Requisite investigation under the law is required because the company was incorporated on 23.06.2006 and in the very next year it purchase a land measuring 9551 Sq. Yards at prime location in Aligarh and managed funds of Rs. 3,78,93,361/-. It is also worthwhile to mention that the case seems to belong to F.Y. 2008-09 relevant A.Y. 2009-10 however, the physical possession of the property under consideration and also the consideration thereof passed on during the F. Y. 2007-08 relevant to A. Y. 2008- 09.”***

If according to the Ld. Assessing officer requisite investigation under law is required in the matter and which is clear that the matter needs to be properly investigated and accordingly a course of action is to be taken then how notice U\S 148 was issued at this stage when further investigation was needed. This is really true that investigation was needed as the amount of Rs. 74,00,000/- contributed by one of the promoters vide cheques detailed above after transferring from loan accounts, copy of the statements of account placed at page No 38, 39, 40 and 41 of the paper book. Had a proper mind been applied the Ld. Assessing officer would not have considered above amount for issuance of notice. Then the amount escaped as alleged would have been less by 74,00,000/= and obviously this could not be the reason at all. This clearly indicates that there is no application of mind from the Id. Assessing officer to the reasons recorded when at this stage further investigation was required. Further If as a result of investigation or enquiry the reasons gets changed or focus gets shifted to some other person as was obvious in the present case, had proper enquiries been conducted before recording of the reasons then how the reason recorded for reopening of assessment of the assessee is justified when after proper investigation and enquiries the assessing officer would get compelled to issue notices in favour of the share applicants and not in favour of the assessee. The reason therefore is nothing but a reason recorded in hurry without enquires before recording reasons and that too when the matter was getting time bared so the Id. Assessing officer had no alternative but to issue notice under section 148 of the Income Tax Act 1961 in favour of the assessee in haste which is bad in law as the reason recoded without proper enquiries and application of mind and in a time bared situation is not a reason justified at all. Therefore the reason recorded is bad in law and the order passed by the Ld. A.O on the basis of said unjustified reasons is bad in law deserves to be quashed.

Further in last para of the reasons recorded the Ld. Assessing officer mentions ***“in view of the additional information/documents received from the office of Addl. Commissioner of Income Tax Rage 5, Ferozabad I have reason to believe that the assessee has willfully and knowingly concerted its particulars of income to avoid tax and that income of Rs. 3,78,93,361/= chargeable to tax has escaped***

***assessment for the A.Y 2008-09 within the meaning of section 147 of the Income Tax Act 1961."***

Your honor above lines clearly indicate that the Id. Assessing officer has acted on the information received from Addl. CIT Ferozabad, and framed belief on the information received from the above said office and not on account of his independent application of mind and further processing of information. In framing the reasons the Ld. A.O has acted casually and mechanically. There is no processing of information received from Addl. Commissioner of Income Tax, Ferozabad as the words **"in view of the additional information/documents received from the office of Addl. Commissioner of Income Tax Raga 5, Ferozabad I have reason to believe"** clearly indicate that the assessing officer has acted purely on the information received from the other office. There is no working done between receipt of information and framing of belief and accordingly the reopening of assessment.

Therefore the reason recorded without having any such independent processing and application of mind by the A.O. is bad in law and the order passed at the instance of this reason is bad in law is liable to be quashed.

**B) SATISFACTION ACCORDED**

Since the Id. Jt. CIT has agreed with the contention of the A.O therefore when reason is factually incorrect and premature and not in accordance with the law how the agreement of Ld. JT CIT with the reasons recorded is according to the law when there is no application of mind at this stage also. Had the Jt. CIT told the A.O to look into the matter properly he would not have accorded satisfaction at all, at least for the reason that Rs. 74,00,000/- invested by Mr. Sudesh Kumar is invested after obtaining loan and loan statements have been submitted during the course of assessment. So the satisfaction accorded to the reasons recorded which are bad is also bad in law and not within the meaning of section 151 of the Income Tax Act 1961.

Further if as per reasons of further investigation was required how the case is fit for issuance of provisions of section 147/148 of the Income Tax Act 1961. The Ld. Jt.CIT should have to ask the A.O to see the matter investigated properly then submit for approval. Had the matter been properly investigated then he would not recorded reason like this at least the total amount could have been less by 74,00,000/- secondly matter could have got shifted to the applicants instead of the appellant. The reason recorded is bad and agreeing to the bad reasons and according approval to the bad reasons is also bad in law and not within section 151 of the Income Tax Act 1961. The order passed by the Ld. A.O and confirmed by Ld. CIT(A) deserved to be quashed.

I may rely upon following judicial pronouncements relevant extracts are stated as under:-

***In Chugamal Rajpal Vs. S.P Challia & Ors (SC), the Honorable Supreme Court has held.***

Under section 148 and 151(2) the Income Tax Officer must record his reasons for issuing the notice U\S 148. There must be prima facie ground for taking action U\S 148. Further before issuing such a notice provisions of sub section (a) and (b) of section 147 must be satisfied. In this case income Tax officer appears to have a vague feeling that the transactions were bogus and that the alleged creditors were only name lenders. According to him proper investigation regarding loans was necessary. This is not the same thing as saying that there are reasons to issue notice U\S 148 of the Income Tax Act 1961.

In these circumstances it could not be held that the income tax officer had any material before him which could satisfy the requirement of either sub section (a) or (b) of section 147. Therefore he could not have issued notice U\S 148. Further the report submitted by him U\S 151(2) did not mention any reason for coming to the conclusion that it was a fit case for issue of notice U\S 148. The Commissioner also mechanically accorded permission. Thus the important safeguard provided U\S 147 and 151 were lightly treated by the income Tax officer as well as by the Commissioner.

**In Assistant commissioner of income Tax Vs. Dhariya Construction Company 92010) 47 DTR 0288, (2010) 236 CTR 0226, (2010) 328 ITR 0515, (2011) 197 TAXMAN 0202 (Supreme Court of India) has held that** reassessment-Reason to believe-report of DVO-Opinion of the DVO per se is not an information for the purpose of reopening assessment under S.147-AO has to apply has mind to the information, if any, collected and must from a belief thereon- Therefore, department was not entitled to reopen the assessment on the basis of the opinion of the DVO."

In Pr. Commissioner of Income Tax Vs G & G Pharma India Ltd. the Honorable High court of Delhi (2016) 384 ITR 0147 (Delhi), "When basic requirement that AO must apply his mind to material on record in order to have reasons to believe that income of the Assessee escaped assessment was missing, reopening of assessment not justified."

In Shree BhagwanVs. Income Tax officer (2015) 45 CCH 0040 Del Trib, Honorable Delhi Bench of ITAT has held that "Mere Annexure cannot be regarded as a material or evidence to prima facie show or establish nexus or link which discloses escarpments of income for warranting addition u/s 68."

In Bir Bahadur Singh Sijwali Vs. Income Tax Officer (2015) 68 SOT 0197 (Delhi) (URO) it was held that "Reassessment proceedings cannot be resorted to only to examine facts of a case, no matter how desirable that be, unless there is a reason to believe, rather than suspect, that income has escaped assessment."

The reason recorded is therefore bad and agreeing to the bad reasons and according approval to the bad reasons is also bad in law and not within section 151 of the Income Tax Act 1961. Therefore the order passed by the Ld. A.O and confirmed by Ld. CIT(A) deserved

to be quashed.

Ground No 2

During the course of assessment the assessee has submitted all the information against queries dated 11/03/2016 and 18/03/2016 which are placed on page No 13 to Page No 25 of the paper book. All the requisite information has been submitted:-

1. Identity details of the applicants
2. PAN card
3. Adgar Cards
4. Bank statements
5. Confirmations
6. Khatunies
7. Proof of sale of agricultural produce etc.
8. Loan Account Statements

and placed on page No 36 to 193 of the Paper book. The appellant has discharged his duty by providing all the information required and even has requested the A.O for issuance of notices 131 or 133(6) of the Income Tax Act, given on reply placed at page No 22 para 2 of the paper book. They assessee can not do anything beyond that to prove the credit worthiness of the applicants.

Further the appellant has increased share capital of the company and made necessary allotment of shares in favour of the applicants. Copy of form of allotment with detail of allotment is placed on page No 26 to 35 of the paper book.

Further Inspite of specific request made by the appellant to the A.O vide his reply that if any other information is needed he can provide or you can issue directly 131 or 133(6) and appellant will bear the cost of travel and food of the person if called for.

After this there is no rebut from the Ld. A.O, he neither wanted any further information nor called the applicants for examination. There is no any adverse finding why and how the amount remained unexplained but simply alleged that the appellant failed to prove Identity, creditworthiness, Genuineness of the transaction. This goes contrary to the provisions of section 68 of the Income Tax Act 1961.

Then how the share capital amount received by the applicant be taxed under section 68 of the Income Tax Act 1961.

Further the recent judgment of Honorable Supreme Court in the matter of M\ S NRA Iron and Steel Private Limited which is distinguished as under:-

<b>1. Non of the Investment companies which have invested could investment</b>	Here all the details are submitted and the assessee will bear all the costs of bringing the applicants. Here the amounts are small. Bank statements and ITRs are furnished and even detail agricultural produce sold has been produced.
<b>2. Some Investor companies are Not existent</b>	Here all the details are submitted and the A.O. has been requested to issue notices u/s 133(6) or 131 and the assessee will bear all the costs of bringing the applicants. Therefore, none of the applicants are non existent.
<b>3. None of the companies produced bank statements</b>	Here bank statements are furnished and the A.O. has been specifically requested for any information if needed and even has been requested for issuance of notice u/s. 133(6) or 131 of the Income Tax Act, 1961
<b>4. None of the investors companies appeared before the A.O. but merely sent written response through DAK</b>	In fact A.O. has been specifically requested to issue 131 or 133(6) of the Income Tax Act 1961 and even the appellant could bear their cost of travel and food.
<b>5. The companies Hema Trading and Eternity Multi Trade Pvt. Ltd. at Mumbai were found to be non existent at the address given and the premises was owned by some other person.</b>	No such instance is found in the present case.
<b>6. The companies of Kolkata did not appear before A.O. nor did they produce their bank statements to substantiate their source.</b>	The A.O has been specifically requested for any other information, explanation etc. and has been requested to issue 131 or 133(6). The appellant will bear the costs.
<b>7. The Two companies at Gowhati, Ispat Sheet Ltd and Novelty Traders Ltd were found Non existent.</b>	No such issue is reported here. The assessee has requested A.O for any further information needed And requested for issuance of 133(6) or 131 and the assessee will bear the costs.
<b>8. Further none of the so called investor companies established source of funds from which the high share premium was invested</b>	The appellant has discharged its legal duty and all the information, explanation and documents are submitted. The appellant has discharged its duty in Proving the Genuineness, creditworthiness and sources of funds Invested by the applicants.

<b>9. In this case there is no mention that the assessee company has subsequently made allotments to the shareholders, increased share capital etc.</b>	The appellant has allotted shares to all the applicants as per relevant provisions of companies Act and detail of allotment is at page No. 26 to 35 of the paper book.
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The judgment in the matter of M\ S NRA Iron and Steel private limited is factually distinguished as above as the appellant has submitted all the details to prove the Identity, credit worthiness, genuineness of the transactions made by the applicants.

I may rely on the Citation of Honorable Supreme Court **in Commissioner of Income Tax vs. Lovely exports (P) LTD. 92008) 6 DTR 0308. (2008) 2016 CTR 0195 the Honorable Supreme Court has held that If the share applications money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the department is free to process to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company."**

**The facts of the case are quite similar to the facts of Lovely Exports but facts of MVS NRA Iron and Steel Private Limited are distinguished as above.**

Therefore on the basis of above facts and circumstances of the case the Ld. Assessing officer has hypothetically treated the amount invested by investors as transactions attracting provisions of section 68 of the Income Tax Act 1961.

Further as alleged vide para 2 page 22 of CIT(A) order that the appellant has failed to satisfy the conditions as provided in section 68 of the Income Tax Act 1961 in case of any of the creditors. In none of the cases creditworthiness of the of the creditors could be ascertained. It is not understandable when all the details of the investors have been submitted as stated by Ld. CIT(A) in his order on page No 16 para 5.1 still the Ld. CIT(A) has given a finding with regard to no non establishment of satisfying provisions of section 68 of the Income Tax Act 1961.

The appellant after submitting all the information required as per provisions of section 68 of the Income Tax and further requested the A.O for issuance of Notices U\ S 133(6) of the Income Tax Act 1961 or 131 of the Income Tax Act 1961 and without rebutting anything which goes against the appellant still the A.O treated the amount as unexplained and taxed U\ s 68 Of the Income Tax Act 1961. There is no any such specific finding which could state that any of the applicant is non existent or any specific reason where the appellant has not discharged its responsibility under law to prove credit worthiness of the creditors still the transaction has been treated under provisions of section 68 of the Income Tax Act 1961. However passing of orders by both Ld. CIT(A) and the Ld. A.O in a mechanical and

hypothetical manner as nothing has been rebut further amount of Rs. 74,00,000/= invested by Mr. Sudesh Kumar has also been taxed when his loan account statements are submitted and placed at page No 38,39,40 and 41 of the paperbook. In both the orders below there is nothing mention of this transaction . This clearly proves that in spite of the requesting the A.O for issuance of 131 and 133(6), and after submission of all the information he assessing officer has acted hypothetically and treated the amount invested under section 68 of the Income Tax Act 1961 which is bad in law.

In the light of my submissions and grounds of appeal raised the appeal filed by the appellant may be allowed in the interest of justice.

6. On the other hand, the ld. DR relying on the orders of authorities below submitted that the ld. Authorities below are quite justified to raise a finger on enormous receipt of share application in the light of authorized capital of assessee company. Cash deposit was found preceded to issuance of cheques by most of the investor companies. The creditworthiness of the creditors was not proved and hence, the ld. Authorities below have committed no error while making and sustaining the impugned addition. The ld. DR apart from relying on the decisions relied by ld. CIT(A) has also filed a written synopsis containing various case laws, which reads as under :

In the above case, it is humbly submitted as follows:

1. In the above case, information was received from Addl. CIT Range -5 Firozabad that the assessee has made an investment of Rs. 3,19,00,000 in buying a property at Aligarh.
2. During assessment proceedings, the assessee explained that an amount of Rs. 3,39,38,525 was received on account of share application money from 34 share applicants.
3. Despite being given adequate opportunity, the assessee has not furnished bank statements of most of the persons. Even in cases where bank statements were furnished, it was noticed that they had deposited cash in their bank prior to issuing cheques for share applications.

**Suman Gupta Vs CIT (2013-LL-0122-69) (Supreme Court) (Copy Enclosed)**  
where Hon'ble Supreme Court dismissed appeal of the assessee.

**Suman Gupta Vs ITO (ITA No.680/12 vide judgement dated 07.08.2012)  
(Allahabad High Court) (Copy Enclosed)**

where Hon'ble Allahabad High Court held that where identical amounts were found to have been deposited in accounts of half a dozen lenders prior to lending, and assessee could only produce one lender for examination, 'addition is to be made as assessee failed to prove genuineness of loans

**Blessing Construction Vs ITO T20131 32 taxmann.com 366  
(Gujarat)/r20131 214 taxman 645 (Gujarat) (Copy Enclosed)**

where Hon'ble Gujarat High Court held that where sizeable amounts were deposited in cash in account of depositors only before their withdrawal through cheques in favour of assessee, addition was justified.

4. The authorized capital of assessee is only Rs. 10 lakhs where as assessee has accepted share application money of Rs. 3.40 or without increasing its authorized capital, which shows that assessee never intended to issue any shares against this share application money. **Hence, genuineness of the transactions is not proved.**
5. Many of the share applicants were agriculturist and not filing Income Tax Returns
6. The Ld CIT(A) has given remarks on pages 16 to 22 of his order with regard to each share applicant as to how **their credit worthiness was not proved.**
7. As held by Hon'ble Supreme Court in the case of **PCIT Vs NRA Iron & Steel (P.) Ltd. 412 ITR 161 (SC)**, there was failure of assessee to establish credit worthiness of investor companies

In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to addition made u/s 68 of I.T.Act:

**1. PCIT Vs NRA Iron & Steel (P.) Ltd. T20191 103 taxmann.com 48  
(SC)/r20191 262 Taxman 74 (SC)/r20191 412 ITR 161 (SCI (Copy  
Enclosed)**

where Hon'ble Supreme Court reverse order of lower Authorities holding that where there was failure of assessee to establish credit worthiness of investor companies, Assessing Officer was justified in passing assessment order making additions under section 68 for share capital / premium received by assessee company. Merely because assessee company had filed all primary evidence, it could not be said that onus on assessee to establish credit worthiness of investor companies stood discharged

**2 PCIT Vs NDR PROMOTERS PVT LTD (T20191 102 taxmann.com 182  
(Delhi)/r20191 261 Taxman 270 (Delhi)/r20191 410 ITR 379 (Delhi))**

where Hon'ble Delhi High Court held that where Assessing Officer made additions to assessee's income under section 68 in respect of amount received as share capital from

several companies, in view of fact that all of these companies were maintained by one person who was engaged in providing accommodation entries through paper companies and all such companies were located at same address, impugned addition was justified

3. **ITO Vs Synergy Finlease Pvt. Ltd (ITA No.4778/Del/2013)**

where Hon'ble ITAT Delhi held that where investor of share application money had nominal income and cheques had been received just before issue of cheques for share application money, creditworthiness was not proved and addition u/s 68 was sustained.

4. **CIT Vs MAF Academy (P.) Ltd (361 ITR 258) (Copy Enclosed)**

where Hon'ble Delhi High Court held that where assessee, a private limited company, sold its shares to unrelated parties at a huge premium and thereupon within short span of time those shares were purchased back even at a loss, share transactions in question were to be regarded as bogus and, thus, amount received from said transactions was to be added to assessee's taxable income under section 68 It was held as follows:

***"53. In contrast to the above judgments, in the present case, the Assessee is a private limited company and in the factual matrix, we have held that the Assessee has not been able to discharge the initial onus and has not been able to establish the identity, creditworthiness of the share applicants and the genuineness of the transaction. Though, in our considered opinion, none of the above judgments, referred to by the Assessee respondent, are applicable in the facts of the present case and in view of the findings recorded by us hereinabove.***

***54. In view of the above, we are of the view that the Assessee has not discharged the onus satisfactorily and the additions made by the Assessing Officer were justified and sustainable."***

5. **CIT Vs Navodava Castle Pvt Ltd T20141 367 ITR 306 (Del) (Copy Enclosed)**

where Hon'ble Delhi High Court accepted that since the assessee was unable to produce the directors and the principal officers of the six shareholder companies and also that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer had observed that there were genuine concerns about identity, creditworthiness of shareholders as well as genuineness of the transactions.

***"20. Now, when we go to the order of the Tribunal in the present case, we notice that the Tribunal has merely reproduced the order of the Commissioner of Income-tax (Appeals) and upheld the deletion of the addition. In fact, they substantially relied upon and quoted the decision of its co-ordinate Bench in the case of MAF Academy P. Ltd., a decision which has been overturned by the Delhi High Court, vide its judgment in CIT v. MAF Academy P. Ltd. [2014] 206 DLT 277 ; [2014] 361 ITR 258 (Delhi)). In the impugned order it is accepted that the assessee was unable to produce directors and principal officers of the six shareholder companies and also the fact that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer has observed that there were genuine concerns about identity, creditworthiness of shareholders as well as***

*genuineness of the transactions.*

**21. In view of the aforesaid discussion, we feel that the matter requires an order of remit to the Tribunal for fresh adjudication keeping in view the aforesaid case law."**

**Navodava Castle Pvt Ltd Vs CIT (T20151 56 taxmann.com 18 (SC)/r2015l 230 Taxman 268 (SC)) (Copy Enclosed)**

SLP of assessee dismissed by Hon'ble Supreme Court

**6 Pratham Telecom India Pvt Ltd Vs DCIT (2018-TIQL-1983-HC-MUM-m (Copy Enclosed)**

where Hon'ble Bombay High Court held that mere production of PAN numbers & bank statements is sufficient enough to discharge the burden on taxpayer to escape the realms of Section 68

**7. JJ Development Pvt Ltd Vs CIT (2018-TIQL-395-SC-IT) (Copy Enclosed)**

where Hon'ble Supreme Court held that when the assessee fails to provide a convincing explanation with regard to the cash credit before the AO and the same was accepted by the ITAT being a fact finding body, the same cannot be disputed further. Apex Court dismissed the Special Leave to Petition filed by the assessee

**8. CIT Vs Nipun Builders & Developers (P.) Ltd (30 taxmann.com 292, 214 Taxman 429.350 ITR 407. 256 CTR 34) (Copy Enclosed)** where Hon'ble Delhi High Court held that where assessee failed to prove identity and capacity of subscriber companies to pay share application money, amount so received was liable to be taxed under section 68. It was held as follows:

***"12. A perusal of the order of the Tribunal shows that it has gone on the basis of the documents submitted by the assessee before the AO and has held that in the light of those documents, it can be said that the assessee has established the identity of the parties. It has further been observed that the report of the investigation wing cannot conclusively prove that the assessee's own monies were brought back in the form of share application money. As noted in the earlier paragraph, it is not the burden of the AO to prove that connection. There has been no examination by the Tribunal of the assessment proceedings in any detail in order to demonstrate that the assessee has discharged its onus to prove not only the identity of the share applicants, but also their creditworthiness and the genuineness of the transactions. No attempt was made by the Tribunal to scratch the surface and probe the documentary evidence in some depth, in the light of the conduct of the assessee and other surrounding circumstances in order to see whether the assessee has discharged its onus under Section 68. With respect, it appears to us that there has only been a mechanical reference to the case-law on the***

*subject without any serious appraisal of the facts and circumstances of the case.*

**13. We, therefore, answer the substantial question of law framed by us in the negative, in favour of the revenue and against the assessee. The appeal of the revenue is allowed with no order as to costs."**

9 CIT Vs Nova Promoters & Finlease (P) Ltd (18 taxmann.com 217, 206 Taxman 207. 342 ITR 169. 252 CTR 187) (Copy Enclosed) where Hon'ble Delhi High Court held that amount received by assessee from accommodation entry providers in garb of share application money, was to be added to its taxable income under section 68. It Was held as follows:

**"41. In the case before us, not only did the material before the Assessing Officer show the link between the entry providers and the assessee-company, but the Assessing Officer had also provided the statements of Mukesh Gupta and Rajan Jassal to the assessee in compliance with the rules of natural justice. Out of the 22 companies whose names figured in the information given by them to the investigation wing, 15 companies had provided the so-called "share subscription monies" to the assessee. There was thus specific involvement of the assessee-company in the modus operandi followed by Mukesh Gupta and Rajan Jassal. Thus, on crucial factual aspects the present case stands on a completely different footing from the case of Oasis Hospitalities (P.) Ltd. (supra).**

**42. In the light of the above discussion, we are unable to uphold the order of the Tribunal confirming the deletion of the addition of Rs. 1,18,50,000 made under section 68 of the Act as well as the consequential addition of Rs. 2,96,250. We accordingly answer the substantial questions of law in the negative and in favour of the department. The assessee shall pay costs which we assess at Rs. 30,000/-."**

10 CIT Vs N R Portfolio Pvt Ltd T20141 42 taxmann.com 339 (Delhi/[2014] 222 Taxman 157 (Delhi)(MAG)/[2014] 264 CTR 258 (Delhi) (Copy Enclosed) where Hon'ble Delhi High Court held that if AO doubts the documents produced by assessee, the onus shifts on assessee to further substantiate the facts or produce the share applicant in proceeding. It was held as follows:

**"30. What we perceive and regard as correct position of law is that the court or tribunal should be convinced about the identity, creditworthiness and genuineness of the transaction. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be**

*sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive. Companies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the persons behind the company who take the decisions, controls and manage them."*

11 **CIT Vs Empire Builtech (P.) Ltd (366 ITR 110) (Copy Enclosed)** where Hon'ble Delhi High Court held that u/s 68 it is not sufficient for assessee to merely disclose address and identities of shareholders; it has to show genuineness of such individuals or entities.

12. **CIT Vs Focus Exports (P.) Ltd (51 taxmann.com 46 (Delhi)/r2015l 228 Taxman 88) (Copy Enclosed)** where Hon'ble Delhi High Court held that where in respect of share application money, assessee failed to provide complete address and PAN of certain share applicants whereas in case of some of share applicants, there were transactions of deposits and immediate withdrawals of money from bank, impugned addition made under section 68 was to be confirmed

10 **PCIT Vs Bikram Singh r2017l 85 taxmann.com 104 (Delhi)/r2017l 250 Taxman 273 (Delhi)/r2017l 399 ITR 407 (Delhi) (Copy Enclosed)** where Hon'ble Delhi High Court held that even if a transaction of loan is made through cheque, it cannot be presumed to be genuine in the absence of any agreement, security and interest payment. Mere submission of PAN Card of creditor does not establish the authenticity of a huge loan transaction particularly when the ITR does not inspire such confidence. Mere submission of ID proof and the fact that the loan transactions were through the banking channel, does not establish the genuineness of transactions. Loan entries are generally masked to pump in black money into banking channels and such practices continue to plague Indian economy.

7. We have heard the rival submissions and have gone through the entire material available on record. A perusal of the grounds of appeal and the facts as enumerated in the impugned order, reveals that the assessee has challenged before us both the validity of reopening proceedings as well as the merits of addition. For the sake of convenience, we first take up the issue of validity of reopening proceedings.

8. The first contention of the assessee has been that the notice u/s. 148 has been issued and the assessment has been reopened on borrowed satisfaction, i.e., only on the basis of information received from Addl. CIT, Range-5, Firozabad regarding purchase of properties and investment therein. No independent inquiry is made by Assessing Officer before forming the belief of escapement of income. This lapse on the part of the Assessing Officer makes the reassessment as void having been made only on borrowed satisfaction. We have come across various decisions of Hon'ble High Courts for the proposition that where the assessment is reopened only on the basis of information without bringing any tangible material on record or without application of mind or making any enquiry, such re-assessment cannot be sustained being void. Some of the decisions are referred to as under :

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

9. In the instant case, the non-application of mind to the information is apparent from the fact that the total amount involved was Rs.3,19,00,000/- and the amount of Rs.74,00,000/- was advanced by the promoters of the developer company through account payee cheque out of his saving bank account No. 010000103020454 with PNB, which was raised as loan by the assessee. This aspect did not strike to the assessee while making addition of the entire amount of share application money received, whereas the

information was received with respect to investment in properties. This fact itself goes to substantiate the non-application of mind for reopening the case.

10. We have also gone through the reasons recorded, which eloquently speak that the formation of belief has been made only and only on the basis of information received without making any enquiry or pointing out any tangible material in the said reasons recorded. The basis of belief is self explanatory from the reasons recorded, where the Assessing Officer has mentioned that *“in view of the additional information/documents received from the office of Addl. Commissioner of Income Tax Range-5, Firozabad, have reason to belief that the assessee has willfully and knowing concealed its particulars of income to avoid tax and that income of Rs.3,78,93,361/- chargeable to tax has escaped assessment”*. This itself goes to show that the AO was mechanically persuaded by the report of Addl. CIT, Range-5, Firozabad and hence, such a re-assessment, in our considered opinion, cannot be sustained being void in law, as also held in various of decisions as under :

- Sarthak Securities Co. (P.) Ltd v. ITO [2010] 195 Taxman 262 (Delhi);
- Signature Hotels (P.) Ltd. v. ITO [2012] 20 taxmann.com 797 (Delhi);
- CIT v. Sfil Stock Broking Ltd. [2010] 325 ITR 285 (Delhi);
- CIT v. Suren International (P.) Ltd. [2013] 35 taxmann.com 398 (Delhi);

11. The ld. AR of the assessee also contended that since, the AO has reopened the assessment proceedings only on the basis of information received from Addl. CIT, Firozabad and there was no further material collected, then reopening will not be justified. For this proposition he placed reliance on following authorities:-

- Dhariya Construction Company, (2010) 328 ITR 515 (SC),(relied by Id. AR) the head-notes of which read as under :

*Reassessment – Reason to believe- report of DVO- opinion of the DVO per se is not an information for the purpose of reopening assessment under s. 147 – Assessing Officer has to apply his mind to the information, if any, collected and must form a belief thereon – Therefore, department was not entitled to reopen the assessment on the basis of the opinion of the DVO.”*

- In PCIT V. G & G Pharma India Ltd. [2017] 81 taxmann.com 109 (Delhi), it has been held by jurisdictional High Court that “*when basic requirement that Assessing Officer must apply his mind to material on record in order to have reasons to believe that income of the assessee escaped assessment was missing, reopening of assessment not justified.*”

12. In CIT vs. Meenakshi Overseas Pvt. Ltd. (supra) case was reopened by the Assessing Officer on the basis of information of Investigation Wing where there was no independent application of mind to any tangible material which formed the basis of belief of escapement. In that case also, the information received contained (i) the names of beneficiaries (ii) bank name & branch of beneficiaries banks and entry giving banks, (iii) value of entries taken (iv) name of account holder of entry giving account and the Assessing Officer after going through the said information straightway derived its conclusion without application of his mind. In these facts, the Hon’ble Jurisdictional High Court after following various other decisions has held as under :

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

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

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

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

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

23. *Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be*

*evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.*

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

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

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

27. *Each case obviously turns on its own facts and no two cases are identical. However, there have been a large number of cases explaining*

*the legal requirement that requires to be satisfied by the AO for a valid assumption of jurisdiction under Section 147 of the Act to reopen a past assessment.*

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

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

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

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

*"14. The first sentence of the reasons states that information had been received from Director of Income-Tax (Investigation) that the petitioner had introduced money amounting to Rs. 5 lacs during financial year 2002-03 as per the details given in Annexure. The said Annexure. reproduced above, relates to a cheque received by the petitioner on 9th October, 2002 from Swetu Stone PV from the bank and the account number mentioned therein. The last sentence records that as per the information, the amount received was nothing but an accommodation entry and the assessee was the beneficiary.*

*15. The aforesaid reasons do not satisfy the requirements of Section 147 of the Act. The reasons and the information referred to is extremely scanty and vague. There is no reference to any document or statement, except Annexure, which has been quoted above. Annexure cannot be regarded as a material or evidence that*

*prima facie shows or establishes nexus or link which discloses escapement of income, Annexure is not a pointer and does not indicate escapement of income. Further, it is apparent that the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. The Assessing Officer accepted the plea on the basis of vague information in a mechanical manner. The Commissioner also acted on the same basis by mechanically giving his approval. The reasons recorded reflect that the Assessing Officer did not independently apply his mind to the information received from the Director of Income-Tax (Investigation) and arrive at a belief whether or not any income had escaped assessment."*

13. It also appears that in the instant case, the reassessment proceedings were initiated by the Assessing Officer for making fishing enquiries, which is not permissible at all by resorting to the proceedings u/s. 147 of the Act. In *Bir Bahadur Singh Sijwali vs. ITO (2015) 68 SOT 197 (Delhi)*, it was held that *"Reassessment proceedings cannot be resorted only to examine facts of the case, no matter how desirable that be, unless there is a reason to believe, rather than suspect, that income has escaped assessment."*

14. Thus, in view of various decisions, rendered in the cases cited above, in the light of reasons recorded in the instant case, we are of the considered opinion that the ld. Authorities below were not justified to sustain the validity of reassessment proceedings being invalid. The decisions relied upon by the ld. DR and also by ld. Authorities below in the peculiar facts of the present case, do not render any help to the Revenue being distinguishable on facts. The decisions relied by Ld. DR mostly pertain to the merits of the additions made U/s 68 of the Income Tax Act. 1961. Therefore, the impugned order

deserves to be set aside on this legal aspect of the case. Since the appeal of the assessee deserves to be allowed on legal grounds, we need not to enter into the merits of additions made by the Assessing Officer and extensive contentions made by the ld. AR.

15. In the result, the appeal is allowed.

Order pronounced in the open court on 28.05.2019.

Sd/-

**(Amit Shukla)**  
**Judicial member**

Sd/-

**(L.P. Sahu)**  
**Accountant Member**

Dated: 28.05.2019

*\*aks\**

*Copy of order forwarded to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>Commissioner</i>	(4)	<i>CIT(A)</i>
(5)	<i>Departmental Representative</i>	(6)	<i>Guard File</i>

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Delhi Benches, New Delhi*