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

Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member

ITA No. 1077/Del/2019
Assessment Year: 2010-11

Shri Vijay Agarwal, C-169, Pushpanjali enclave, Pritampura, Delhi (PAN- AFSPA8080P) **(Appellant)**	**vs.**	Income-tax Officer, Ward 48(5), New Delhi **(Respondent)**

ITA No. 1078/Del/2019
Assessment Year: 2010-11

Shri Raj Gupta, C-169, Pushpanjali enclave, Pritampura, Delhi (PAN- AGSOG2661F) **(Appellant)**	**vs.**	Income-tax Officer, Ward 48(5), New Delhi **(Respondent)**

ITA No. 1079/Del/2019
Assessment Year: 2010-11

Smt. Sheela Devi, 1756, Nai Basti Naya Bazar, Delhi (PAN- AAAPD3717F) **(Appellant)**	**vs.**	Income-tax Officer, Ward 47(1), New Delhi **(Respondent)**

ITA No. 1080/Del/2019
Assessment Year: 2010-11

Shri Manoj Agarwal, 1756, Nai Basti, Naya Bazar, Delhi (PAN- ADCPA1665J) **(Appellant)**	**vs.**	Income-tax Officer, Ward 48(2), New Delhi **(Respondent)**

ITA No. 1081/Del/2019
Assessment Year: 2010-11

Shri Manish Agarwal, C-169, Pushpanjali enclave, Pritampura, Delhi (PAN- AEWPA7232G) **(Appellant)**	**vs.**	Income-tax Officer, Ward 48(5), New Delhi **(Respondent)**

Appellant by	S/Sh. Rajeev Saxena, R.P. Mall, Advocates S/Sh. Ajit Kumar Jha and Shyam Sunder, ARs
Respondent by	Sh. P.V. Gupta, Sr. DR

Date of Hearing	25.04.2019
Date of Pronouncement	30.05.2019

ORDER

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

The aforesaid bunch of appeals by different assessees are directed against the separate orders of ld. CIT(A)-16, New Delhi dated 28.12.2018 for the assessment year 2010-11. Since the grounds raised, issues involved and the contentions made by both the parties are identical, the same were heard together and are being disposed of by this consolidated order for the sake of convenience and brevity. Both the parties agreed that the decision in one appeal shall equally apply to the other appeals. We, therefore, take up the appeal of the assessee, Shri Vijay Agarwal in ITA No. 1077/Del/2019 first.

2. The grounds raised in this appeal read as under :

"1. That, the Ld. CIT(A) has erred in law as well as on facts in confirming the order of the assessing officer and justifying the reassessment proceedings because:

a. He has failed to appreciate that the assessing officer has completed the assessment without satisfying the statutory pre-conditions envisaged in the Act and this ground itself deserves the assessment to be quashed.

b. The AO has failed to form the believe that any income has escaped the assessment and merely on assumption on presumption, imaginary figures have been adopted which has no relevance with the facts of the case.

c. The AO has initiated the proceedings on the basis of mere information received without independent application of mind which is mandatory to reopen the assessment and to form an opinion that income has escaped the assessment.

d. The assessment proceedings are barred by limitation being initiated after the period of six years.

e. The assessing officer has not fulfilled either the condition for issuing notice or for completing the assessment proceedings.

f. Both the authorities have failed to notice that provisions of section 147 are not applicable once search material found during search was relied upon and provisions of 153C are separately provided for this specific purpose while no such satisfaction had been recorded and in order to overcome the lacuna, such provisions have been applied.

2. That the Ld. CIT(A) has erred in law as well as on facts in confirming the addition made by the AO of Rs. 3,51,52,680/- while referring the provisions of Section 56(2)(vii)(c)(ii), ignoring the facts that the assessee had acquired shares before the commencement of said provision of the Income Tax Act, 1961.

3. That, the Ld. CIT(A) has grossly erred in law as well on facts in confirming the addition made by the AO of Rs. 25,00,000/- u/s 68 of the Income Tax Act, 1961 relating to the unsecured loan raised by the assessee from M/s Vidya Shanker Investment Private Limited."

3. The brief facts pertaining to this appeal are that a search and seizure operation was carried out on 14.09.2010 on the different persons/ companies related to the "Jagat Group" where various incriminating documents were found and seized from the residential premises of the key person Sri Satish Pawa. Documents so found related to acquisition/ purchase of a paper company, M/s Index Securities & Research Pvt. Ltd. in the shape of a chart containing the details of purchase of shares at a very low price. On the basis of information received from DCIT, Central Circle-09, to the above effect, the Assessing Officer issued notice u/s. 148 after recording the following reasons :

> "Search and seizure operation was carried out on 14.09.2010 on the different persons/ companies related to the "Jagat Group". Various incriminating documents were found and seized from the residential premises of the key person Sri Satish Pawa. Documents related to acquisition/ purchase of a paper company, M/s Index Securities & Research Pvt. Ltd. in the shape of a chart containing the details of purchase of shares at a very less intrinsic value was found and seized. Accordingly, information in the case of Sh. Vijay Aggarwal has been received from the DCIT, Central Circle-9 (erstwhile), New Delhi vide his letter F.No. DCIT/CC-09/12-13/2015, dated 09.07.2013.
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> 2. Vide letter F. No. DCIT/CC-09/12-13/190, dated 25.06.2013, he had informed that on 15.09.2009, Sh. Vijay Aggarwal had purchased 3,94,000 shares of M/s Index Securities & Research Pvt. Ltd. (PAN : AAACI2919K) from M/s Lotus Realcon Pvt. Ltd. @ Rs.2.25 per share. Total value paid of Rs.8,86,500/-. Sh. Vijay Aggarwal along with 18 other persons (all are related to the "Jagat Group") had purchased the total shareholding of the said company from different entities. By this way, the company was totally acquired by the "Jagat Group". The total control over the affairs of the company was undertaken to pass on the assets holding to various relatives/ family members in the shape of unsecured loans, which were later utilized in the different ongoing business projects of the group. The control over this company was earlier held/ managed by Shri S.K. Jain, a well known Entry Operator, who had sold this paper company to the "Jagat Group". This whole exercise was found to be an accommodation entry.
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> 2.2. Further, Vide letter F. NO. DCIT/CC-09/12-13/215, dated 09.07.2013, he had informed that Sh. Vijay Aggarwal had received unsecured loan of Rs. 25,00,000/- from M/s Vidhya Shankar Investments Pvt. Ltd. However, this company was purchased by the persons connected to and controlled by Jagat Group and his

associates. During the course of search at D-842, IInd Floor, New Friends Colony, New Delhi, certain incriminating documents were found and seized which shows that the shares of the company standing in the name of various investors who had allegedly given share capital/share premium, during the year under consideration were transferred to various persons in F.Y. 2009-10 connected and controlled by Jagat Group. The purchasers of the shares are either employees of Jagat Group or relatives of the key persons of Jagat Group – Sri Satish Kumar Pawa and Sh. Sant Lal Agarwal.Thus, they are connected and controlled by these two persons. The list of purchasers clearly reveal that the shares of M/s. Vidya Shankar Investments Pvt. Were sold to Jagat Group at the price of Rs.3.5 per share against their face value of Rs.10/- and book value of Rs.90.25 per share. The fact itself shows that the assessee company was a front company to introduce undisclosed income of the Jagat Group in the garb of share capital and share premium routed through various companies mentioned in the list. It is beyond comprehension that if these companies were not the facilitators to the Jagat Group, how they sold their shares in the assessee company at a such a cheap price when the book value of shares of the assessee company was more than Rs.90/- per share and how Jagat Group could be able to purchase the entire company for a consideration of Rs.87,44,750/-, whereas I the month in which this transfer took place share capital and reserve and surplus of the company was Rs.22,54,99,727/-. The intention was not the profit motive and the whole façade was created to give the colour of genuineness to the undisclosed income of the Jagat Group. Thus, M/s. Vidhya Shankar Investments Pvt. Ltd. is one of the group companies of Jagat Group. The loan of Rs.25,00000/- from M/s. Vidhya Shankar Investments Pvt. Ltd. is nothing but the assessee's own funds routed into its books of account through these companies in the garb of unsecured loans.

3. A perusal of the return of income downloaded from the system reveals that the assessee has neither shown any investment in unquoted shares, nor has he shown any unsecured loan. Hence, it is clear that Sh. Vijay Aggarwal had purchased 3,94,000 shares of M/s. Index Securities & Research Pvt. Ltd. @ 2.25 per share for an amount of Rs.8,86,500/-, whereas the book value of the shares were Rs.91.47 per share, thereby total value ofRs.3,60,39,180 (Rs.3,60,39,180 – Rs.8,86,500). Further, it is also clear that the amount of Rs.25,00,000/- claimed to be unsecured loans from M/s. Vidhya Shankar Investments Pvt. Ltd. is nothing but assessee's undisclosed income. In view of above facts and circumstances of the case, I have reason to believe that the income of the assessee of more than Rs.1.0 lac for the A.Y. 2010-11 has escaped from assessment and hence this is a fit case for initiation of proceedings in terms of section 147 of the IT Act, 1961.

7. It is pertinent to mention that in the case of CIT vs. Nova Promoters & Finlease Private Ltd. (ITA No. 342 of 2011) dated 15.02.2012, the Hon'ble Delhi High Court which is the jurisdictional High Court has held that as long as there is a 'live link' between the document/information which was placed before the Assessing

Officer at the time when reasons for reopening were recorded, proceedings u/s. 147 would be valid. The court also held –

> *"We are aware of the legal position that at the stage of issuing the notice u/s. 148 the merits of the matter are not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax has escaped assessment."*

8. Further more, in the case of Jyoti Goyal vs. ITO, ITA No. 1250/Del/2010, the Honble ITAT Delhi held that –

> *As regards the other contentions of the assessee that the reopening was done in a mechanical manner without application of mind, we find there is nothing on record to support such a contention. There is a live link between the information which was available with the Assessing Officer and his formation of belief that income has escaped assessment, sufficiency of such information cannot be gone into while deciding the issue of validity of reopening. The Assessing Officer can also not make enquiries as no proceedings were pending before him for the relevant assessment year. In the above view of the matter, we are in agreement with finding of the Ld. CIT(A) that the reopening of assessment u/s 147 of the Act was valid.*

9. The live link between the material provided by the investigation wing and the reasons for belief that income has escaped assessment has been sufficiently demonstrated. Since, no assessment has been completed u/s. 143(3) of the Act, and period of 4 years has elapsed, hence, forwarded to the Pr. Commissioner of Income Tax-16, New Delhi for consideration and necessary approval in accordance with the proviso appended with section 151(1) of the I.T. Act, 1961 for issuance of notice u/s. 148 of the IT Act."

3.1 The Assessing Officer, thereafter, issued notices u/s 143(2) and 142(1) for providing requisite information & documents. In response, the requisite documents and information were provided by the assessee and vide his letter dated 26.04.2017 also filed a copy of return of Income for the Assessment Year 2010-11 which was originally filed on 14.03.2011 on a total income of Rs.5,69,194/- after deduction under Chapter Vl-A of Rs. 44,936/-. He requested to treat this return to have been filed in response to notice issued

u/s 148. Copy of reasons was supplied by the Assessing Officer to the assessee.

3.2. From the reasons recorded, based on the impugned information, the Assessing Officer observed that the Assessee had purchased 3,94,000 shares of M/s Index Securities & Research Pvt. Ltd @ Rs 2.25 per share for an amount of Rs. 8,86,500/ whereas the book value of the shares were Rs. 91.47 per share and accordingly, the total value of shares purchased comes to Rs. 3,60,39,180/-. This led the Assessing Officer to observe that the assessee has made undisclosed investment of Rs. 3,51,52,680/- (RS. 3,60,39,180- Rs. 8,86,500). In this regard, the assessee was asked to produce share application Forms, share certificates and copy of audit report, balance sheet & Profit & Loss Account alongwith all the annexures of M/s Index Securities & Research Pvt. Ltd for the period ending 31.03.2010. The assessee was also required to explain the sources of above investment made by him. In response, the assessee vide his letter dated 14.11.2017 produced the Copy of share certificate issued by M/s Index Securities & Research Pvt. Ltd. It was found that the original allottee was M/s Lotus Realcon Pvt. Ltd and the Share Certificate after purchase of shares by assessee stood duly transferred in the name of assessee as was clear from the mutation on the back side of Share Certificate. The assessee also provided Copy of Bank Statement of State Bank of Patiala indicating the payment of Rs. 8,86,500/ for the purchase of said Shares. Vide letter dated 23.11.2017, the assessee also produced the copies of Audit Report, Balance Sheet and Profit & Loss account of M/s Index Securities & Research Pvt. Ltd for the period ending 31.03.2010 alongwith all the

annexures, as required by the Assessing Officer. The assessee further informed the Assessing Officer that he did not purchase shares directly from the company but purchased from other company who was holding these shares and hence share application form was not produced. Having examined all these documents, the assessee was further asked to provide copy of Annual Return filed by M/s Index Securities & Research Pvt. Ltd for the Financial Year ending 31.03.2010 and copy of share holders list of M/s Index Securities & Research Pvt. Ltd for the period ending 31.03.2010. The assessee produced the copy of ROC return alongwith share holders list, on perusal of which it was found that the name of the assessee was there at Sr. No. 42 of the share holders list with the holding of 3,94,000 shares.

3.3. The assessee was again asked to explain the Sources of investment of shares and whether, the shares under consideration are still held by him. In response, the assessee informed that the shares are still held by the assessee and a loan of Rs 25 lacs was raised from one M/s Vidhya Shankar Investments Pvt. Ltd ie Rs. 15 lacs on 30.06.2009 and Rs. 10 lacs on 28.08.2009. The amount of Rs 10 lacs was used for investment under consideration. He has informed that it is evident from the copy of Bank Statement of State Bank of Patiala.

3.4. The assessee was further asked to furnish following documents/information in connection with the loan raised from M/s Vidhya Shankar Investments Pvt. Ltd. :

1. Confirmations

2. Copy of ITR alongwith Computation of Income.

3. Copy of Audit report, Profit & Loss accounts and Balance sheet as on 31.03.2010 alongwith annexure of Loans & advances indicating the name of assessee with amount of loan given to him.

4. Whether, loan is still outstanding?

3.5. The AR provided with the copy of Confirmations, Copies of ITR and Computation of Income, Copies of Audit Report, Profit & Loss accounts and Balance Sheet with all the annexures as on 31/03/2010 of M/s Vidhya Shankar Investments Pvt. Ltd. On going through the said documents, the AO observed that M/s Vidhya Shankar Investments P. Ltd has filed his return of income for the Assessment Year 2010-11 on a total income of Rs. 1,02,69,910/-. The name of the assessee is appearing in the list of Loans & Advances. The copy of Confirmations is also examined and as on records. M/s Vidhya Shankar Investment Pvt. Ltd also charged interest of Rs. 1,43,200/- from the assessee as the same is evident from confirmation. The AR has also informed that said loans received was not squared up as the balance of Rs. 25,29,700/- is still outstanding as on 31.03.2010. Only Rs. 1,13,500/- was paid and interest amount of Rs. 1,43,200/- was accumulated.

3.6. After considering the submissions of the assessee, the AO, however, being dissatisfied observed as under :

"The submission of the assessee has been considered and from the records, it is seen that the shares were though transferred in the name of the assessee on 18.09.2009 but the payment against the same has been

cleared from the bank account of the assessee on 01.10.2009. There is no doubt to the fact that the shares were purchased off line i.e. not through any recognized stock exchange through D-mat A/c. There is investigation report that the purchase of shares of M/s Index Security & Research Pvt. Ltd was all manipulated by the persons belonging to Jagat Group. Therefore, there is no denial to the fact that the transfer of shares certificates in the name of the assessee prior to 01.10.2009 without having received the sale consideration was also done to evade the provisions of section 56(2) (vii) of the Act. Even perusal of the bank account of the assessee reveals that the assessee had not sufficient balance on the date of transfer of shares in his name. It is only when funds were received on 26.09.2009 from M/s Vidhya Shankar Investments (P) Ltd., another company controlled by the persons of Jagat Group, that payment against purchases of shares has been cleared from the bank account of the assessee. This further leads to draw suspicion over the period as to when the transaction of purchase of shares took place. Had there been no malafide intention of both the parties then the transfer of shares in the name of the assessee should have taken only after the receipt of the sale consideration.

From the above discussions, it is held that the actual transactions of purchase of shares by the assessee took place on 01.10.2009. Therefore the provisions of section 56(2) (vii) of the Income Tax Act are squarely applicable in the case of the assessee. Since the assessee had acquired the shares for the consideration which is less than the aggregate fair market value of shares, the amount of Rs. 3,51,52,680 is assessed in the hands of the assessee u/s 56(2) (vii) of the Act. Further it is also clear that the amount of Rs. 25 lakhs claimed to be unsecured loans from M/s Vidhya Shankar Investment P. Ltd is nothing but assessee's undisclosed income and is assessed u/s 68 of the Income Tax Act, 1961."

3.7. Accordingly, the Assessing Officer made addition of Rs.3,51,52,680/- being the difference between the actual purchase value and the aggregate fair market value of shares as per provisions of section 56(2)(vii) and addition of

Rs.25,00,000/-, being unexplained unsecured loan from M/s. Vidhya Shankar Investment P. Ltd. under section 68 of the Act.

3.8. Aggrieved by the aforesaid additions, the assessee carried the matter before the ld. CIT(A) where he filed detailed written submissions and relied on various case laws. The Ld. CIT(A), however, being dissatisfied by the submissions of the assessee, dismissed the appeal by endorsing the view taken by the AO. Aggrieved, the assessee is in appeal before the Tribunal.

4. Reiterating the submissions made before the ld. Authorities below, the ld. AR of the assessee also submitted a consolidated written synopsis pertaining to all these appeals, which states as under :

1. The captioned five appeals are directed against the respective orders of Commissioner of Income Tax (Appeals) and are fixed together having common issue to be decided by the Hon'ble Bench that:

   a. ***Whether an addition can be made by applying the provisions of section 56(2)(vii) of the Act which provision was applicable w.e.f. 01.10.2009, whereas the transaction of the purchase of the shares took place in the month of September, 2009 i.e. shares were transferred in the name of the appellant on 18.09.2009 and consideration for the purchase of shares were also given by cheque dated 15.09.2009 i.e. prior to 01.10.2009.***

   b. ***Whether the unsecured loans received by the appellant have correctly been added u/s 68 of the Act without appreciating that neither the identity nor the creditworthiness has been doubted and only genuineness has been doubted that too purely on assumptions and presumptions and appellants have furnished complete documentary evidences and none of the evidences has been disputed?***

Apart from the aforesaid, one more issue common in all the five appeals are as under:

c. Whether the proceedings u/s 147 of the Act can be initiated on the last date of expiry of limitation solely on the basis of the information received from DCIT, CC-09, New Delhi in the year 2013, without having any tangible material to form a reason to believe that appellant has made any undisclosed investment or the unsecured loan to be treated as the undisclosed income of the appellant.

2. It is submitted that all the aforesaid assessee have entered into an agreement on 15th September 2009 with the transferor companies to purchase the shares of M/s Index Securities & Research Pvt. Ltd. It is submitted that to purchase the shares of the aforesaid company, the appellants have also received interest bearing loan from M/s Vidhya Shankar Investments Pvt. Ltd and issued cheques on 15th September 2009 i.e. on the date of the entering into agreement for the purchase of the shares.

Sr. No.	Name of the appellants	Date of entering into agreement	Payment of consideration
1	Vijay Aggarwal	15.09.2009	Cheque No. 19213 dated 15/09/2009 drawn on State Bank of India
2	Raj Gupta	15.09.2009	Cheque No. 332739 dated 15/09/2009 drawn on State Bank of Patiala
3	Sheela Devi	15.09.2009	Cheque No. 880314 dated 15/09/2009 drawn on State Bank of Patiala
4	Manoj Aggarwal	15.09.2009	Cheque No. 258353 dated 15/09/2009 drawn on State Bank of Patiala
5	Manish Aggarwal	15.09.2009	Cheque No. 258126 dated 15/09/2009 drawn on State Bank of Patiala

Relevant agreements, confirmation, mutation of shares, bank statements, receipts etc. are placed in the Paper Book of each of the assessee separately, however, for the convenience sake, charts are prepared giving brief description of relevant dates of these transactions which are enclosed with this synopsis as **Annexure – A to E.**

3. It is submitted that all the aforesaid assessees are relatives and don't have substantial income and were not having sufficient funds to invest out of their own resources and so, have taken interest bearing loan from M/s Vidhya Shankar Investments Pvt. Ltd. Copy of ITR and Bank Statements are enclosed in the Paper Book at pages 8-9 and 31-35 in the case of Vijay Aggarwal and similarly at pages 5-6 and 12-27 of Smt. Raj Gupta mother of Vijay Aggarwal and Manish Aggarwal, at pages 8-9 and 80-83 of Smt Sheela Devi mother of Shri Manoj Aggarwal whose ITR and Bank Statements are place also at pages 5-6 and 11-19. The ITR and bank statement of Shri Manish Aggarwal are placed at pages 9-10 and 162-164 respectively of the separate paper book. It would be seen that the income earned for AY 2010-11 and credit balances in the bank account of each of the assessee on 26/29.09.2009 i.e. before 01.10.2009 for purchase of shares, are as under:

Sr. No.	Assessee	Income	Bank Balance	Investment
1	Vijay Aggarwal	5,69,194/-	10,53,904/-	8,86,500/-
2	Raj Gupta	1,80,410/-	10,26,674/-	8,91,000/-
3	Sheela Devi	1,67,576/-	10,03,189/-	8,88,750/-
4.	Manoj Aggarwal	2,52,706/-	10,10,234/-	8,93,250/-
5.	Manish Aggarwal	1,89,547/-	10,27,341/-	8,97,750/-

4. That from the aforesaid factual details, it would be seen that aforesaid assessees have purchased the shares of M/s Index Securities & Research Pvt. Ltd. in the month of September, 2009 and have also paid the consideration as such, transaction of the purchase of the shares were complete in the month of September, 2009, i.e. before the date of 1st October, 2009, and hence provision of section 56(2)(vii)(c)(ii) is inapplicable.

5. It is however submitted that the assessing officer has re-opened all the assessment u/s 147 and notice u/s 148 was issued on the last date i.e. 31.03.2017 on the basis of certain information received from the DCIT, CC-09, New Delhi. In the reasons to believe, it was alleged that M/s Index Securities & Research Pvt. Ltd. was acquired

by the appellants alongwith other persons related to Jagat Group and loan was received from M/s Vidhya Shankar Investments Pvt. Ltd to purchase these shares. It was further observed that return of income reveals that assessee has neither shown any investment nor shown any unsecured loan. Hence, learned AO formed a belief that the assessee has purchased shares @ Rs. 2.25 per share, whereas book value of the shares were 91.47 per share, thereby assessee has made an undisclosed investment and loan from Vidhya Shankar Investments Pvt. Ltd. is undisclosed income.

5.1 It is submitted that in order to initiate re-assessment proceedings it is necessary that the AO has reason to believe that any income has escaped assessment. Thus, it is necessary firstly that AO must have reason to believe, secondly there has to be income which has escaped assessment. Both the conditions are not satisfied as AO himself has re-opened reassessment on the borrowed information which was not examined by himself before issuing notice u/s 148 which was on last day when it was becoming barred by limitation. Whereas the information was received by him in 2013 and in 4 years thereafter the AO did not enquire any thing from the assessee or collected any material to arrive at reason to believe which is a mandatory condition as the legislature specifically states about AO's belief and not other's. The AO's reference of ITR was also without any footings as ITR during A.Y. 2010-11 does not have relevant column to show investment or loans received.

5.2 It is thus submitted that in the instant case there is no material much less valid material. It is submitted that assumptions which are merely in the nature of suspicion cannot be the foundation for proceedings u/s 147 of the Act. It is therefore submitted that, reasons recorded are highly vague, indefinite, far-fetched, remote and cannot by any standard of imagination lead to a conclusion of the escapement of income and they are merely presumptuous in nature. In support of the aforesaid submissions, reliance is placed on the finding of the Hon'ble Court in the case of **PCIT vs. Meenakshi Overseas (P.) Ltd**. reported in [2017] 395 ITR 677 (Delhi) wherein it has been held as under:

*"**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 after 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 materialon 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."*

5.3 Further Hon'ble Court in the case of **Sabh Infrastructure Ltd. v. ACIT in W P. (C) 1357/2016** dated 25.09.2017 has laid down the guidelines for issuing notice u/s 148 of the Act. The observation of this Hon'ble Court in the aforesaid case reads as under:

"19. Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under Sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:
(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided;
(ii) the reasons to believe ought to spell out all the reasons and grounds available with the AO for re-opening the assessment - especially in those cases where the first proviso to Section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons an any enquiry conducted by the AO on the same and if so, the conclusions thereof;
(iii) where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons;

(iv) the exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasijudicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed."

5.4 That in the case of **PCIT vs. RMG Polyvinyl (I) Ltd.** reported in [2017] 396 ITR 5 (Delhi) , it has been held as under:

"12. *Recently, in its decision dated 26th May, 2017 in ITA No. 692/2016 Pr. CIT v. Meenakshi Overseas [2017] 82 taxmann.com 300 (Delhi), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report."*

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

5.5 Further reliance is placed on the following judgments wherein it has been held that information received from the investigation wing per se would not constitute tangible material, unless the some further material has been brought on record and assessing officer has applied his mind to such information/material:

i. CIT Vs. Multiplex Trading & Industrial Co. Ltd. in ITA No.356/2013 dated 22.09.2015 (Hon'ble Delhi High Court);
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),
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)

6. It is further submitted that even otherwise there has to be income which has escaped assessment. The notional income cannot be a basis which otherwise does not arise. The assessee has made investment and the ITR as on 31.03.2010 i.e. relevant for AY 2010-11 does not have any such column to show the investment. The investment was made through banking channel and there was not even a whisper that any money was transacted other than the investment made by the assessee. The income declared by the assessees and bank statements clearly show that there were not sufficient amount available with them for making investment and so, loan was received by them. Thus the condition necessary to be fulfilled for reopening the assessment that there has to be income which has escaped assessment. The assessing officer did not bring any material on record other than the documents showing investment that any income has escaped assessment.

7. It is further submitted that in the reasons to believe, it has been alleged that appellant had made undisclosed investment, however before making such allegation, no material at all has been brought on record that the appellant has paid any sum over and above the declared consideration. It is submitted that to bring to tax any undisclosed investment, the AO in 3 cases (Sheela Devi, Manoj & Manish Aggarwal) admitted that after introduction of Section 56(2)(vii), it is not relevant (page 8 of AO). It is submitted that the burden is on the Revenue to prove that the real investment exceed the investment shown in the account books of the assessee. That the reliance is placed on the following judgments:

i. K.P. Varghese v. ITO [1981] 131 ITR 597 (SC)
ii. CIT v. Puneet Sabharwal [2011] 338 ITR 485
iii. CIT vs. Shankuntala Devi, 316 ITR 46
iv. CIT vs. Suraj Devi, 328 ITR 604
v. CIT v. Vinod Singhal (I.T.Appeal No. 482 of 2010 dated 5-5-2010)
vi. 226 ITR 344 Smt. Amar Kumari Surana vs. CIT
vii. CIT vs. Smt. Vindhavasini Devi Case ITA No. 265 of 2008, HC (All)

7.1 It is submitted that merely on the basis of the difference between the book value and actual consideration no addition can be made under section 69B of the Act. Reliance is placed on the order of the Tribunal in the case of **Rupee Finance reported in 119 TTJ 643**, wherein it has been held that, merely because assessee purchased certain shares at value much less than market price, difference in purchase cost and market price cannot be added u/s 69 of the Act. That the aforesaid order of the Tribunal was affirmed by the Bombay High Court in ITA No.1208 dated 20.10.2008.

7.2 Further in the case of **ACIT vs. Associated Techno Plastics (P.) Ltd.** reported in [1999] 106 TAXMAN 65 (DELHI) (MAG.), wherein the assessee-company purchased a huge number of shares of a company HCL from its holder-investment company. The Assessing Officer found that while the quoted price of those shares

was Rs. 41 per shares and face value was Rs. 10 per shares, the seller sold same at a price as low as Rs. 6.02 per shares. Even though, certificate of the seller was submitted that the shares were sold at Rs. 6.02 per shares, the Assessing Officer, assuming that shares were sold at quoted price of that day, made necessary addition to the income of the assessee as undisclosed investment under section 69B. On appeal, the Commissioner (Appeals) followed the decision of the Supreme Court in the case of *K.P. Varghese* v. *ITO* [1981] 131 ITR 597 as the company was an investment company. She held that until it was proved beyond doubt that the consideration actually passed was more than what had been recorded, section 69B could not be invoked. Since the Assessing Officer could not categorically find any such fact, she deleted the addition made by the Assessing Officer. On revenue's appeal, Hon'ble Tribunal held that t*he seller company had admitted to have sold the* shares *at the price as claimed by the purchaser assessee-company. The Assessing Officer had not been able to establish that anything more than what had been admitted to have been paid and received had passed hands in order to invoke provisions of section 69B. As nothing had been proved to show that any other amount than admitted had been paid by the assessee in order to buy* shares*, the Commissioner (Appeals) was justified in deleting the addition.*

7.3 Further Hon'ble Tribunal in 80 TTJ 69 AFFIRMED BY GUJ HC IN 182 CTR 370, held that "However, the fact remains that the AO has not brought any material on record to indicate that the assessees involved in these appeals who admittedly belong to Uttamchandani family who is having 50 per cent share in M/s JJ Corporation, have in tact paid any "on money" to M/s JJ Corporation in respect of the shops purchased by them. The AO has made these additions presumably by invoking the provisions of s. 69B and as such the onus is on him to prove by evidence that the assessees have in fact paid any "on money" over and above the money which has been recorded in the books of account for making investments in the purchase of shops. Since no evidence has been brought on record by the AO in this regard, the additions made on account of alleged unexplained investments in the purchase of shops by alleged understatement of consideration cannot be sustained."

7.4 Further reliance is placed on the following orders of the Tribunal:

i. Vishal P. Mehata v. Dy. CIT [ITA No. 3586/Mum/2009, dated 26.02.2010]

ii. Smt. Nina P. Mehta The Dy.Commissioner of Income-tax [ITA No.3585/Mum/2009 dated 30th day of March 2010]

8. Further in respect of the unsecured loan received from M/s Vidhya Shankar Investment Pvt. ltd., it is submitted that appellants have received interest bearing loans from the aforesaid company by account payee cheques. The aforesaid company is an income tax assessee and has duly been assessed. Further it is submitted that aforesaid company is a Non Banking Finance Company (NBFC) and is engaged in the business of sale, purchase and trading of the shares and giving loans

and advances. From the perusal of the profit and loss account of the aforesaid company it would be seen that during the year under consideration, aforesaid company has earned interest income of Rs. 1,37,47,082/-. The appellant has furnished complete documentary evidences to substantiate the burden u/s 68 of the Act. The learned AO while forming his reasons to believe without any tangible material and solely on the basis of the information received from the DCIT, CC-09, New Delhi has arbitrarily formed a reason to believe that loan received by the appellant from M/s Vidhya Shankar Investment Pvt. Ltd. is nothing but the appellants own fund routed into its books of account through the aforesaid company.

9. In view of the aforesaid, it is submitted that since there is no material that the appellant had made any undisclosed investment or the loan received by the appellant is its own funds. It is submitted that it is settled law that the reasons for the formation of the belief must have a rational connection with 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 Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment. The aforesaid submission of the appellant is supported by the judgment of th**e Apex Court in the case of ITO vs. Lakhmani Mewal Das reported in 103 ITR 437** wherein at page 448, their Lordships have held as under:

"As stated earlier, the reasons for the formation of the belief must have a rational connection with 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 Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far- fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in section 147of the Act of 1961 would not lead to the conclusion that action cannot be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence."

10. The asessee submits that Hon'ble Apex Court in the case of **CIT vs Kelvinator of India Ltd. reported in 320 ITR 561 (SC)** has held that law as to reopening of assessment has undergone a change w.e.f. 1.4.1989 that proceedings cannot be initiated unless based on fresh material. The submission of assessee is that mere "information" is insufficient unless supported by tangible material. **It is submitted that assumptions which are merely in the nature of suspicion cannot be the foundation for proceedings u/s 147 of the Act. It is submitted that, reasons recorded are highly vague, indefinite, far-fetched, remote and cannot by any standard of imagination lead to a conclusion of the escapement of income and they are merely presumptuous in nature.**

10.1 Further to the aforesaid, it is submitted that Apart from the aforesaid, it is submitted that in the instant case, approval for the initiation of the proceedings has also been granted mechanically, and hence also initiation of the reassessment proceedings is bad in law. Reliance is placed on the following judgments:

i. **Pr. CIT vs. N. C. Cables Ltd (in ITA 335/2015 order dated 11.01.2017),** it was held that 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.

ii. **Central India Electric Supply Co. Ltd. vs ITO and Anr. 333 ITR 237 HC (Delhi**): Merely affixing a 'yes' stamp and signing underneath suggested that the decision was taken by the Board in a mechanical manner as such, the same was not a sufficient compliance under section 151 of the Act.

iii. Union of India v. M.L. Capoor and Ors., AIR 1974 SC 87

iv. German Remedies Ltd vs. Dy. CIT (2006) 287 ITR 494 (Bom).

v. ITO v. Direct Sales (P) Ltd. ITAT (Delhi) [2015]: Merely stating "Approved" is not sufficient sanction of CIT and renders reopening void. Commissioner has to apply mind and due diligence before according sanction to the reasons recorded by the AO.

vi. ShriAmarlal Bajaj Vs.The ACIT (I.T.A. No.611/Mum/2004 dated 24.07.2013): Commissioner has simply put "approved" and signed the report thereby giving sanction to the AO.

vii. While according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied" is not a proper satisfaction (**CIT vs. S. Goyanka Lime & Chemical Ltd. – (2015) 64 taxmann.com 313 (SC)).**

In view of the aforesaid, it is submitted that reopening of the assessment is unsustainable in law.

11. **It is further submitted that though in the reasons to believe, the learned AO has formed a reasons to believe that appellant has made undisclosed investment in the purchase of the shares, however while framing the assessment, when it was found that there is no tangible material to come to a conclusion that appellant has made any undisclosed investment in the purchase of the shares, as such, learned AO made the addition by invoking section 56(2)(vii) of the Act which provision is also inapplicable to the facts and circumstances of the case**.

12. It is submitted that the AO has applied section 56(2)(vii) in order to arrive at notional income which was introduced by the legislature specifically to be applicable w.e.f. 01.10.2009, however since the transaction of the purchase of the shares were complete before that date, as such, even the aforesaid provision is also inapplicable.

13. It is submitted that in the captioned appeals, it would be seen that appellants have entered into agreement for the purchase of the shares of M/s Index Securities & Research Pvt. Ltd. on 15.09.2009 and also paid the consideration by way of cheque dated 15.09.2009. The shares were also mutated in the name of the appellants on 18.09.2009. The appellants have taken loan from M/s Vidhya Shankar Investment Pvt. Ltd. and loan amount was also credited in the banks of the appellant on 26/29.09.2009 and cheques given by the appellant was subsequently cleared. It is submitted that since the transaction of the purchase of shares are complete before the 01.10.2009, as such, provisions of section 56(2)(vii) is inapplicable.

14. **It is submitted that annual general meeting of the company was held on 24.09.2009. That under the Companies Act, 1956 prevailing at that time, the company has to file details of the shareholders as on the date of AGM alongwith annual return to be filed for each year. The copy of the annual return alongwith its annexure clearly shows that appellants became shareholder as on the date of AGM i.e. 24.09.2009. Copy of the annual return alongwith its annexure is enclosed herewith**. It is submitted that since the transfer of shares has already taken place before 24.09.2009, and aforesaid document is a conclusive proof of transfer of shares in the name of appellant. It is further submitted that relevance of consideration passing subsequently has no relevance. It is also highly relevant to be state that under the Act for the purpose of computation of capital gain, date of transfer is relevant and not the date of passing of the consideration. In any case, in this case consideration was also given on the date of the transfer and merely cheques were realised subsequently.

15. It is submitted that under the Indian Contract Act, the contract is treated to be complete on the date when both the parties have agreed and consideration is settled. (Section 3 & 4), however, the contract can be revoked before its acceptance is complete or acceptance may be revoked before the communication of acceptance is complete as against the acceptor but not afterwards (Section 5). It is submitted that in the present case both the parties have signed the agreement on 15.09.2009 and so, Section 5 of Indian Contract Act has no relevance and the contract can be revoked only as per situations given in Section 6. In accordance with Section 6, various situations are given, which are also not arising in the present case as the conditions have already been fulfilled and consideration settled has been accepted without any dispute.

16. It is submitted that merely because the cheques were cleared on 01.10.2009 and in one case on 19.10.2009 (Shri. Manoj Aggarwal ITA No.: 1080/Del/2019) same is irrelevant as it is settled law that the date of payment of consideration would be date when the cheques were handed over and not the date when the cheque is cleared as when a cheque is handed over and such cheque is encashed subsequently, same would relate back to the date when the cheque was issued and not when it was encashed or credited to account.

17. In *Felix Hadley & Co.* v. *Hadley* (L.R. (1898) 2 Ch.D.680, Byrne J. expressed the same idea in the following passage in his judgment at page 682 :

> "In this case I think what took place amounted to a conditional payment of the debt; the condition being that the cheque or bill should be duly met or honoured
>
> at the proper date. If that be the true view, then I think the position is exactly as if an agreement had been expressly made that the bill or cheque should operate as payment unless defeated by dishonour or by not being met; and I think that that agreement is implied from giving and taking the cheques and bills in question."

18. The following observations of Lord Maugham in *Rhokana Corporation* v. *Inland Reveue Commissioners* (L.R. [1938] AC 380 at p.399) are also apposite:

> "Apart from the express terms of section 33, sub-section 1, a similar conclusion might be founded on the well known common law rules as to the effect of the sending of a cheque in payment of a debt, and in the fact that though the payment is subject to the condition subsequent that the cheque must be met on presentation, the date of payment, if the cheque is duly met, is the date when the cheque was posted."

19. It is submitted that aforesaid judgment has been followed by the Apex Court in the case of **CIT v. Ogale Glass Works Ltd. [1954] 25 ITR 529** wherein it was held that even if the cheques were taken conditionally, the cheques not having been dishonoured but having been cashed, the payment related back to the dates of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques. The findings of the Apex Court are as under:

> "In the case before us none of the cheques has been dishonoured on presentation and payment cannot, therefore, be said to have been defeated by the happening of the condition subsequent, namely, dishonour by non-payment and that being so there can be no question, therefore, that the assessee did not receive payment by the receipt of the cheques. The position, therefore, is that in one view of the matter there was, in the circumstances of this case, an implied agreement under which the cheques were accepted unconditionally as payment and on another view, even if the cheques were taken conditionally, the cheques not having been dishonoured but having been cashed, the payment related back to the dates of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques."

20. The aforesaid judgment of the Apex Court has been followed in the various judgments to the proposition that if the cheque has been issued in due course, unless the cheque is dishonoured, it will have to be presumed that the amount was paid on the date on which the cheque was given:

i. CIT vs. Dewan Rubber Industries [2014] 42 taxmann.com 249 (Allahabad)

ii. DIT (Exemption) v. Raunaq Education Foundation [2013] 350 ITR 420/213 Taxman 19/29 taxmann.com. 150. In this case Hon'ble Supreme Court have gone to that extent where post dated cheque was issued and the receipt was issued by the trust on the date on which cheque was handed over. The receipt issued was treated to be valid and after clearing of the cheque the same was held to be valid and no action 13(1)(c) was taken against the trust with regard to benefiting interested persons.

21. In such circumstances, it is respectfully submitted that since the provisions of section 56(2)(vii) was inserted w.e.f. 01.10.2009, and transaction of the purchase of shares were complete before that date, hence, addition made by the learned AO by applying the aforesaid provision is unsustainable in law.

22. It is further submitted that while making the impugned addition, more or less in different languages, following reasons were given by the AOs in various assessment orders:

(a) Shares were though transferred in the name of assessee but the payment against the same has been cleared from the bank account of the assessee on 01.10.2009.

(b) Assessees had not sufficient balance on the date of transfer of shares in their names. It is only when funds were received on 26.09.2009 from Vidhya Shankar Investments Pvt. Ltd, payments against purchases were cleared from the bank account of the assessees.

(c) The transaction is complete only when the cheques issued for the purchase of shares is cleared from the bank account of the assessees and not before that.

The appellants have already made the submissions in paras hereinbefore that aforesaid findings of the AO/CIT is unsustainable in view of the law laid down by the Apex Court.

(d) The deal of purchase of shares was not a normal transaction but a managed deal before 01.10.2009.

It is submitted that if the appellant has entered into the purchase of the transaction before 01.10.2009, same does not call for an adverse inference. Reliance is placed on the judgment of the Apex Court in the case of **Vodafone International Holdings B.V. vs. Union of India reported in 341 ITR 1** wherein it has been held as under:

"**117.** Revenue cannot tax a subject without a statute to support and in the course we also acknowledge that every tax payer is entitled to arrange his affairs so that his taxes shall be as low as possible and that he is not bound to choose that pattern which will replenish the treasury. Revenue's stand that the ratio laid down in *McDowell* is contrary to what has been laid down in *Azadi Bachao Andolan case* (*supra*), in our view, is unsustainable and, therefore, calls for no reconsideration by a larger branch."

(e) That M/s Index Securities & Research Pvt. Ltd allotted the shares to the transfer company on 18.09.2009 and on the same date, such shares were transferred, which shows that the transaction is not genuine.

It is respectfully submitted that aforesaid observation is factually incorrect as shares were allotted to the transferor companies on 31.03.2007 as is evident from Form 2 filed with ROC. It is relevant to state here that subsequently, the shares were splitted w.e.f. 30.06.2008 and after the split, though the details

of the shares i.e. number of the shares and folio number were available with the transferor companies however they did not receive the new share certificate and hence after the agreement, when the old certificates were handed over to the company for mutation, new share certificates were issued and endorsement were made in the names of the appellants. Hence the observation made by the AO and CIT(A) that shares were allotted on the same date to the transferor companies is factually incorrect.

23. It is submitted that the Hon'ble ITAT in the recent decision in the case of DCIT vs. Subodh Menon 103 taxmann.com 15 (Mumbai) have discussed at length and analysed section 56(2)(vii) and held that "where offer made was accepted before 1st October 2009, the provisions of section 56(2)(vii) do not apply to the contract executed prior 01.10.2009 (Para 20 of the decision enclosed).

24. It is submitted that the Hon'ble ITAT also referred to explanatory notes to section 56(2)(vii) of the Income Tax Act wherein they have clarified that the provision was introduced in order to counter evasion mechanism to prevent laundering of unaccounted income once, it is found that there is not even a whisper about money laundering by the AO in the assessment order the provision of 56(2)(vii) would not be applicable. In this connection the Hon'ble ITAT have referred to the decision of Hon'ble Supreme Court in the case of KP Varghese vs. ITO 131 ITR 597 in context of section 52(2) of the Act and held as under:

"*the object and purpose of subsection 2 as explicated from the speech of Finance Minister, was not to strike at honest and bonafide transaction where the consideration for the transfer was correctly disclosed by the assessee but bring within the net of taxation those transaction where the consideration in respect of transfer was shown at lesser figure then that actually received by the assessee so that they do not escape the charge of tax on capital gains by under statement of the consideration. This was the real object and purpose of the enactment of sub-section 2 and interpretation of this section must fall in line with advancement of that object and purpose. We must, therefore, accept as the underlying assumption of sub-section (2) that there is under statement of consideration in respect of the transfer and sub-section (2) applies only where actual consideration received by the assessee is not disclosed and the consideration declared in respect of the transfer is shown at lesser figure than the actually received.*"

25. Apart from the aforesaid, it is submitted that the appellant in the case of Smt. Sheila Devi, Shri. Manoj Aggarwal and Shri. Manish Aggarwal also filed supporting evidences to the evidences already filed before the learned AO, as during the course of the assessment, learned AO did not accept such documents on the ground that files are with the higher authority. It is relevant to state that similar evidences were

filed in the remaining two cases i.e. Shri. Vijay Aggarwal and Smt Raj Gupta who were being assessed by different assessing officer, however since in these cases, the assessing officer was handicapped due to lack of availability of relevant files. It is submitted that the supporting documents as was filed by the such appellants were also forwarded to the learned AO for his comments and appellants also filed its rejoinder submissions however learned CIT(A) did not admit such evidences. It is submitted that such an action of the learned CIT(A) is unsustainable in law as documents furnished before her were not the additional evidences but were only the supporting evidences.

26. It is submitted that in the present case also there was not even a whisper about money laundering by the AO in the assessment order infact as already stated AO at page 8 in reply to such argument stated it is not relevant after introduction of Section 56(2)(vii). The transactions were made through account payee cheques and accepted by the seller of the shares. Hence the addition made by applying the provisions of section 56(2)(vii) is unsustainable in law.

27. With regard to the addition made in respect of unsecured loan received from M/s Vidhya Shankar Investments Pvt Ltd., it is submitted that aforesaid company is a Non Banking Finance Company (NBFC) and is engaged in the business of sale, purchase and trading of the shares and giving loans and advances. From the perusal of the profit and loss account of the aforesaid company it would be seen that during the year under consideration, aforesaid company has earned interest income of Rs. 1,37,47,082/-. The appellant has furnished complete documentary evidences to substantiate the burden u/s 68 of the Act.

M/s Vidhya Shanker Investments Pvt. Ltd.	Address: Ak-94, 1st Floor, Shalimar Bagh, Delhi – 110008 PAN: AAACV4336K

28. It is submitted that the appellants have received interest bearing loans from the aforesaid company through banking channels. To substantiate the aforesaid transaction, assessee has filed the following documentary evidences:

i. Copy of the confirmation of M/s Vidhya Shanker Investments Pvt. Ltd.
ii. Copy of the ITR of M/s Vidhya Shanker Investments Pvt. Ltd.
iii. Copy of relevant bank statement of M/s Vidhya Shanker Investments Pvt. Ltd.
iv. Copy of relevant bank statement of the assessee.
v. Copy of the Memorandum of association and articles of association.
vi. Copy of the order of the Hon'ble Tribunal in the case of M/s Vidhya Shanker Investments Pvt. Ltd

vii. Copy of the judgment of the High Court in the case of M/s Vidhya Shanker Investments Pvt. Ltd

29. It is submitted that M/s Vidhya Shanker Investment Pvt. Ltd is also assessed tax and assessment of the aforesaid creditor for the AY 2005-06 to 2011-12 was made u/s 153C of the Act on 28.03.2013 and while making the assessment of the aforesaid creditor, loan advanced by the aforesaid creditor to the assessee has not been doubted. In fact, order of assessment made in the case of M/s Vidhya Shanker Investment Pvt Ltd was not found sustainable by the learned CIT(A) and such order of the CIT(A) has been upheld by the Hon'ble Tribunal and Hon'ble High Court of Delhi which is also reported in **[2017] 86 taxmann.com 84 (Delhi).**

30. It is submitted that allegation made by the AO/CIT(A) that loan received by the assessee is nothing but its own funds which was routed in its books from the aforesaid company is entirely incorrect. It is submitted that there is no basis for such an allegation. It is submitted that the assessee has received the loan from the aforesaid company which was credited in its books of account, and appellant also requested the learned AO to enquire from the M/s Vidhya Shanker Investment Pvt Ltd however no such enquiry was made by the AO/CIT(A).

31. It is thus, submitted that once the lenders have duly confirmed the factum of unsecured loan to the assessee no addition can be made under section 68 of the Act in the hands of the assessee, as held by the Apex Court in the judgment reported in **292 ITR 682, CIT vs. K. Chinnathamban (SC),** where it has been held by their Lordships of the Apex Court *"where a transaction stands confirmed by the third party of an investment no addition could possibly be made u/s 68 of the Act, in the hands of the assessee in whose, books of accounts credit appears".*

32. It is further submitted that it has not even been established that unsecured loan received by the assessee has been originated from the coffers of the assessee. In support of the aforesaid, the appellant seeks to place reliance on the judgment of the High Court of Delhi in the case of **CIT vs Value Capital Services (P) Ltd.** reported in **307 ITR 334**, wherein their lordship's have held as under:

> "Learned counsel for the Revenue submits that the creditworthiness of the applicants can nevertheless be examined by the Assessing Officer. It is quite obvious that is very difficult for the Assessee to show the creditworthiness of strangers. If the Revenue has any doubt with regard to their ability to make the investment, their returns may be re-opened by the department.
>
> **In any case, what is clinching is the additional burden on the Revenue. It must show that even if the applicant**

> **does not have the means to make the investment, the investment made by the applicant actually emanated from the coffers of the Assessee so as to enable it to be treated as the undisclosed income of the Assessee.** This has not been shown insofar as the present case is concerned and that has been noted by the Tribunal also." [Emphasis Supplied]

33. The assessee also submits that the **Hon'ble Delhi High Court in the case of CIT vs. Real Time Marketing (P) Ltd. reported in 306 ITR 55** has held that burden is on the Assessing Officer to show that money received originated from the coffers of the assessee company. The finding of the High Court are as under:

> "8. There is a finding of fact given by the two authorities namely CIT(A) and the Tribunal to the effect that:-
>
> The confirmation of M/s. ACL has been filed by the Assessee. The said company was assessed to tax. The source of ACL had been explained as out of transfer of funds from the accounts of M/s. BTL. Thus, the Assessee discharged its burden of proving identity, capacity and genuineness of the transaction.
>
> The Assessing Officer has not brought any material to show that the funds to ACL were provided by the Assessee. Under the circumstances, it cannot be said that the cash credit in question has remained unexplained. **There is absolutely no material to link the Assessee with the sum of Rs.22,97,000/- deposited in cash in the bank account of M/s. FBSL.**
>
> **9. In view of the concurrent findings of the fact given by the two authorities that there is no material to link the Assessee with a sum of Rs.22,97,000/- deposited in cash in the bank account of M/s. FBSL, as such, no case is made out for making addition under Section 68 of the Act, since there was no material with the Assessing Officer to come to the conclusion regarding any genuineness or fictitious identity of the entries or non capacity of the lender.**
>
> 10. Under these circumstances, we do not find any infirmity or perversity in the order passed by the Tribunal and in our opinion no substantial question of law arises in this case. With

the result, the present appeal is not maintainable and the same is hereby dismissed." [Emphasis Supplied]

34. Also Gujarat High Court in the case of **DCIT vs. Rohini Builders** reported in **256 ITR 360 following the judgment of Apex Court in the case of Orissa Corporation reported in 159 ITR 78** has held that, burden u/s 68 stands discharged by proving the identity of the creditors by giving the complete address and, permanent account numbers, which has been duly complied by the assessee. It has been held in the aforesaid judgment as under:

> "Thus it is clear that the **assessee had discharged the initial onus which lays on it terms of section 68 by proving the identity of the creditors by giving their complete addresses, GIR number/permanent accounts number and the copies of assessment orders wherever readily available**. It has also proved the capacity of the crediotrs by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the source of the credits in its books of account but not the source of the source as held by the Bombay High Court in the case of Orient Trading Co. Ltd. vs. CIT [1963] 49 ITR 723. **The genuineness of the transaction is proved by the fact that the payment to the assessee as well s repayment of the loan by the assesse to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques**. Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer cannot be aground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation [1986[159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish that revenue's case and **in order to sustain the addition the revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw an adverse inference against the assessee**. In this case of six creditors who appeared before the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case **the**

Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69" [Emphasis supplied]

35. **It is thus submitted that, entire monies originated from the bank account of the creditor who is duly identifiable and have also confirmed advancing loan to the assessee, as such, addition made by the AO is unsustainable in law.**

36. Further, it is settled law that if an assessee has furnished the evidences/material to establish the transaction, and the learned AO is not inclined to believe the material placed by assessee, then burden is on him to bring material to rebut the same as has been held by the Hon'ble High Court of Delhi in the case of **CIT V Genesis Commet (P) Ltd reported in 163 Taxman 482.** The assessee also submits that where no adverse material has been brought on record, no addition can be made in respect of the share application money in the hands of the assessee. Reliance is placed on the following judicial pronouncements:

i) **ITA No. 212/2012 (Del) dated 11.04.2012 CIT vs. Goel Sons Golden Estate (P) Ltd**
ii) **ITA No. 298/2012 (Del) dated 16.05.2012 CIT vs. Dalmia Bros Pvt. Ltd.**

iii) **ITA No. 1257/2011 (Del) dated 20.07.2012 CIT vs. Expo Globe India Ltd**
iv) **357 ITR 146 (Del) CIT vs. Fair Finvest Ltd.**
v) **361 ITR 10 (Del) CIT vs. Gangeshwari Metal (P) Ltd.**

vi) **ITA No. 871/D/2010 A.Y. 2003-04 dated 25.05.2012 ITO vs. M/s Excellance Town Planner (P) Ltd.**
vii) **ITA No. 1125/D/2012 A.Y. 2002-03 dated 01.06.2012 ITO vs. M/s Hi tech Accurate Communication (P) Ltd.**
viii) **ITA No. 1177/D/2012 A.Y. 2001-02 dated 05.10.2012 ITO vs. India Texfab Marketing Ltd.**
ix) **ITA No. 4498/D/2010 A.Y. 2003-04 dated 30.12.2010 Intimate Jewels (P) Ltd.**
x) **ITA No. 1078/D/2013 A.Y. 2002-03 (Del) Mithila Credit Services Ltd. vs. ITO**
xi) **ITA No. 5656/D/2012 A.Y. 2004-05 (Del) Gulati Glass Industries (P) Ltd.**
xii) **367 ITR 217 (All) CIT vs. Vacmet Packaging (India) (P) Ltd.**
xiii) **44 taxmann.com 460 (Raj) CIT vs. Supertech Diamond Tools (P.) Ltd.**
xiv) **51 taxmann.com 198 (Mad) CIT vs. Pranav Foundation Ltd.**
xv) **50 taxmann.com 416 (Mad) Victory Spinning Mills Ltd.**

xvi) **ITA NO. 2082/D/2011 dated 8.12.2014 A.Y. 2007-08 ACIT vs. Divine (India) Infrastructure Ltd.**
xvii) **ITA NO. 1644/D/2012 dated 28.11.2014 A.Y. 2003-04 ACIT vs. Gulshan Polyols Ltd.**
xviii) **ITA No. 4122/D/2009 dated 22.10.2014 A.Y. 2001-02 ITO vs. N.C. Cables Ltd**
xix) **ITA No. 2821/D/2011 dated 16.10.2014 ITO vs. Rakam Money Matters (P) Ltd.**
xx) **ITA No. 645/2012 dated 13.1.2015 Funnay Time Finvest Ltd.**

37. It is submitted that the unsecured loan has been received by the assessee through proper banking channels. It is respectfully submitted that it is settled law that **it is not the business of the Assessee to find out the source of money of the creditor. That in a latest judgment, pronounced on 21.12.2015, Hon'ble High Court of Delhi in the case of CIT vs. M/s Shiv Dooti Pearls & Investment Ltd. (429/2003), has held as under:**

> 12. The Court has examined the decision of the Gauhati High Court in Nemi Chand Kothari (supra). Therein the Gauhati High Court referred to Section 68 of the Act and observed that the onus of the Assessee "to the extent of his proving the source whom which he has received the cash credit." The High Court held that the AO had ample 'freedom' to make inquiry "not only into the source(s) of the creditor, but also of his (creditor's) sub-creditors and prove, as a result, of such inquiry, that the money received by the Assessee, in the form of loan from the creditor, though routed through the sub-creditors, actually belongs to, or was of, the assessee himself." Thereafter, the High Court, on a harmonious construction of Section 106 of the Evidence Act and Section 68 of the Act, held as under:
>
> "What, thus, transpires from the above discussion is that while Section 106 of the Evidence Act limits the onus of the Assessee to the extent of his proving the source from which he has received the cash credit, Section 68 gives ample freedom to the Assessing Officer to make inquiry not only into the source(s) of the creditor, but also of his (creditor's) subcreditors and prove, as a result, of such inquiry, that the money received by the Assessee, in the form of loan from the creditor, though routed through the sub-creditors, actually belongs to, or was of, the Assessee himself. In other words, while Section 68 gives the liberty to the Assessing Officer to enquire into the source/sources from where the creditor has received the

money, Section 106 makes the Assessee liable to disclose only the source(s) from where he has himself received the credit and it is not the burden of the Assessee to show the source(s) of his creditor nor is it the burden of the Assessee to prove the creditworthiness of the source(s) of the subcreditors. If Section 106 and Section 68 are to stand together, which they must, then, the interpretation of Section 68 has to be in such a way that it does not make Section 106 redundant.

Hence, the harmonious construction of Section 106 of the Evidence Act and Section 68 of the Income Tax Act will be that though apart from establishing the identity of the creditor, the Assessee must establish the genuineness of the transaction as well as the creditworthiness of his creditor, the burden of the Assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the Assessee and the creditor. **What follows, as a corollary, is that it is not the burden of the Assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the Assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been, eventually, received by the Assessee.** It, therefore, further logically follows that the creditor's creditworthiness has to be judged vis-a-vis the transactions, which have taken place between the Assessee and the creditor, and **it is not the business of the Assessee to find out the source of money of his creditor or of the genuineness of the transactions, which took between the creditor and sub-creditor and/or creditworthiness of the sub-creditors, for, these aspects may not be within the special knowledge of the Assessee**." (emphasis supplied)

13. The above observations, far from supporting the case of the Revenue, does the opposite. In the subsequent decision of this Court in **Mod. Creations Pvt. Ltd. v. Income Tax Officer (2013) 354 ITR 282 (Del)**, the position was clarified by the Court and it was held:

"It will have to be kept in mind that Section 68 of the I.T. Act only sets up a presumption against the Assessee whenever unexplained credits are found in the books of accounts of the Assessee. It cannot but be gainsaid that the presumption is

rebuttable. In refuting the presumption raised, the initial burden is on the Assessee. This burden, which is placed on the Assessee, shifts as soon as the Assessee establishes the authenticity of transactions as executed between the Assessee and its creditors. It is no part of the Assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the Assessee to prove the credit worthiness of the sub-creditors."

14. In Mod. Creations Pvt. Ltd. (supra) this Court negatived the case of the Revenue that the onus was on the Assessee to prove the source of the sub-creditor. It was observed as under:

"14. With this material on record in our view as far as the Assessee was concerned, it had discharged initial onus placed on it. In the event the revenue still had a doubt with regard to the genuineness of the transactions in issue, or as regards the credit worthiness of the creditors, it would have had to discharge the onus which had shifted on to it. A bald assertion by the A.O. that the credits were a circular route adopted by the Assessee to plough back its own undisclosed income into its accounts, can be of no avail. The revenue was required to prove this allegation. An allegation by itself which is based on assumption will not pass muster in law. The revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation. The ITAT, in our view, without adverting to the aforementioned principle laid stress on the fact that despite opportunities, the Assessee and/or the creditors had not proved the genuineness of the transaction. Based on this the ITAT construed the intentions of the Assessee as being malafide. In our view the ITAT ought to have analyzed the material rather than be burdened by the fact that some of the creditors had chosen not to make a personal appearance before the A.O. If the A.O. had any doubt about the material placed on record, which was largely bank statements of the creditors and their income tax returns, it could gather the necessary information from the sources to which the said information was attributable to. No such exercise had been conducted by the A.O. In any event what both the A.O. and the ITAT lost track of was that it was dealing with the assessment of the company, i.e., the recipient of the loan and not that of its directors and shareholders or that of the sub-creditors. If it had any doubts with regard to their credit worthiness, the revenue could always bring it to tax in the hands of the creditors and/or

sub-creditors. [See **CIT v. Divine Leasing & Finance Ltd. (2008) 299 ITR 268 (Delhi) and CIT v. Lovely Exports (P) Ltd. (2008) 216 CTR 195 (SC)**]."

38. That in the case of CIT vs. **Daulat Ram Rawatmull reported in 87 ITR 349 at page 359**, Hon'ble Apex Court has held as under:

"The explanation furnished about the source of Rs. 5,00,000 in fixed deposit in the name of Biswanath was that he had kept an amount of Rs. 4,50,000 with M/s. Soorajmal Nagarmal and Rs. 50,000 in deposit with Comilla Bank. The amount of Rs. 4,50,000 was stated to have been withdrawn by Biswanath from M/s. Soorajmal Nagarmal in January, 1941, while the other amount of Rs. 50,000 was withdrawn from Comilla Bank in March, 1942. The amount of Rs. 5,00,000 was then transferred by Biswanath to his native place, Ratangarh (Desh) in Rajasthan due to bombing panic in Calcutta. When war situation improved, the money was taken from Desh to Jamnagar for deposit. This explanation was found to be false in view of the admitted position that the amount of Rs. 5,00,000 in fixed deposit in the name of Biswanath in Jamnagar bank had been tendered at Burrabazar Calcutta branch of the Central Bank on November 15, 1944, and thereafter was transferred through Bombay head office of the bank to Jamnagar. There were also other circumstances which pointed to the falsity of the above explanation. The falsity of the above explanation of Biswanath, in the opinion of the High Court, did not warrant the conclusion that the amount of Rs. 5,00,000 belonged to the assessee. We can find no flaw or infirmity in the above reasoning of the High Court. The question which arose for determination in this case was not whether the amount of Rs. 5,00,000 belonged to Biswanath, but whether it belonged to the respondent-firm. The fact that Biswanath has not been able to give a satisfactory explanation regarding the source of Rs. 5,00,000 would not be decisive even of the matter as to whether Biswanath was or was not the owner of that amount. A person can still be held to be the owner of a sum of money even though the explanation furnished by him regarding the source of that money is found to be not correct. From the simple fact that the explanation regarding the source of money furnished by A, in whose name the money is lying in deposit, has been found to be false, it would be a remote and far-fetched conclusion to hold that the money belongs to B.

> There would be in such a case no direct nexus between the facts found and the conclusion drawn therefrom."

38.1 That in the case of **CIT v. Dwarkadhish Investment (P.) Ltd**, reported in [2011] 330 ITR 298 (Delhi) Hon'ble High Court has held as under:

> **"8.** In any matter, the onus of proof is not a static one. Though in section 68 proceedings, the initial burden of proof lies on the assessee yet once he proves the identity of the creditors/share applicants by either furnishing their PAN number or Income-tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the revenue. Just because the creditors/share applicants could not be found at the address given, it would not give the revenue the right to invoke section 68. One must not lose sight of the fact that it is the revenue which has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the 'source of source'."

38.2 Further reliance is placed on the following judicial pronouncements:

i. [2014] 361 ITR 220 (Delhi) **CIT v. Kamdhenu Steel & Alloys Ltd.**
ii. [2015] 57 taxmann.com 176 (Gujarat) **Smt. Neelamben Gopaldas Agrawal v. ITO**
iii. [1997] **224 ITR 180 (P&H)** CIT vs. **Ram Narain Goel**
iv. [2014] 366 ITR 217 (Rajasthan) **CIT v. Jai Kumar Bakliwal**
v. [2013] 214 Taxman 440 (Allahabad) **Zafa Ahmad & Co. v. CIT**
vi. 103 ITR 344 at 349-350 (Patna) **Saraogi Credit Corporation v CIT**
vii. 59 ITR 632 at 636 (Assam) **TolaRam Daga v cIT**
viii. 49 ITR 273 at 279 (Mad) **S. Hastimal v CIT**
ix. 151 ITR 150 at 156-157 (Pat) **Addl. CIT, Bihar v Hanuman Aggarwal**
x. 154 ITR 244 at 247 (Pat) **Addl CIT v Bahri Bros. (P) Lt**
xi. 264 ITR 254 at 261-266 (Gau) **Nemichand Kothari v. CIT**
xii. 280 ITR 512 at 518 (Guj) **Murlidhar Lahorimal Vs. CIT**
xiii. [2008] 219 CTR (Raj.) 571 at 577 **Labh Chand Bohra v. ITO**
xiv. 256 ITR 360 at 369 (Guj) **DCIT Vs Rohini Builders**

It is necessary to state that these loans are interest bearing loan and AO has also noticed that part of the same has been returned and interest has been credited and confirmation of the same was also filed before the learned AO. The AO himself has accepted the identity and creditworthiness. As regards to genuineness, the AO did not point out any reason but made an allegation without any basis and purely on

suspicion and surmises. It is further submitted that while making the impugned addition, learned AO did not bring any evidence to rebut the evidences furnished by the assessee and made the addition on suspicion and speculations. It is submitted that it is settled law that suspicion howsoever strong cannot partake the character of evidence. Reliance for this proposition is placed on **37 ITR 271 (SC) Uma Charan Shaw & Bros. Co. v. CIT**. It has been further held in the following cases that **suspicion howsoever strong cannot take the place of proof:**

i) **Dhakeswari Cotton Mills Ltd. vs. CIT 26 ITR 775 (SC) at 782 (SC)**
ii) **Omar Salay Mohammad Sait v CIT 37 ITR 151(SC)**
iii) **Dhirajlal Girdharilal v CIT, Bombay 26 ITR 736 (SC)**
iv) **Lal Chand Bhagat Ambica Ram v CIT 37 ITR 288 (SC)**
v) **Krishnand vs. State of Madhya Pradesh AIR 1977 SC 796**
vi) **Jayadayal Poddar vs. Mst Bibi Hazra AIR 1974 SC 171**
vii) **CIT vs. K. Mahim Udma 242 ITR 133 (Ker)**

39. It is therefore submitted that the addition made by the learned AO and sustainable by the learned CIT (A) in respect of unsecured loan received by the appellant is unsustainable in law."

5. The ld. DR, on the other hand, relied on the orders of the authorities below and submitted that since on the date of transfer of fund as consideration of share, the provisions of section 56(2)(vii) were applicable, the ld. Authorities below have rightly determined the value of shares after considering the aggregate fair market value thereof. All the companies, i.e., seller, purchaser (assessee) and lender (Vidhya Shanker Investment Pvt. Ltd.) were the entities of Jagat Group and therefore, the AO has rightly determined the value of shares as per aggregate fair market value of shares as per information received from DCIT, Central Circle-9, New Delhi. It was also submitted that the ld. CIT(A) was justified in rejecting the legal pleas of the assessee raised against validity of reopening of assessment. The case laws cited by assessee with respect to the reopening of assessment do not apply in

the peculiar facts and circumstances of the case. He, therefore, submitted that the decision reached by the ld. CIT(A) needs no interference.

6. We have heard the rival submissions and have gone through the entire material on record including the decisions cited by both the parties. As far as the legal ground of the assessee is concerned, the assessee appears to have challenged the reopening of assessment on multiple grounds, such as, reopening on the basis of presumption, reopening only on the basis of information received without application of mind, proceedings being barred by limitation, having been initiated after a period of six years and reopening of assessment u/s. 147 rather than specific provision u/s. 153C for the purpose, by recording proper satisfaction and so on. The assessee has also relied on several decisions to challenge the validity of reopening, in his written synopsis. We, however, do not find any substance in the contentions of the assessee that the reopening of assessment is not legally valid. It is notable that the reopening of assessment has been made on the basis of information received from DCIT, Central Circle, which has been considered as tangible material by various Authorities when the Assessing Officer has made proper application of mind on such information. In the instant case, we do not find non-application of mind by the Assessing Officer, as the impugned information has been viewed by the AO in the light of assessee's state of affairs and books of account. Besides, the Assessing Officer has made deep examination by calling for plenty of documentary evidences in the light of allegations made in the information received, as is evident from the assessment order. Therefore, it cannot be said that the AO has not applied his mind. The allegation of proceedings being barred by limitation, i.e, beyond six years, too is not

sustainable, inasmuch as, the notice u/s. 148 was issued on 31.03.2017 and six years' time from the assessment year under consideration expires on 31.03.2017, as in the instant case, it is not in dispute that the return of the assessee was processed u/s. 143(1)(a) of the Act. Besides, the re-assessment proceedings have been initiated on the basis of information received and examining the same in the light of assessee's state of affairs, it cannot be accepted that the Assessing Officer was obliged to make assessment u/s. 153C of the Act. In presence of all these peculiar circumstances, the decisions relied by the ld. Counsel on legal grounds, are not found applicable to the present case, being distinguishable on facts. Accordingly, the stand of assessee on validity of reassessment proceedings, deserves to fail.

7. Now, adverting to the merits of the case, on perusal of assessment order and the submissions of both the parties, we find that the only questions, which now require adjudication are –

> ***Whether the ld. Authorities below are justified in making addition of Rs.3,51,52,680/- by applying the provisions of section 56(2)(vii) of the Act in the attending facts and circumstances of the case ?***
>
> ***Whether in the facts and circumstances of the case the ld. Authorities below are justified in making addition of Rs.25,00,000/- u/s 68 of the Act, as unexplained unsecured loan from Vidhya Shankar Investment Pvt. Ltd. or not ?***

8. Addressing to the first question, we observe from the record that the assessee had purchased the shares of M/s Index Securities & Research Pvt. Ltd. in the month of September, 2009 and have also issued the cheque for

consideration on 15.09.2009 itself, on which date no sufficient balance was available in the bank account of the assessee. The shares also stood transferred in the name of assessee on 18.09.2009. The assessee had raised unsecured loan from Vidhya Shankar Investment Pvt. Ltd., which too was credited in the bank account of assessee on 26.09.2009, meaning thereby, after 26.09.2009 the assessee had sufficient balance in its bank account to honour the cheque issued. The Assessing Officer has applied the provisions of section 56(2)(vii), which came into force from 01.10.2009, on the premise that the said cheque was cleared from the bank on 01.10.2009 and therefore, the share transaction would not be deemed to have been completed before 01.10.2009. In this context, it is notable that all the documentary evidence submitted by the assessee unequivocally go to prove the transfer of shares in the name of assessee in the month of September, 2009. Simply because the consideration was passed onto the seller on 01.10.2009, it cannot be said that the share transaction was not complete prior to this date once all the documentary evidence as required by the AO were furnished by the assessee regarding completion of share transactions in the month of September, 2009. For this view of ours, we get support from the decision of Hon'ble Supreme Court in the case of CIT vs. Ogale Glass Works Ltd., 25 ITR 529, wherein it was held that even if the cheques were taken conditionally, the cheque not having been dishonoured but having been encashed, the payment related back to the date of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques. The relevant portion of the decision is reproduced above. In the light of this decision, in our opinion, the provisions of section 56(2)(vii) would not apply to the present case.

9. Further, the co-ordinate Bench of Tribunal in the case of Subodh Menon 103 taxmann.com 15 (Mumbai) have discussed at length and analysed the section 56(2)(vii) and held that "where offer made was accepted before 1st October 2009, the provisions of section 56(2)(vii) do not apply to the contract executed prior 01.10.2009. Para 20 of this order is reproduced as under :

> *20. Moreover, the provisions of section 56(2)(vii) are applicable only from 1st October, 2009. In the instant case, the offer was made by the company to the shareholders to subscribe for the shares on 7 September, 2009 pursuant to resolution passed by board of directors on the same date. Further, on 21st September, 2009, the company informed the shareholders about the acceptance of shares offered by the company. Therefore, the offer made by the company was accepted by the shareholders before 1st October, 2009 hence, the contract between the company and the shareholder for issue by the company of shares was completed before 1st October, 2009. Accordingly, the provisions of section 56(2)(vii) do not apply to as the contract was executed prior to 1st October 2009. It was only the formal routine act of issuance of the share certificate by the company which took place after 1 October, 2009. The revenue has also relied on the provisions of section 17 that there would be a tax liability under section 17, even if section 56(2)(vii) does not apply, as the assessee being an employee of the company. The allotment of shares by the company the holding of the assessee came down from 34.57% to 33.30%, i.e., shareholding of the assessee witnesses a decline after the shares were allotted by the company, no benefit was received by the assessee and therefore, even the provisions of section 17 of the Act are not applicable.*

In view of above decisions and the attending facts of the present case, in our considered opinion, the ld. Authorities below were not justified in making addition by invoking the provisions of section 56(2)(vii) of the Act by determining the value of shares on the basis of aggregate fair market value as

against the actual value thereof supported by various documentary evidence. Accordingly, the first question is decided in favour of the assessee and against the Revenue.

10. Adverting to the second addition of Rs.25,00,000/- u/s. 68 as unexplained unsecured loan from M/s. Vidhya Shankar Investment Pvt. Ltd., it is not in dispute that the assessee had filed all the documentary evidences in support as required by the Assessing Officer. There is nothing on record to rebut the contention of assessee that he had already filed following documents before the authorities below :

> Copy of the confirmation of M/s Vidhya Shanker Investments Pvt. Ltd.
> Copy of the ITR of M/s Vidhya Shanker Investments Pvt. Ltd.
> Copy of relevant bank statement of M/s Vidhya Shanker Investments Pvt. Ltd.
> Copy of relevant bank statement of the assessee.
> Copy of the Memorandum of association and articles of association.
> Copy of the order of the Hon'ble Tribunal in the case of M/s Vidhya Shanker Investments Pvt. Ltd
> Copy of the judgment of the High Court in the case of M/s Vidhya Shanker Investments Pvt. Ltd

11. It is evident from the assessment order itself that M/s. Vidhya Shanker Investment Pvt. Ltd. has declared to have advanced loan of Rs.25.00 Lakhs to the assessee, as was also found proved from the accounts of the lender. It is also not in dispute that the lender company M/s. Vidhya Shanker Investment Pvt. Ltd. is assessed to tax and assessment of the aforesaid creditor for the AY 2005-06 to 2011-12 was made u/s 153C of the Act on 28.03.2013 and while making the assessment of the aforesaid creditor, loan advanced to the assessee has not been doubted, which was not found sustainable by the learned CIT(A) and the order of the CIT(A) stood upheld by the Tribunal and Hon'ble jurisdictional High Court, reported in [2017] 86 taxmann.com 84

(Delhi). Moreover, once the assessee has filed all the documentary evidence, as stated above, wherein no defects have been pointed out by AO, nor is there any objection as to the identity and creditworthiness of the creditor, there remains no justification to invoke the provisions of section 68 only for the purpose of addition. On perusal of the balance sheet of the creditor, we find that there was total shareholder funds of Rs.23,21,43,367/- and the gross revenue earned during the year is Rs.1,37,61,631/-, which is mainly interest income. The loan amount received by assessee was through banking channel. The creditor has confirmed to have charged interest of Rs.1,43,200/- from the assessee in his confirmation and it was clearly informed to the AO that the said loan was not squared up as the balance of Rs.25,29,700/- is still outstanding as on 31.03.2010 and only a sum of Rs.1,13,500/- was paid. The interest amount of Rs.1,43,200/- was stated to be accumulated. The assessment order is quite silent on these contentions of the assessee made before the Assessing Officer. There is not even an iota of evidence or circumstance to doubt that amount received by the assessee from the creditor was generated from the coffers of assessee. In presence of all these facts, and in view of various decisions, relied by the ld. AR in its written synopsis, we are of the opinion that the ld. CIT(A) was not justified to sustain the addition of Rs.25,00,000/- made by the AO u/s. 68 of the IT Act without controverting the contentions made by the assessee and evidences filed by him. We, accordingly, do not find any justification to sustain this addition too in the peculiar facts and circumstances of this case. As a result, the appeal of the assessee deserves to be allowed.

12. As already seen, the facts involved in appeals of other assessees, captioned above, are identical and arguments and grounds are also common barring the quantum of additions, our aforesaid decision in appeal of Shri Vijay Aggarwal shall apply mutatis mutandis in remaining appeals of different assessees before us.

13. In the result, all the appeals of different assessees are partly allowed.

Order pronounced in the open court on 30th May, 2019.

Sd/- Sd/-

(Bhavnesh Saini)
Judicial member

(L.P. Sahu)
Accountant Member

Dated: 30th May, 2019
aks

Copy of order forwarded to:

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi