

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

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

ITA No.6017/Del/2018
Asstt. Year: 2007-08

ITO, Ward-20(3) New Delhi.	Vs.	RMP Holding (P) Ltd. 138C, Block B, Group -4, Dilshad Garden, New Delhi – 110 095 PAN AAACR5533N
(Appellant)		(Respondent)

ITA No. 79/Del/2019
Asstt. Year 2010-11

RMP Holding (P) Ltd. 138C, Block B, Group-4, Dilshad Garden, New Delhi -110 095 PAN AAACR5533N	Vs.	ITO, Ward 20(3) New Delhi.
(Appellant)		(Respondent)

ITA No. 3299/Del/2017
Asstt. Year 2006-07

M/s. R.N. Khemka Enterprises (P) Ltd, G-137, Gali No.6, Shiv Mandir Road, Swaroop Nagar, Delhi – 110 034.	Vs.	ITO, Ward-15(1) New Delhi.
(Appellant)		(Respondent)

ITA Nos. 584, 6016, 585/Del/2018
Asstt. Years 2006-07, 2007-08, 2008-09

ITA Nos. 1029, 78/Del/2019
Asstt. Years 2008-09, 2010-11

M/s. R.N. Khemka Enterprises (P) Ltd, G-137, Gali No.6, Shiv Mandir Road, Swaroop Nagar, Delhi – 110 034 PAN AADCR1772L	Vs.	ITO, Ward-20(3) New Delhi.
(Appellant)		(Respondent)

Department by:	Shri Surender Pal. Sr. DR
Assessee by :	Shri S.K. Gupta, CA
Date of Hearing	24/05/2019
Date of pronouncement	09/08/2019

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeals have been filed by the above named assesses against separate impugned orders viz., in the case of **M/s. R.N. Khemka Enterprises (P) Ltd. vs ITO:-**

Date of Order	Order passed by Ld. CIT(Appeals)	Section in which order has been passed	Assessment year
01.03.2017	7	143(3)/147	2006-07
27.12.2017	7	271(1)(c)	2006-07
30.8.2018	36	143(3)/147	2007-08

24.1.2019	7	271(1)(c)	2008-09
20.9.2017	38	143(3)/147	2008-09
17.12.2018	7	143(3)/147	2010-11

In the case of M/s. RMP Holding (P) Ltd. vs ITO:-

Date of Order	Order passed by Ld. CIT(Appeals)	Section in which order has been passed	Assessment year
1712.2018	7	143(3)/147	2010-11

And in ITO vs. RMP Holding (P) Ltd.:-

Date of Order	Order passed by Ld. CIT(Appeals)	Section in which order has been passed	Assessment year
29.08.2018	36	143(3)/147	2007-08

2. Since issues involved in all the appeals are common arising out of identical set of facts, therefore, same were heard together and are being disposed of by way of this consolidated order. In all the years the common issue involved relates to addition made u/s 68 on account of share application money and validity of reopening u/s 147 on various grounds. The quantum of addition and penalty levied for all the assessment years are tabulated here as under:-

ITA No.	Asstt. year	Addition u/s 68	Order passed
6017/Del/2018	2007-08	Rs. 1,66,65,000/-	u/s 143(3)/147

79/Del/2019	2010-11	Rs. 5,10,00,000/-	u/s 143(3)/147
3299/Del/2017	2006-07	Rs. 55,00,000/-	u/s 143(3)/147
584/Del/2018	2006-07	Penalty of Rs. 55,00,000/-	u/s 271(1)(c)
6016/Del/2018	2007-08	Rs. 3,34,31,000/-	u/s 143(3)/147
585/Del/2018	2008-09	Rs. 1,07,00,000/-	u/s 143(3)/147
1029/Del/2019	2008-09	Penalty of Rs. 1,07,00,000/-	u/s 271(1)(c)
78/Del/2019	2010-11	Rs. 8,15,00,000/-	u/s 143(3)/147

3. In so far as appeals for Asstt. Years 2006-07, 2007-08 and 2008-09 are concerned including the penalty proceedings u/s 271(1)(c), the findings and the reasons given by the AO and the facts and circumstances are exactly the same, therefore, we will take up these appeals together and our finding given in one of the appeal will apply *mutatis mutandis* in all the appeals relating to these assessment years. However, in so far as two appeals are of M/s. R.N. Khemka Enterprises and M/s. RMP Holding (P) Ltd. both for the assessment year 2010-11 will be decided separately in this order as the reasoning and the grounds taken by the AO in the assessment order for making the addition are slightly different from the earlier years.

4. As a lead appeal we are taking up the appeal for the assessment year 2006-07, in ITA No. 3299/Del/ in the case of M/s. R.N. Khemka Enterprises (P) Ltd. The facts in brief are that the return of income was filed on 29.8.2007 which was duly processed u/s 143(1). Thereafter, the assessee's case was reopened u/s 147/148 on the following reasons recorded:-

“A search & seizure action was conducted by Unit-VI (2) at the residence and offices of Shri Surender Kumar Jain and Sh. Virender Jain on 14.9.2010. Various incriminating documents/material was seized during the course of search. During the first search investigation and perusal of seized documents it was observed that Sh. Surendra Kumar Jain and Sh. Virendra Jain were engaged in the business of providing accommodation entries by providing cheques/PO/DO in lieu of cash to a large number of beneficiary companies thorough various paper and dummy companies floated and controlled by them. It was also evidently established by the wing that Sh. Surendra Kumar Jain and Sh. Virendra Jain are known entry providers and are the actual controllers of more than 100 companies/proprietary firms/partnership firms. They control these entities through various persons by appointing them as directors / partners / proprietors apart from nominating them as authorized signatories for maintaining the bank accounts of these entities but in fact all these persons act only as their stooges. The cash received from the recipient parties for providing the accommodation entries was first deposited in the accounts of these dummy firms/companies in the disguise of the cash received against the bogus sales, duly shown in the books of accounts. From there, this cash was transferred to the different paper companies floated by Sh. Surender Kumar Jain and Sh. Virendra Kumar Jain through a complex trail of transactions, so as to hide the actual sources of funds of the last set of recipient companies of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain.

In this way, the reserve & surpluses and the capital account of a specific set of companies are enhanced with the help of the unexplained cash received by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain, which is routed to these companies through

their dummy firm/companies. Once the funds of these companies have been enhanced sufficiently, accommodation entries through-RTGS/Cheque in the shape of the share capital, capital gains or loans as per the specific requirement of the recipient clients were provided them in lieu of the cash received from them. In this way, the chain for providing an accommodation entry gets completed.

As per seized annexure, the assessee M/s R N Khemka Enterprises P Ltd. has taken the following accommodation entries from the following person(beneficiary) as per details hereunder:-

Bank book Date	From	To (Beneficiary)	Bank	Cheque /RTGS	Cheque Date	Amount	Through	Ann- exure e	P g N o
15-02-06	Pelicon Finance & Lease Ltd.	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000248	16-02-06	10,00,00	Satish	A-52	26
18-02-06	Vogue Leasing & Finance P Ltd.	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000043	18-02-06	10,00,00	Satish	A-52	30
28-02-06	Pelicon Finance & Lease Ltd.	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000250	28-02-06	6,00,000	Satish	A-52	47:
10-03-06	Finage Lease & Finance India Lid	R N Khemka Enterprises P Ltd.	BOI	CH. No. 049900	10-03-06	7,00,000	Satish	A-53	15
16-03-06	Karishma Industries Ltd	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000310	16-03-06	7,00,000	Satish	A-53	22
30-03-06	Vogue Leasing & Finance P Ltd.	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000077	31-03-06	7,00,000	Satish	A-54	26
30-03-06	S R Cable P Ltd.	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000062	31-03-06	8,00,000	Satish	A-54	26

In view of the report received from the DIT(Inv.) Unit-VI(2), New Delhi and in view of the facts narrated above it is clear that the assessee has not disclosed fully and truly all material facts necessary for its assessment for that assessment year. In have therefore, reason to believe that the sum of Rs. 55,00,000/- chargeable to tax has escaped assessment. Thus, the same is to be brought to tax under section 147/148 of the I.T. Act 1961.

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

Sd/-

Dated 20.3.2013

*(I P MADAN)
(Income Tax Officer, Ward 15(1)
New Delhi.*

Addl. CIT Range 15, New Delhi

4.1 The aforesaid 'reasons' have been approved by the Additional CIT Range 15, New Delhi after stating as under: -

“Approved in view of reasons recorded above.”

4.2 Accordingly, a notice u/s 148 was issued on 21.3.2013, in response to which, assessee vide letter dated 23.4.2013 stated that the return filed u/s 139 may be treated as return filed in response to notice u/s 148. Thereafter, assessee had sought for the 'reasons recorded' and raised objections challenging the validity of reopening on various counts which have been disposed off by the Ld. AO vide letter dated 13.10.2014.

5. The AO has taken note of the fact that Assessee Company was incorporated on 21.12.2005, and this was the first assessment year. The Assessee Company was engaged in the business of trading of shares and was also earning interest income. AO further noted that as per the seized annexure found during the course of search and seizure action in the case of Shri Surender Kumar Jain and Shri Virender Kumar Jain on 14.9.2010, the seized annexure reflected following accommodation entries taken by the assessee from various companies: -

Bank Book Date	From	To (Beneficiary)	Bank	Cheque/ RTGS	Cheque Date	Amount	Through	Annexure No.	Page Nos.
15-02-06	Pelicon Finance & Lease Ltd.	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000248	16-02-06	10,00,000	Satish	A-52	26
18-02-06	Vogue Leasing & Finance P Ltd.	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000043	18-02-06	10,00,000	Satish	A-52	30
28-02-06	Pelicon Finance & Lease Ltd.	R N Khemka Enterprises P Ltd.	KOTAK	C11. No. 000230	28/2-06	6,00,000	Satish	A-52	47
10-03-2006	Finage Lease & Finance India Ltd.	R N Khemka Enterprises P Ltd.	BOI	CH. No. 049900	10-03-06	7,00,000	Satish	A-53	IS
16-03-06	Karishmn Industries Ltd	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000310	16-03-06	7,00,000	Satish	A-53	22
30-03-06	Vogue Leasing & Finance P Ltd.	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000077	31-03-06	7,00,000	Satish	A-54	26
30-03-06	S R Cable P Ltd.	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000062	31-03-06	8,00,000	Satish	A-54	26

Thereafter, AO has stated that in order to verify the claim of the assessee and various documentaries evidences filed by the assessee before him, notices u/s 133(6) were issued to all the above-mentioned parties from whom the assessee has claimed to have received share capital. In his order he has categorically mentioned that in compliance of the notices, all these companies have filed their confirmation, bank statements, copy of their ITR, etc. The relevant observations of the AO in this regard as given in para 3.1 is reproduced hereunder: -

“3.1 In order to verify the claim of the assessee notices u/s 133(6) of the Act were issued to all the above mentioned parties, from whom the assessee had claimed to have received share capital. In compliance to the notices, all these companies have filed their confirmation, bank statement and copy of ITR. Perusal of their bank accounts reveals that there have been regular debit and credit entries of equivalent amounts within a span of two-three days. Such is a general phenomenon in the case of the entry providers. The assessee was asked to produce the Principal Officers/Directors of these concerns for examination which could prove the genuineness of the transaction entered into by it as the onus to prove the genuineness of the transaction, credit worthiness of the persons and identity of the persons. The assessee has failed to produce the Directors/Principal Officer of the above subscriber companies.”

6. The assessee before the AO has also challenged that, since this is the first year of the assessee company, therefore, there cannot be any unaccounted income earned by the assessee and hence no addition could have been made on account of alleged unaccounted money and in support various judicial pronouncements were also filed. However, Ld. AO rejected the assessee's contention and stated

that company was incorporated in August 2005 and had 6-7 months to earn the unaccounted money and assessee has claimed to have received share premium @ 40 per share allotted to these concerns. He inferred that all these share application moneys are a bogus accommodation entry and asked the assessee to produce the Directors of the companies for examination. But assessee has failed to produce these persons.

7. One very important fact as culled out from the assessment order and also recorded by the AO is that, at the instant of assessee, summons was issued to Shri Surender Kumar Jain and Shri Virender Kumar Jain, alleged entry providers as per the Investigation Wing. In response to such summons, they had duly appeared before the AO and their statement were also recorded on oath by him on 13.3.2014. Though there is no mention of the relevant content of the statement, however, AO has observed that though these persons have stated that they were not related to the said parties and have denied providing any accommodation entry to the assessee. But still he observed that they are the persons who have controlled the whole affair of the said parties and earlier also in Investigation Wing, they have not admitted that they are engaged in the business of providing the accommodation entry, therefore, their statement given before him cannot be relied upon, because Investigation Wing had earlier established that they were entry operators and providing accommodation entry to various persons. The observation of Ld. AO in this regard which has a very vital bearing in all the years under appeal are reproduced hereunder:

“3.3. The assessee was asked to produce the Principal Officer/Director of the concerns for examination which could prove the genuineness of the transaction entered into by it as the onus to prove the genuineness of the transaction, credit worthiness of

*the person and identity of the persons was upon the assessee but it has failed to do so. **At the instance of the assessee, summons were issued to Shri Surender Kumar Jain and Shri Virender Kumar Jain. Though these persons were not related to the said party but their statement was recorded on 13.03.2014 as they are the persons who have controlled the whole affairs of the said parties.** It has been stated by them that earlier also in Investigation Wing they have not admitted that they are engaged in the business of providing accommodation entries. Their statement cannot be relied upon as the Investigation Wing/Central Circle-23 has established that they are entry operators and providing accommodation entries in the shape of share capital in lieu of cash received by them.”*

8. Assessing Officer further noted that there are various debit and credit entries in the bank accounts of these companies and issuance of cheques from associate concerns of these companies, which goes to show that they were providing bogus accommodation entries. Thus, he held that explanation offered by the assessee about the nature of the sums found credited in the books were not satisfactorily explained accordingly, after quoting following judgments, he added the entire amount of share application money received under section 68: -

- (1) Hon'ble Delhi High Court in the case of Indus Valley Promoters Ltd. V. Commissioner of Income-tax (2008}305ITR0202.*
- (2) Hon'ble Supreme Court in the case of Commissioner of Income Tax v . P Mohanakala 291 ITR 278.*
- (3) Sumati Dayal V. CIT (1995) 214ITR801(SC);[1995] Supp 2 SCC 453 relied on K. S. Kannan Kunhi V. CIT [1969] 72 ITR 757(Ker) considered.*

(4) Hon'ble Delhi High Court in the case of Commissioner of Income Tax-V vs Nova Promoters and Finlease (P) Ltd. [2012] 342 ITR 169.

(5) CIT-V Oasis Hospital P Ltd. [2011]333 ITR 119 (Delhi).

(6) NR Portfolio - ITA Nos. 1018/2011& 1019/2011

Accordingly, he held that the amount of share application money of Rs. 55 lacs have been routed through bogus accommodation entries which is to be treated as unexplained cash credit to be added u/s 68. He has also initiated penalty proceedings u/s 271(1) for furnishing of inaccurate particulars.

9. Before the Ld. CIT (A) the assessee made very elaborate and detailed submissions along with all the documentary evidences filed before the AO in support of the share application money received by the assessee from all these companies. Assessee also challenged the validity of reopening on various counts. Ld. CIT (A) has called for the remand report of the AO on all the submissions. AO though admitted that assessee has filed the confirmations from the parties, their bank statements, copy of ITRs of the parties. Further, all these companies have also filed all these documents once again in response to notices u/s 133(6), but the Ld. AO in his remand report once again has mainly gone by the fact that the assessee has failed to produce the Directors of these companies. After receiving a remand report assessee has filed details of shareholders which have been tabulated from pages 15-16 of the order. Ld. CIT(A) has taken note of all these facts including the fact that summon u/s 131 was issued at the instance of the assessee to Shri Surender Kumar Jain and Shri Virender Kumar Jain as they were the persons who controlled these companies and were entry provider as reported by the Investigation wing. However, Ld. CIT (A) observed that, why any prudent investor would make investment in shares at a premium of Rs. 40/- per share in the

assessee company and nothing has been brought on record justifying the premium amount determined by the assessee company on its shares. Even the bank account shows that there were regular deposits and the return of income of these companies show the same pattern i.e., loss or disclosure of meagre income. Thereafter, he has referred and relied upon ITAT decision of Ahmedabad Bench; and in the case of ACIT vs. Nakoda Fashions (P) Ltd. in ITA No. 1716/Ahd./2012.

10. In so far as the denial by Shri Surender Kumar Jain and Shri Virender Kumar Jain in the statement before the AO that they were not engaged in the business of providing accommodation entry, Ld. CIT(A) observed that in the case of same persons, in their individual hands, substantive amount has been added on account of accommodation entry; and before the Tribunal they have admitted that they were engaged in the business of providing accommodation entry and therefore, only commission income on accommodation entry should be taxed. After referring to various decisions, including that of in our portfolio **Nipun Builders & Developers (P) Ltd. 350 ITR 407**, he has confirmed the said addition.

11. Before us Ld. Counsel for the assessee first of all has challenged the validity of reopening u/s 147 on following counts: -

- i) Mechanical satisfaction of the Additional CIT u/s 151.
- ii) Non supply of reasons in the form same were recorded and also the proforma in which satisfaction of approving authority could be approved.
- iii) Non application of mind on the following information provided by DDIT Investigation in the absence of any supporting material provided with the information.

12. In so far as mechanical satisfaction u/s 151, he pointed out that the Ld. ACIT Range 15 has mentioned “*approved in view of the reasons recorded above*”. Such an approval/ satisfaction is too mechanical and is conspicuous of any application of mind by either of authorities. In support, he has relied upon catena of judgments including those of Hon’ble Delhi High Court in the case of **Pr. CIT vs. N.C. Cables Ltd., 391 ITR 11; United Electrical Co. Pvt. Ltd. vs. CIT, 258 ITR 317 (Del); Central India Electric Supply Co. Ltd. vs ITO, 333 ITR 237 (Del)** and also judgments of Hon’ble Chattisgarh High Court in the case of Maruti Clean Coal & Power Ltd. vs. ACIT and Hon’ble MP High Court in the case of CIT vs. M/s. S. Goyanka Lime and Chemicals Ltd. 231 taxman 0073. He submitted that, such mechanical approval/ satisfaction goes to shows that there has been complete non application of mind by the approving authorities which is fatal to jurisdictional issue u/s 147/148 read with section 151. He also strongly relied upon the judgment of Hon’ble Delhi High Court in the case of **Sabh Infrastructure vs. ACIT in W.P.(c) 1357/2016 dated 25.9.2017**, wherein the Hon’ble High Court has held that furnishing of incomplete reasons without providing the ground on which satisfaction by the authorities concerned u/s 151 was reached to sanction the issue u/s 148 cannot be sustained. Here in this case, he pointed out that AO has mainly supplied reasons recorded and not the format/proforma in which such reasons recorded was sent for approval by the higher authority. Lastly, he submitted that there is a complete non application of mind on the information provided by the DDIT Investigation Wing by the AO, because there was no material provided with the information. This he submitted that is evident from the ‘reasons recorded’ itself that the AO has only gone by the information received from DDIT Investigation Wing New Delhi and his reason to believe is based on entirely borrowed satisfaction without

verifying the same from the record of the assessee. Further, the 'reasons recorded' does not mention the type or the nature of accommodation entry, i.e., share capital or capital gains or loans. Not only that, there is a further inherent contradiction that such accommodation entries are in lieu of cash paid by the assessee to the so called entry provider but in the later part of the reasons, AO mentions that there is cash received by the assessee against the accommodation entry. He has not even verified the seized documents in the case of Shri Surender Kumar Jain and Shri Virender Kumar Jain. In support he strongly relied upon the judgment of Hon'ble Delhi High Court in the case of **PCIT vs. Meenakshi Overseas P Ltd. 395 ITR 677 (Del.)** and also following judgments:-

1. **Pr. CIT vs. G&G Pharma India Ltd.** 384 ITR 147 (Del.).
2. **Pr. CIT vs. RMG Polyvinyl (I) Ltd.** (2017) 396 ITR 5 (Del.)
3. **CIT vs Independent Media Pvt Ltd** in ITA 108/2015 dated 19.11.2015
4. **Signature Hotels P. Ltd. Vs. ITO** - [201 1] 338 ITR0051
5. **CIT Vs. Insecticides (India) Ltd.** - [2013] 357 ITR330 (Delhi)
6. **Pr CIT vs SNG Developers Ltd** (supra) (Del) approved by Hon'ble Apex Court by dismissing SLP of revenue (supra)
7. **Hindustan Lever Ltd. Reported** in [2004] 137 TAXMAN 479 (BOM.)
8. **Sarthak Securities Co. Pvt. Ltd. Vs. ITO** (2010) 329 ITR110 (Del)
9. **CIT Vs. SFIL Stock Broking Ltd.** - [2010] 325 ITR 285 (Del).
10. **CIT Vs. Supreme Polypropolene (P) Ltd.** - ITA No.266/2011 dated 30th October, 2012. (Delhi High Court)
11. **CIT vs. Greenworld Corporation** 314 ITR 81 (SC)

12. **CIT vs. Shree Rajasthan Syntex Ltd.** (2009) 212 Taxation 275 (Raj.

13. **CIT v. Kamdhenu Steel & Alloys Ltd.** (2012) 248 CTR 33 (Del)

14. **Pionner Town Planners vs DCIT** (supra)

15. **Pushp Steel & Mining Ltd vs ITO** (supra) The Hon'ble AM is party to the decision.”

13. Ld. Counsel further submitted that the AO has not given any opportunity for cross examination of the statement. In so far as statement relied upon by the AO no adverse inference can be drawn based on such statement and in support several other judgements were relied upon including judgment of Hon'ble Supreme Court in the case of **Anadaman Timber Industries vs CCE 281 CTR 241.**

14. Lastly on merits, besides oral argument he has also filed written submissions. In sum and substance his main contentions are as under:-

- The appellant had furnished during assessment of proceedings, which has been mentioned in table in sub para 6.3 of the Ld. CIT (A) order mentioning the documents filed such as Confirmation from each share applicants along with share application form, list of directors downloaded from MCA portal, affidavit of director, resolution of board of directors, relevant portion of Bank statement and Copy of ITR-V. In some cases, copies of assessment order, like in cases of M/s Karishma Industries for AY 2005-06 & AY 2006-07 M/s Finage Leasing and Finance (India) Ltd for AY 2007-08 and M/s S.R. Cables for AY 2006-07 were also enclosed. Similar details were submitted by the share

applicant companies directly to the AO in response to notice u/s 133(6),

- The AO vide order sheet dated 23.01.2014 required the appellant to produce the directors of the share applicant companies. The AO appears to have put the onus on the appellant to produce the directors without considering the evidences furnished by the appellant in support of share application money.

- The Delhi High Court in the case of **Makhani and Tyagi (P) Ltd.** reported 267 ITR4 30 held that decision of the Sophia Finance Ltd. in case of acceptance of share capital by a company is applicable to private limited companies too. It was further held that when documentary evidence in support of identity of shareholder along with the assessment particulars or other evidences are placed on record, which had neither been controverted nor disapproved by the A.O, no interference by the A.O is called for. If still, in the opinion of the A.O, it was necessary to enquire further then it was for him to issue coercive process shareholders are before him and they are questioned about the investment. Instead of doing so, issuance of summons when these materials were produced before him, he is not entitled to pass the burden on the assessee to bring the shareholders before him. He is under obligation to enforce attendance if he feels that personal attendance and deposition of the shareholder is necessary. In view of the above judgment of Hon'ble Delhi High Court in the above case, the appellant cannot be fastened with the responsibility to produce the shareholder for examination of the A.O. Further reliance is also placed for the above proposition of law on the judgment of Hon' ble Delhi High

Court in the case of **Commissioner of Income Tax vs. Victor Electrodes Ltd. 2010 329 ITR271 (Del) (PB 90-91)**.

➤ Mere non production of a Director without anything more and where all relevant documents are placed on records which remained uncontroverted specifically, cannot justify adverse inference u/s 68 of the Act which is unlawful. Following case laws were relied upon by him to support this proposition :

- **CIT v. Jalon Hard Coke Ltd.** in SLP Civil Diary No. 16078 of 2018 (SC);
- **CIT vs Orchid Industries** 397 ITR136 (80m);
- **Pr CIT vs Hi-Tech Residency P Ltd** (Delhi High Court) ITA NO.628/2016 Dated: 07.07.2017
- **Pr. CIT vs Softline Creations P Ltd** 387 ITR636 (Del)
- **Pr. CIT vs Rakam Money Matters Pvt Ltd** ITA 778/2015 Dated 13.10.2015 (Del);
- **Pr. CIT vs. Goodview Trading Pvt. Ltd.** ITA NO.377 of 2016 (Del) dated 21.11.2016.
- **Aksar Wire Products Pvt Ltd vs ACIT** in ITA No.1167 /Del/20 15 dated 11/12/2015
- **ACIT vs Madhusudan Packaging Pvt Ltd** in ITA No.4930/Del/2017 dated 09/05/2018
- **Moti Adhesives Pvt Ltd vs ITO** in ITA NO.3133/Del/2018 Dated: 25.06.2018.
- **M/s Astech Industries P Ltd vs DCIT (PB 386-399)** ITA No.2332/Del/2018 dt: 20.12.2018.

➤ On that basis, at best creditworthiness of the shareholders could only be disputed. So far as the identity of the share applicants and genuineness of the transaction is concerned, the AO has

questioned genuineness of the transaction. There is no adverse observation with regard to identity of the shareholders. In view of the fact that the identity of the shareholder is not in dispute, the addition u/s 68 cannot be made in the hands of the assessee company in view of the decisions of jurisdictional Delhi High Court detailed as under:

1. **CIT VS Vrindavan Farms (P) Ltd** ITA No. 71 to 72 & 84/2015 (Del) dated 12.08.2015(PB 1-2)
2. **Pr. CIT vs. Veedhata Tower Pvt. Ltd** (Bombay High Court in ITA No.819 OF 2015 Dated: 17.04.2018
3. **Pr. CIT Vs Paradise Inland Shipping Pvt Ltd** ITA No.66 of 2016 Bom HC Dated 10.04.2017.
4. **CIT vs Mis Russian technology Centre (P) Ltd** ITA No.547, 549 & 555/2013 Dated 15.12.2016 (Del)
5. **CIT v. Lovely Exports (P.) Ltd.** [S.L A. No. 11993 of 2007, dated 11-1-2008] (SC)
6. **Sofia Finance Ltd** (205 ITR98) (Del) (FB)
7. **CIT vs Steller Investment Ltd** (192 ITR287) (Del) upheld by CIT vs Steller Investment Ltd (251 ITR263) (SC)
8. **Achal Investment Ltd vs CIT** (268 ITR211) (Del)
9. **DCIT vs Esteem Towers (P) Ltd.** (99 TIJ 472) (Del)
10. **CIT vs Dolphin Canpack Ltd** (204 CTR 50) (Del)
11. **CIT vs Glocom Impex (P) Ltd.** (205 CTR 571) (Del)
12. **CIT vs Gangaur Investment Ltd.** (335 ITR359) (Del)
13. **CIT vs Dwarkadhish Investment (P)Ltd.** (330 ITR298) (Del).
14. **Prabhatam Investment Pvt Ltd Vs ACIT** ITA No.2523 to 2525/Del/2015 Dt:17.04.2017.
15. **PCIT vs Adamine Construction P Ltd** 99 Taxmann.com 45 SC) (2018)
16. **PCIT vs Himachal Fibres P Ltd** 98 Taxmann.com 173 (SC)

➤ It is a case of no enquiry by the AO after the evidences to discharge initial onus u/s 68 by the appellant assessee. The AO conducted no enquiry to verify the evidences furnished. The AO has merely sent notices u/s 133(6) which were complied with, apart from that no enquiry was conducted through the Ward Inspector and on top of it no reference was made with the respective wards of the share applicants or the respective Banks to verify the genuineness of the companies. Under these circumstances, the addition u/s 68 cannot be upheld. Reliance is placed on following judgments:

1. **CIT vs. Laxman Industrial Resources Pvt. Ltd.** 397 ITR 106 dated 14th March, 2017 (Delhi HC)
2. **CIT vs. Gangeshwari Metal (P) Ltd.** (2014) 361 ITR 10 (Del)
3. **Pre CIT vs. Green Valley Plywood Limited** (ITA No. 358/2016 dated 1.6.2016) (Delhi High Court)
4. **Pre CIT vs Rakam Money Matters Pvt Ltd** ITA 778/2015 Dated 13.10.2015(Delhi High Court}
5. **CIT vs. Victor Electrodes Ltd. (2012)** 329 ITR271 (Del)
6. **CIT Vs Nova Promoters and Finlease (P) Ltd** 342 ITR 169(Del}
7. **CIT vs. Orissa Corporation** 159 ITR78 (SC)
8. **CIT vs. Winstral Petrochemicals P. Ltd** 330 ITR 603 (Del)
9. **CIT vs Goel Sons Golden Estate P Ltd.** ITA No. 212/2012
10. **CIT Vs. Arunananda Textiles Pvt. Ltd.** (in ITA NO.1515 of 2005, decided on 02.03.2010), (Kar High Court)
11. **CIT vs. Fair Finvest Ltd.** (2013) 357 ITR146 (Del.)
12. **Pr. CIT vs. Softline Creations Pvt. Ltd.** (2016) 387 ITR 636
13. **Pr. CIT vs. Oriental International Co P Ltd** (Delhi High Court) ITA NO.9/2018 Dated: 08.01.2018.

- The AO has simply believed what is provided to him in the information by the DDIT (Inv). The AO could have justification to initiate the reassessment proceedings based on the DDIT but he was not entitled to rely on the investigation report without establishing that there was nexus between the appellant and the so called entry provider. If the assessment order is gone into, it can be seen that the AO has not dealt with the contents of the information in question. In view of this it can be inferred that the information from DDIT (Inv) is not found to be relevant by the AO. Therefore, the said information cannot be basis for adverse inference against the appellant. Reliance is placed on **CIT Vs Nova Promoters and Finlease (P) Ltd** (Delhi High Court) 342 ITR169 and **CIT Vs Oasis Hospitalities Pvt Ltd** (2011) 333 ITR119 (Del).

- The Ld CIT (A) has taken adverse view of the issue of shares of Rs.10 each at premium of RS.90 per share. It is submitted that the identical issue came for consideration before Hon' ble Delhi High Court in the case **Pr.CIT vs A.R. Leasing Pvt Ltd** in ITA No.361/2017 Dated: 03.07.2017 wherein it was held that if the AO disregards the documents furnished by the assessee to discharge onus u/s 68 and comes to the conclusion that transaction of receiving money as share capital was not a genuine one primarily because the premium charged by the Assessee was much higher than the prevalent market trend, the action of the is not tenable unless AO had brought on record some material to show that confirmation and other evidence placed by the Assessee was not genuine, he could not have simply discarded the documents produced by the Assessee. The share premium of RS.90 per share in the present case cannot be

reasoned for showing the receipt as unexplained cash credit. Since the provisions of sec 56(2)(viib) of the Act is introduced w.e.f from 01.04.2013 cannot be applied retrospectively. Reliance is placed on decision of Hon'ble Bombay High Court in the case of **CIT Vs Green Infra Limited** ITA No. 1162 of 2014 Dt: 16.01.2017 and **CIT vs M/s Gagandeep Infrastructure Pvt Ltd. (PB 95-98)** (2017) 394 ITR 680 (Bom). The Hon'ble Apex Court in the case of **PC IT vs Chain House International Ltd. 98 Txmann.com 47 (SC)** (2018) has also deleted the Issue of shares at disproportionate premium.

14. On the other hand Ld. DR, submitted that so far validity of reassessment proceedings on account of mechanical satisfaction is concerned, he submitted that recently Hon'ble Delhi High Court in the case of **Sonia Gandhi vs ACIT, reported in 407 ITR 594** on almost similar kind of satisfaction and approval has upheld the validity of 147/151. He strongly referred to para 49 of the said judgment. In so far as non application of mind on the information provided by DDIT Investigation Wing, he submitted that AO while disposing of the objections of the assessee has given very detailed finding and referred to the observations of the AO. He also strongly relied upon the order of the AO and Ld. CIT (A) in this regard.

15. Regarding no opportunity for cross examination he has referred and relied upon the following judgments :

- i. Decision of Hon'ble Supreme Court of India in the case of ITO vs. M. Pirai Choodi 334 ITR 262 (SC)
- ii. Decision of Hon'ble Delhi High Court in the case of CIT v. Kuwer Fibers (P) Ltd., 77 taxmann.com 345 (Delhi)

iii. Decision of Hon'ble ITAT in the case of Nokia India P. Ltd., v. DCIT, 59 taxmann.com 212.

16. In so far as on merits all the additions besides strongly referring to the various observations by the AO and Ld. CIT(A) he relied upon the following judgments: -

- i. *Decision of Hon'ble Supreme Court of India in the case of PCIT v. NRA Iron & Steel (P) Ltd. 103 taxmann.com 48 (SC)*
- ii. *Decision of Hon'ble Supreme Court of India in the case of CIT v. Durga Prasad More, 82 ITR 540 (SC)*
- iii. *Decision of Hon'ble Supreme Court of India in the case of Sumati Dayal v. CIT 1995 AIR 2109 dated 28.03.1995.*
- iv. *Decision of Hon'ble Delhi High Court in the case of PCIT v. NDR Promoters (P) Ltd., 410 ITR 379 (Delhi)*
- v. *Decision of Hon'ble Delhi High Court in the case of CIT v. Nova Promoters & Finlease (P) Ltd., 342 ITR 169 (Delhi)*
- vi. *Decision of Hon'ble Delhi High Court in the case of CIT v. N.R. Portfolio (P) Ltd., 42 taxmann.com 339 (Delhi)*
- vii. *Decision of Hon'ble Delhi High Court in the case of CIT v. MAF Academy (P) Ltd., 361 ITR 258 (Delhi).*

17. He submitted that in view of the aforesaid judgements, such kind of share application with high premium from the companies who do not have substantial worth or income in their return of income cannot be held to be genuine, because not only the genuineness of the transaction is doubtful as all the transaction has been routed through entry provider but also their creditworthiness is also doubtful. In so far as the statements of S.K. Jain, same cannot be relied upon as these persons were established entry providers and have been shifting their stance. Thus, order of the Ld. CIT (A) should be confirmed.

18. We have heard the rival submissions, perused the relevant finding given in the impugned orders as well as material referred to before us at the time of hearing. In so far as validity of action u/s147/148 read with section 151, on the ground that there is mechanical satisfaction from the Addl. CIT, it is seen from the proforma of recording of the 'reasons recorded' that, AO has recorded his reasons and below the reasons recorded the Ld. Addl. CIT has noted **"approved in view of the reasons recorded above"**. Such a satisfaction after analyzing the 'reasons to believe by the AO cannot be said to be mechanical or without application of mind. Though, there are various decisions wherein Hon'ble Courts have interpreted approval accorded by competent authorities based on facts and circumstances of the case and have held that approval granted by the higher authority should reflect application of mind and should not be mechanical, because, in matter of acquiring jurisdiction the statute provides certain checks and balances which needs to be adhered in proper manner. One of the judgments strongly relied upon by the Ld. Counsel is of Pr. CIT vs. N.C. Cables Ltd., wherein the competent authority has mainly noted "approved" and nothing else. It was under these facts and circumstances, Hon'ble Court has observed that such an exercise u/s 151 by the competent authority appears to have been ritualistic and formal and required to record elaborate reasons, which is for safeguard and has to be meaningful. Similar view has been expressed in the case of Pr. CIT vs. Meenakshi Overseas (P) Ltd. (supra). Now in the latest judgment, Hon'ble Delhi High Court in the case of Sonia Gandhi vs. ACIT have taken note of earlier judgment of Meenakshi Overseas (P) Ltd. and observed and held as under:

"49. As far as the question of satisfaction recorded by the Principal Commissioner, under Section 151 (I) is concerned, the legal

requirements were spelt out by the Division bench ruling in Meenakshi Overseas (P) Ltd. (supra), in the following terms:

"For the purpose of Section 151 (1) of the Act, what the Court should be satisfied about is that the Additional CIT has recorded his satisfaction "on the reasons recorded by the Assessing Officer that it is a fit case for the issue of such notice", In the present case, the Court is satisfied that by recording in his own writing the words: "Yes, I am satisfied", the mandate of Section 151 (1) of the Act as far as the approval of the Additional CIT was concerned, stood fulfilled. "

In the present case, the PCIT recorded, on reassessment proposal on the file of each assessee, that inter alia, the "lifting of veil" over the tripartite "arrangement" between AICC (i.e. INC), AJL and YI to tax the assessee under Section 56(2)(vii) (c)(ii) of the Act, the sum of Rs. 48,93, 64,896/-. The PCIT, after stating this also recorded that "I am satisfied that the AO i.e. ACIThas sufficient information in her possession which leads to reasons to believe that the assessee would have income which had escaped assessment which exceeds Rs. 1 lakh ". In view of the ruling in Meenakshi Overseas (supra), therefore, the satisfaction recorded by the PCIT was adequate and in accordance with legal requirements."

19. In the case before the Hon'ble Court the satisfaction of the approval was very specific and categorical which may not be exactly same in the present case, but if we go by the spirit of the law which has been enunciated in the earlier judgment of Hon'ble Delhi High Court in the case of Meenakshi Overseas (P) Ltd. and also reiterated in the latest judgment of Sonia Gandhi vs. ACIT, is to be analysed, then what is required to be seen is, whether the competent authority is satisfied on the 'reasons recorded' by the AO that it is a fit case for

issuance of notice u/s 148. Even if the Addl. CIT grants approval for issuance of notice u/s 148 by recording that he is satisfied on the reasons recorded by the AO then that would suffice to come to a conclusion that there is a proper application of mind on the reasons recorded by the AO. How and in which manner and how many words the approving authority should record his satisfaction is purely subjective and it has to be seen whether satisfaction is discernible from overall facts and materials before him. Thus, in our opinion the approval grant by the Addl. CIT cannot be held to be purely mechanical or without application of mind. Thus, such a contention raised by the Ld. Counsel is rejected.

20. In so far as the contention that information supplied and reasons not provided in the proforma in which satisfaction of approving authority was granted, we find that AO has duly given the reasons as asked by the assessee and before us the entire proforma has been placed by the assessee in the paper book before us. This goes to show that such proforma was given to the assessee at some point of time and therefore, this contention of the assessee is not tenable. In any case it such an irregularity cannot be fatal that reason recorded given in the prescribed proforma which will invalidate the entire proceedings u/s 147/148, because what is relevant is, whether the AO had prima facie reasons to believe based on tangible material that income chargeable to escaped assessment and reasons in writing has been communicated to the assessee. If reason to believe has been recorded by the AO in writing which has been duly approved by the higher authority, then it is sufficient to clothe the AO with jurisdiction reopen the assessment and proceed for making the assessment reassessment. Thus, this contention of the Ld. Counsel is also rejected.

21. Now coming to the non application of mind on the information report by the DDIT Investigation Wing, we find from the perusal of the 'reasons recorded' that the AO has mentioned the factum of search and seizure action which was conducted by Investigation Wing at the residence and office premises of Shri Surender Kumar Jain and Shri Virender Kumar Jain on 14.9.2010, wherein documentary evidences and material were seized and from the seized documents Investigation Wing had found that these persons were not only the entry operators but were also controlling various companies/entities through which they were providing accommodation entries. From the search a specific annexure was found wherein the name of the companies from where the assessee has received cheque/RTGS amount, name of the bank and reference of the person and amount paid has been mentioned. When specific information was provided by the investigation wing to the AO, then AO has to prima facie satisfy himself, whether the information is relevant to the assessee or not and whether it constitutes tangible material to entertain reason to believe or not. If AO has applied his mind on such material and then has reach to prima facie reason to believe that sum of Rs. 55 lacs shown as share application money is non-genuine then he gets the jurisdiction to reopen the assessment u/s 147. It is a well settled law that at the time of recording the reasons, AO must entertain reasons to believe based on tangible material and such belief should be discernable from the material brought on record. AO is not required to establish the entire factum of escapement of income. It is in the ensuing reassessment proceedings AO can examine the genuineness of the transaction by calling for assessee's explanation and carry out necessary enquiry. If AO is satisfied with the explanation and evidences, then he may drop the proceedings or accept the genuineness. In any case, if AO has not carried out proper inquiry and

has not rebutted the evidences filed by the assessee and simply makes the addition on some borrowed reasoning of any other authority or any departmental wing, then assessee can always challenge the reasoning and finding of the AO before the appellate forum. It is only where reason to believe is completely divorced from the material on record and there is no live nexus with the escapement of income, then such a reason to believe can be held to be vague and cannot give jurisdiction to the AO for reopening any assessment. Though, here in this case AO has solely relied upon the report received from the Investigation Wing, but in such a report there was a clear cut information regarding assessee and the companies who have given cheque to the assessee along with details of annexure and the amount paid which has been tabulated in the reasons recorded which are prima facie in the nature of accommodation entry, and if AO has found that such amounts are also recorded in the books of the assessee, then it does give rise to reason to believe that such credits are not genuine. AO then has all the powers to examine the credits and call for explanation of assessee and carry out detail scrutiny based on his own inquiry and verification /examination of all the evidences and explanation of the assessee. If after any inquiry some adverse material is found to controvert the assessee's explanation, then he can make the addition and if he is satisfied, then he may accept the assessee's evidence/ explanation. On the facts and circumstances of the present case and on perusal of the reasons recorded, we are of the opinion it cannot be held that AO did not have prima facie reason to belief based on report of investigation wing which is very specific entailing the details of the assessee along with annexure bank account, cheque no. etc. If there are such direct and specific reports which have been sent to the AO along with all the annexures, then it cannot be held that AO was not having any material in his possession to entertain prima facie reason to belief.

Accordingly, contentions raised by the assessee Ld. Counsel cannot be accepted and none of the judgments relied upon by the Ld. Counsel can be held to be applicable on specific facts of the case. Accordingly the validity of reopening as challenged by the assessee on all counts are dismissed.

22. Now coming to the merits of the additions, we find that assessee has received share application money from 5 companies, namely Pelicon Finance & Lease Ltd., Vogue Leasing & Finance P Ltd., Finage Lease & Finance India Ltd., Karishma Industries Ltd. and S. R. Cable P Ltd. These share application money admittedly have routed through banking channel with specific dates and amount. Though these information have been forwarded by the investigation wing based on seized annexure, but nowhere seized annexure indicate that any corresponding incriminating material was also found that money received from these companies were by way of bogus accommodation entries routed through some conduit manner, except that it was found during the course of search in the case of S.K. Jain and V.K Jain, alleged entry providers. These annexures merely states that assessee has received the money from these companies through cheques. There is no reference of corresponding or any other material that some unaccounted money of the assessee has been routed through any other entities or there is any trail of money to the entry providers Shri Surender Kumar Jain and Shri Virendra Jain or through their controlled entities. During the course of assessment proceedings, in support of the genuineness of the receiving of share application money, as admitted by both the parties, assessee has given firstly, confirmation from each share application money alongwith share application form, list of directors of the companies downloaded from MCA site, their balance sheets, ITRs and bank accounts, etc.

23. Once all these documents were submitted by the assessee, the AO carried out further inquiry by sending notices u/s 133(6) on the addresses of all the companies. Not only these notices were served upon the companies but they also duly complied with by sending their confirmations directly before the AO giving the entire details of their bank statements, balance sheets, assessment history, ITRs, board resolutions and other documents. None of these documents have been controverted by the AO, nor has he found any discrepancy in their confirmations and documents. AO has merely stated that assessee has not produced the directors of these companies. Nowhere has it been stated by the AO in his order that any summons u/s 131 was issued to these companies or to their directors whose details were provided to him, to ensure their attendance. One of the observations made by the AO is that these companies have regular debit and credit entries in their bank account and cheques have been issued to the assessee after clearance by way of transfer of funds from their associate concerns. But what are the natures of debit and credit entries have not been stated or elaborate by him. The AO has not asked or enquired from these companies about the sources of their funds received from other companies. These companies have duly disclosed their sources of funds and application of funds including investments etc. in their balance sheets filed along with the Income Tax Returns. If AO had doubted about the source of funds either in the balance sheet or the source of funds in their bank statement, then he should have specifically asked them u/s 133(6) or could have issued summons u/s 131. If assessee has received share application money, then primary onus is upon the assessee to prove the nature and source of the credit. Here the nature of credit is share application money which is duly backed by share application form and all the statutory compliances associated with issuance of share application money and

allotment of shares. The source has been proved by providing the identity and genuineness of the transaction, wherein the assessee has not only filed the confirmations and statutory details of the company and PAN but also the balance sheets, ITRs, bank statement, board resolution, but also the source from where the money has flown from the bank accounts of the companies to the account of the assessee. It is not case where certain cash has been deposited before the issuance of cheques by the companies albeit there are transfers of funds from banking channels. The onus cast upon the assessee prima facie stood fully discharged. The moment the assessee prima facie gives all the evidences regarding the identity and the sources of the funds from where the parties have given the money to the assessee, then onus shifts upon the AO to inquire the veracity of the explanation and evidences and if on his inquiry he brings some material on record to discredit any of the evidences or explanation, then assessee has to substantiate, and if assessee fails to do so, AO can draw adverse inference. To doubt the source of the source, AO has to prima facie examine the accounts of the creditors and if any doubt is entertained by him then he can inquire directly or atleast confront to the assessee for his explanation in such kind of matters of allegations of bogus entry. Here the entire case of the revenue hinges upon the fact that, since assessee's name has figured in the seized annexure found during the course of search and seizure action in the case of Shri Surender Kumar Jain and Shri Virender Kumar Jain and assessee has been found to be one of the beneficiary, therefore the entire transaction of the assessee is in the nature of bogus accommodation entry. Though such a document found in the course of search does give rise to serious suspicion but such suspicion alone cannot be the basis to reject all the documentary evidences filed in support of the share application money. AO is required to carry out specific inquiry

himself to ascertain the genuineness of the transaction. Here in this case, AO did carry out his inquiry u/s 133(6) from the subscribing companies, who corroborated the assessee's explanation and no discrepancy has been found by the AO in their documents.

24. One very important fact and distinguishing feature in this cases are that, AO has summoned the so called entry providers, Shri Surender Kumar Jain and Shri Virender Kumar Jain u/s 131, who duly appeared before the AO and in their statement recorded by the AO, and they duly deposed on oath that none of companies who have subscribed to the shares of the assessee company, in all the assessment years were not related to them and neither they have controlled the affairs of the said companies. This averment has not been controverted by the AO. Another thing they have stated that, even before the investigation wing they have not admitted being engaged in the business of providing accommodation entry. Thus, the entire substratum of alleged bogus entry through these persons which led to initiation of reassessment proceedings collapses when they have denied that they have not provided any bogus entry to the assessee company. When the witness of the AO themselves corroborate the stand of the assessee, then it completely dislodges the case of the AO sans any adverse material. Though exact statement has neither been referred in the assessment order nor in the first appellate order, however the statement which has been placed in the paper book, which for sake of ready reference is reproduced hereunder:-

Q. No. 1 Please Identify yourself?

Ans. I am Surender Kumar Jain s/o Jiwan Mal Jain. I am furnishing my ID proof.

Q. No.2 Are you assessed to Income Tax? If so, please give your Income Tax Particulars.

Ans. Yes, I am assessed to Income tax vide PAN - AAHPJ8940K with DCIT, Central Circle-23, New Delhi

Q. No.3. Please State your sources of Income?

Ans. My Source of Income is salary income of approx Rs.2 Lakhs P.M. being Director in Sunshine Capital Ltd.

Q. No. 4 Please give the details of the companies. in which you are associated in FY 2005-06.

Ans. As I remember today, I was associated with the following concerns:-

M/s Sunshine Capital Ltd; Betsy Growth Fund Ltd; Sarang Securities. Ltd.

Q. No. 5 I am showing you the information received from the Investigation Wing in which it is stated that you are an established entry operator. What do you want to say in this regard?

Ans. This observation is factually incorrect and completely baseless. In my statement recorded by the investigation Wing at the time of search & seizure operation. I have clearly stated that we are doing the business of investment and finance. Accordingly, it is clearly indicating after seeing the statement recorded by investigation Wing this question is clearly irrelevant and very far away from truth and I am again stating that I was never involved in the business of accommodation entry operation.

Q. No. 6. **My above mentioned assessee is alleged to have received share application money by way of bogus accommodation entries from M/s Fineage Leasing & Finance India Ltd., M/s Pelicon Finance & Lease Ltd., M/s Vogue Leasing & Finance Ltd, M/s Karishma Industries Ltd and M/s S R Cable P Ltd. These companies are amongst group of company controlled by you. Please answer.**

Ans. **I am not associated with any of these concerns.**

Q.No. 7 **I am showing you the name of the parties form whom my above mentioned assessee has received share application**

money. Please state whether you know any of them? If yes, how?

Ans. I have seen the list of parties from whom this assessee has shown to have receive share application money. I do not have any link with them.

Q. No. 8 In reply to Q. No.5 above you have denied to be and entry operator. Please state whether at any stage before any Authority you have admitted yourself being engaged in providing accommodation entries?

Ans. No

Q. No. 9. The information received from investigation Wing reveals that you have carried out the business of bogus accommodation entries alongwith your brother Shri Virender Kumar Jain. Please state whether the accommodation entries have been provided by him?

Ans. Sir, as stated earlier we have proves that we are not entry operators. You can record his statement also.

Q.No.10 Are you aware that if at any stage it is found that the above statement is wrong/false, you shall be liable to be prosecuted as per the provisions of the IT Act/CPC.

Ans. Yes.

Q.No.11 Please state the two address viz. as per notice sent as per proof furnished.

Both the premises are our own premises. Previously we were residing at 555 Double Story, New Rajinder Nagar and now we are residing at the other address. My Mobile No.9891709895 and 9312206963

Q.No.12 Do you want to say anything else.

Ans. No

25. Thus, if the entire premise is based on some earlier statement of Shri Surender Kumar Jain and Shri Virender Kumar before the

Investigation Wing or any finding given by them that these two persons were entry providers, but before the AO, if they have been summoned as a witness of the department and these witnesses themselves have denied that they have not provided any accommodation entry to the assessee through any of these entities of companies, then it is very difficult to draw any adverse presumption or inference against the assessee that all the share application money received by these aforesaid companies are in the nature of bogus accommodation entries. The AO has decided against his own witnesses on the ground that their statement given before him cannot be relied upon in wake of their earlier statements before the investigation wing and also Investigation Wing have found sufficient material against them to show that they were engaged in accommodation entry. The Ld. CIT (A) has observed that in the case of these two persons, before the ITAT, they have pleaded that they have provided accommodation entry, therefore, only commission income should be added, which stand of theirs has been accepted. Thus, their statement does not have any credibility. Though Mr. S.K. Jain or V.K. Jain have been found to be entry providers by the Investigation Wing or in their assessments, but what is required to be seen is, whether in the case of the assessee the documents found from them or otherwise show that assessee was a beneficiary of any accommodation entry or the companies who have subscribed to the shares of the assessee company were managed and controlled by these persons. These persons have categorically denied assessee was beneficiary or they are in any way connected to these companies. Further, nothing has been brought by the AO that any of the subscribing companies are related or controlled by these persons. Thus, the reasoning given by the CIT (A) sans any specific link found about these companies or assessee with the S.K. Jain and others, that they have actually provided the

bogus transaction to the assessee, especially when they have stated that they were providing finance assistance to the companies and assisting as professionals for the share subscription etc, cannot be accepted. Atleast something should have found linking the assessee with accommodation entry from these persons through these companies.

26. Further, nowhere has it been brought on record before us that there is any specific trail of routing of unaccounted money of the assessee which has been received in the form of share application money nor these alleged persons have anywhere admitted that assessee was any kind of beneficiary of accommodation entry. Under these facts and circumstances, it would be very difficult to discard by the evidences collected by the AO as well as furnished by the assessee during the course of the assessment proceedings conducted by him. Extraneous information or report from the Investigation wing can form basis for reopening, but when AO is making the assessment then he must scrutinise himself all the documents and carry out his own inquiry. If he makes his own inquiry and nothing adverse has been found, then he cannot make his assessment on borrowed reasoning and rely upon the report of the investigation wing. Thus, on these peculiar facts and circumstances of the case, and in absence of any further inquiry by the AO to dislodge the evidence furnished by the assessee as well as gathered by him u/s 133(6), it would be very difficult to hold that the share application money received by the assessee is either non-genuine or bogus so as to sustain addition under the deeming provision of section 68. Accordingly, same are directed to be deleted.

27. In so far as reliance placed by the Ld. DR on various judgments specifically in the case of PCIT vs. NRA Iron & Steel (P) Ltd. (supra)

and decision of Hon'ble Delhi High Court in the case of CIT vs. Nova Promoters; and lastly, decision of CIT vs. N.R. Portfolio (P) Ltd. would not be applicable on the peculiar facts and circumstances of the present case. The deeming fiction u/s 68 is purely based on facts and explanations submitted by the assessee and if all the evidences duly support the nature and source of the credits alongwith explanation which has not been found to be incorrect or lack any substance, then without any adverse material brought on record to prove that evidences furnished by the assessee then deeming fiction cannot be invoked. The burden of the AO in such cases can only be discharged when he is able to bring some material on record to disprove the explanation and the evidences of the assessee and then he can tax such credit as deemed income. One of the reasons cited by the DR after referring to these judgments was that these companies were showing very meagre income or loss. In our opinion what is required to be seen is, whether these companies has sufficient source of funds duly disclosed in their balance sheet filed along with the income tax return which has been assessed and not disturbed and if the source of funds are disclosed in the books are sufficient to cover up the investments made by them, then whether they have shown lesser income will not lead to inference that they do not have creditworthiness or capacity to make investment. Here in the balance sheets of all the companies there are huge funds available from where they have made investments. It is only by way of inquiry if it is found that these companies are only providing any accommodation entry then a doubt can be created about the creditworthiness of these companies. But without any such prima facie inquiry or material on record to prove that availability of huge investments in their balance sheet are duly supported by source of funds, then it cannot be held that there is a lack of creditworthiness. In view of our detailed finding

given above, we hold that the reasoning given by the AO for sustaining the addition cannot be sustained and accordingly on merits the appeal of the assessee is partly allowed.

28. Both the parties have relied upon catena of decisions in their favour, of jurisdictional High Court and other decisions. However, we are not referring to all the judgments, because these judgments are based on facts and issues involved therein and none of the ratio is squarely applicable on the peculiar facts of the case as discussed above. The ratio and principles especially in the cases of section 68 are mostly based on facts and circumstances and the degree of onus discharged by the assessee and the revenue. That is why, from the judgments as relied upon the parties before us, we find that on the issue of share application money and premium on such shares there are catena of judgments which are in favour of the assessee and some are in favour of the revenue. Thus, in such matters what is required to be seen is the onus which has been discharged by the assessee and the material available with the AO to doubt the explanation and the evidences filed by the assessee and also inquiry conducted by the AO to rebut or controvert the explanation of the assessee. Accordingly, we are not dealing with those judgments because, Ld. Counsel has relied upon as many as 65 judgments and it would be very difficult and cumbersome to deal with each and every judgments.

ITA NO. 584/DEL/2018
ASSTT. YEAR 2006-07

29. In appeal pertains to penalty proceedings u/s 271(1)© against the same quantum of addition of Rs. 55 lacs received by way of share application money. The AO has levied penalty of Rs. 18,51,700/- on account of addition of Rs. 55 lacs and since we have already deleted

the quantum on merits, therefore, levy of penalty u/s 271(1)© has become infructuous. Thus, same is deleted.

30. In the result appeal of the assessee is partly allowed.

ITA NO. 6016/DEL/2018
ASSTT. YEAR 2007-08

31. The aforesaid appeal pertains to assessment year 2007-08, wherein the assessee has challenged the validity of provisions u/s 147 on similar grounds as taken in Asstt. Year 2006-07 and also addition of Rs. 3,34,31,000/- made u/s 68 on account of share application money and further addition of Rs. 1,67,155/- being 0.5% of alleged accommodation entries. In this case also exactly similar reasons have been recorded except for this year, assessee has received aggregate sum of share application money of Rs. 3,34,31,000/- from 10 parties as per following details appearing in the assessment order.

Bank Book Date	From	To (Beneficiary)	Bank	Cheque/RTGS	Cheme Date	Amount	Through	Annexure No.	Pg- No
18-04-06	Timely Fincap P Ltd	R N Khemka Enterprises P Ltd.	IB	CH. No. 295687	20-04-06	5,00,000	Bhagaria Loan	A-55	27
20-04-06	Graph Financial Services P Ltd.	R N Khemka Enterprises P Ltd.	UTI	CH. No. 024520	21-04-06	15,00,000	Rhooaria Loan	A-55	32
20-04-06	Graph Financial Services P Ltd.	R N Khemka Enterprises P Ltd.	UTI	CH. No. 024521	21-04-06	13,00,000	Rhooaria Loan	A-55	32
20-04-06	Graph Financial Services P Ltd.	R N Khemka Enterprises P Ltd.	UTI	CH. No. 024522	21-04-06	10,00,000	Bhagaria Loan	A-55	32
06/05/2006	Hillridge InvestmentsLtd.	R N Khemka Enterprises P Ltd.	KOTAK	P No. 000439	05-06-06	10,00,000	Satish Goel	A-58	6
06/05/2006	SR Cable P Ltd. ^	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000106	05-06-06	15,00,000	Satish Goel	A-58	6
06/12/2006	Sunny Cast & Forge Ltd.	R N Khemka Enterprises P Ltd.	UTI	CH. No. 066925	13-06-06	15,00,000	Satish Goel	A-58	18
06/12/2006	Singhal Securities PJJteK	R N Khemka Enterprises P Ltd.	UTI	CH. No. 067121	06/10/2006	10,00,000	Satish Goel	A-58	18
20-06-06	Pitambra SecuritiesjUtd.	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000081	20-06-06	10,00,000	Satish Goel	A-58	29
20-06-06	Brite Indu Resourcesjytd.	R N Khemka Enterprises P Ltd.	KOTAK	CH. No. 000226	20-06-06	15,00,000	Satish & Bhageriy	A-58	29
20-06-06	Finage Lease & Finance India Ltd.	R N Khemka Enterprises P Ltd.	UTI	CH. No. 006236	27-06-06	17,00,000	Satish & Bhageriy	A-58	34
26/06/2006	Vogue Leasing 8t Finance P Ltd.	R N Khemka Enterprises P Ltd.	UTI	CH. No. 046853	27-06-06	18,00,000	Satish & Bhageriy	A-58	34
08/11/2006	Sunny Cast & Forge Ltd	R N Khemka Enterprises P Ltd.	UTI	CH. No. 066969	09/11/2006	9,00,000	Satish Goel	A-63	3
08/11/2006	Sunny Cast & Forge Ltd	R N Khemka Enterprises P Ltd.	UTI	CH. No. 066970	09/11/2006	6,00,000	Satish Goel	A-63	3
08/11/2006	Singhal Securities P Ltd.	R N Khemka Enterprises P Ltd.	UTI	CH. No. 067153	14/11/2006	10,00,000	Satish Goel	A-63	3

08/11/2006	Singhal Securities P Ltd.	R N Khemka Enterprises P Ltd.	UTI	CH. No. 067154	14/11/2006	10,00,000	Satish Goel	A-63	3
	Parshudh Finance Cpf P Ltd.		UT»	CH. No. 047194	14/11/2006	10,00,000	Satish Goel	A-63	5
13/11/2006		R N Khemka Enterprises P Ltd.							
	Hilridge Investments Ltd.		UTI	CH. No. 080418	18/11/2006	30,00,000	Bhagaria	A-63	9
18/11/2006		R N Khemka Enterprises P Ltd.							
	Hilridge Investments Ltd.		UTI	CH. No. 080433	27/11/2006	63,00,000	Bhagaria Loan	A-63	13
25/11/2006		R N Khemka Enterprises P Ltd.							
	Parshudh Finance Co. P Ltd.	R N Khemka Enterprises P Ltd.	HDFC	CH. No. 264486		10,00,000	Satish Goel Via Bhageria	A-63	25
09/12/2006					09/12/2006				
	Hilridge Investments Ltd.	R N Khemka Enterprises P Ltd.	HDFC	CUT No. 273420		10,00,000	Satish Goel Via Bhageria	A-63	25
09/12/2006					09/12/2006				
26/12/2006	Hilridge Investments Ltd.	R N Khemka Enterprises P Ltd.	UTI	CH. No. 080475	26/12/2006	30,00,000	vimal Bhagaria	A-63	38

2. Here in this year also, the assessee has filed various documentary evidences in the form of share application money, copy of bank statement of the companies subscribing the shares of the assessee company, copy of income tax return and audited balance sheets and other catena of documents similar to what was given in the appeal of the earlier year. This year also, AO had issued notices u/s 133(6) to these companies, in response to which confirmations and documents have been filed by them. The AO precisely on same ground that Directors have not been produced and on the same reasoning has confirmed the said addition. The observation and the finding of the Ld. CIT (A) are also exactly the same.

33. In so far as issue of validity of reopening u/s 147 is concerned, similar arguments and reasoning have been placed by the Ld. Counsel and also by the Ld. DR. therefore our finding given in the aforesaid appeal will apply mutatis mutandis as the facts are same. Thus, in view of our above findings the legal grounds raised by the assessee are treated as dismissed.

34. Again in so far as the merits of the addition are concerned the facts and circumstances as discussed in the impugned order remain the same, except for in this year there more companies and similar set of documentary evidences has been filed by the assessee. Hence our

aforesaid finding will also apply on the present year also as assessee has not only filed all the documentary evidences but also these companies have also directly responded to the AO u/s 133(6) and without making any further inquiry or bringing any material on record, has made the addition exactly on same ground and reasoning and has been confirmed by the Ld. CIT (A) precisely in same manner, which as per our detailed reasoning given above is not sustainable for various reasons. Further, the addition on account of commission on such share application money will also get deleted as it was based on the premise that assessee must have paid commission out of undisclosed sources. Accordingly, the additions made by the AO under section 68 are directed to be deleted. This appeal of the assessee is partly allowed.

**ITA NO. 6017 DEL 2018
ASSTT. YEAR 2007-08**

35. The aforesaid appeal has been filed by the assessee M/s. RMP Holding (P) Ltd. wherein the assessee has raised similar grounds viz. challenging the validity of reopening u/s 147 and addition of Rs. 1,66,65,000/- u/s 68 on account of share application money and addition of Rs. 83,325/- being 0.5% of the alleged accommodation entry. Here in this case also exactly similar reasons have been recorded, wherein following details of the amount received by the assessee from various companies have been mentioned.

<i>Bank Book Date</i>	<i>From</i>	<i>To (Seneffjcsary)</i>	<i>Bank</i>	<i>Cheque/RTGS</i>	<i>Oveffjuse</i>	<i>Tihiotawg fe</i>	<i>m.</i>	<i>Pg. no ;</i>
09/05/2006	Karishma Industries Ltd.	RMP Holdings P Ltd.	Kotak V	Ch. No. 000457	11/11/2006	15,00,000	Satesh loan	12
09/05/2006	World Link Telecom Ltd.	RMP Holdings P Ltd.	Kotak	Ch. No. 000097	10/05/2006	15,00,000	Satesh loan	12

07/08/2006	Hillridge Investments Ltd.	RMP Holdings (PLtd.	UTI	Ch. No. 047280	07/08/2010	10,00,000	Satish R'langriya	tysn	8
17/08/2006	SR Cable P Ltd	RMP Holdings P Ltd.	UTI	Ch. No. 46048	15/08/2006	20,00,000	Satish Goyal		20
15/09/2006	SR Cable P Ltd	RMP Holdings P Ltd.	UTI	Ch. No. 046060	15/09/2006	&W.CWO		A-61	147
26/10/2006	Vogue Leasing & Finance P Ltd.	RMP Holdings PLtd.	UTI	Ch. No. 046886	27/10/2006	10,00,000	Satish Goyal	MI	22
08/11/2006	Sunny Cast & Forge Ltd.	RMP Holdings P Ltd.	UTI	Ch. No. 066968	09/11/2006	10,00,000	Satish Goyal	MS	3
18/11/2006	Hillridge Investments Ltd.	RMP Holdings P Ltd.	UTI	Ch. No. 008796	18/11/2006	10,00,000	Bhagariya	MS	3
10/01/2007	SR Cable P Ltd	RMP Holdings P Ltd.	UTI	Ch. No. 045914	11/01/2007	5,00,000	Vimal Bhagariya	A&	8
10/01/2007	Pelicon Finance & Lease Ltd.	RMP Holdings P Ltd.	UTI	Ch. No. 083406	11/01/2007	25,00,000	Vimal Bhagariya	A&	8
19/01/2007	Sunny Cast & Forge Ltd.	RMP Holdings P Ltd.	UTI	Ch. No. 066991	19/01/2007	10,00,000	Vimal Bhagariya	A&	15
27/02/2007	Shalini Holdings Ltd,	RMP Holdings P Ltd.	UTI	Ch. No. 080659	27/02/2007	40,50,000	Vimal Bhagariya Loan		50

36. Here in this appeal also, the reasoning and finding of the AO are exactly the same and also the finding of the Ld. CIT (A). Thus, in view of our finding given in the aforesaid appeal, we hold that, firstly, the reopening u/s 147 is valid and all the conditions raised by the assessee before us on various grounds are dismissed; and secondly, the additions made on merits are directed to be deleted in view of the finding given in the earlier years, because in this year also similar facts and reasons are permeating. Accordingly, appeal of the assessee is partly allowed.

**ITA NO. 585 DEL 2018
ASSTT. YEAR 2008-09**

37. In this year assessee has challenged addition of Rs. 1,07,00,000/- on account of share application money made u/s 68 and addition of Rs. 1,07,000/- on account of alleged commission income. In this year the assessee has taken share application money from the following company :-

Bank Book	From	To (Beneficiary)	Bank	Cheque/ RTGS	Cheque Date	Amount	Through	Cheque No.	Pg. No.
22-01-08	FIN ACE LEASE & FINANCE INDIA LTD	R N KHEMKA ENTERPRISES P LTD	BOI	CH. NO. 107550	22-01-08	40,00,000	BHAGRI A JI (LOAN)	A-89	26
07-02-08	SINGHAL SECURITIES P LTD.	R N KHEMKA ENTERPRISES	UTI	CH. NO. 102584	07-02-08	10,00,000	VIMAL BHAGA	A-94	9
12-02-08	FIN AGE LEASE & FINANCE INDIA LTD.	R N KHEMKA ENTERPRISES	AXIS	CH. NO. 102359	12-02-08	10,00,000	VIMAL BHAGA	A-94	15
12-02-08	VIRGIN CAPITAL SERVICES P LTD	R N KHEMKA ENTERPRISES	AXIS	CH. NO. 094550	12-02-08	20,00,000	VIMAL s- BHAGA RIYA	A-94	31
08-03-08	ZENITH AUTOMOTIVE P LTD	R N KHEMKA ENTERPRISES	AXIS	CH. NO. 098120	08-03-08	9,00,000	BHAGA RIA	A-95	11
08-03-08	VICTORY SOFTWARE P LTD	R N KHEMKA ENTERPRISES	AXIS	CH. NO. 094439	08-03-08	8,00,000	BHAGA RIA	A-95	11
12.02.08	Vergin Capital Services Pvt. Ltd.	RN KHEMKA ENTERPRISES	AXIS	Ch. No. 102420	12.02.08	10,00,000	VIMAL BHAGRI	A-94	15

38. Here again in the impugned assessment order by and large facts remain the same, as the Ld. AO without rebutting any of the evidences filed and also replies and evidences received from the parties in response to notice u/s 133(6) has proceeded to make addition simply based on information of the investigation wing. No further inquiry has been conducted by the AO. The alleged accommodation entry especially when the alleged entry operators, Shri Surender Kumar Jain and Shri Virender Kumar Jain have denied providing any kind of accommodation entry to the assessee. The AO has mainly referred to quantum proceedings to Shri Surender Kumar Jain and Shri Virender Kumar Jain to conclude that they were entry operators and based on this he has drawn a presumption that assessee also must have taken the accommodation entry from these two persons. Nowhere, he has verified the bank statement of the companies subscribing to the share nor examined the veracity of the source of the funds, specifically when

they have the huge and sufficient funds available in the balance sheet. Accordingly, our finding given in all the earlier appeals will apply mutatis mutandis and accordingly the addition made by the AO is directed to be deleted. In so far as validity of reopening u/s 147 is concerned the same is decided against the assessee in view of the reasoning given in the earlier years. Accordingly appeal of the assessee is partly allowed.

**ITA NO. 1029 DEL 2019
ASSTT. YEAR 2008-09**

39. Now we will come to ITA No. 1029/Del/2019, which is in relation to the penalty proceedings u/s 271(1)© against the same quantum of addition of Rs. 1,07,00,000/- received by way of share application money. The AO has levied penalty of Rs. 10,07,000/- on account of addition of Rs.1,07,00,000/- and since we have already deleted the quantum on merits therefore levy of penalty u/s 271(1)© has become infructuous therefore same is deleted.

40. In the result appeal of the assessee is partly allowed.

**ITA NO. 78/DEL/2019 &
ITA NO.79/DEL/2019 for the
ASSTT. YEARS 2010-11**

41. Now we come to the ITA No. 78 & 79/DEL/2019 in the case of R.N. Khemka Enterprises (P) Ltd. & RMP Holding (P) Ltd. Here in this case also the reopening u/s 147 was based on information from the investigation wing that assessee has taken share application money from various companies. The list of which was found from the search of Shri Surender Kumar Jain and Shri Virender Kumar Jain during the course of search and seizure action has been reproduced in the reasons recorded. In the impugned assessment orders, AO has

incorporated various seized annexure found during the course of search and has categorically stated that there is a mention of the assessee having taken cheques from various parties/concerns aggregating to Rs. 8,15,00,000/- in the case of R N Khemka Enterprises; and Rs. 5,10,00,000/- in the case of RMP Holding Pvt. Ltd. During the course of assessment proceedings assessee has furnished all the relevant details as filed in the earlier years, i.e., confirmations, copy of balance sheet, auditor's report, profit and loss account, income tax returns, bank statement, board resolution etc. Ld. AO on the perusal of these documents has noted following facts, which were not there in the earlier years as discussed above:-

“These documents were examined and it has been noticed that none of the documents e.g. balance-sheet. Auditors report etc filed in respect of above said parties bear the contact number(s) and rubber stamp of the company issuing the name & stamps of its directors who signed these documents which proves that these documents are nothing but an attempt made by the assessee to divert the facts of the case. Further these copies show similar types of signatures appended in it and names of directors are not mentioned in any of these document and in view of these facts, the genuineness of transactions remained unverifiable.”

42. Not only that, the AO has also issued notices u/s 133(6) to all the companies from whom share capital has been received by the assessee in order to verify the creditworthiness and genuineness of the transactions. However, as stated by the AO, no replies have been received or furnished by these companies in response to the notice u/s 133(6) and in most of the cases these letters have been received back unserved with the postal remark “no such company /left”. The relevant observation of the AO in this regard is reproduced as under:-

“Notices u/s 133(6) of IT Act were also issued to all the entities / companies from whom share capital is shown to have received requiring them to furnish the following documents to verify the creditworthiness, genuineness of transactions and identification of the entity, which is reproduced hereunder. The assessee was also asked to furnish the same in respect of all above referred parties.

*“ _____,
_____ ”*

D/Sirs,

Subject: Information required U/S 133(6) of IT Act in case of M/s RN Khemka Enterprises (P) Ltd. for A.Y. 2010-11 -reg

In connection with the time barring assessment proceedings of the above captioned assessee for A Y 2010-11, you are required to furnish the following details :-

- a) Nature of transactions with above mentioned assessee during AY 2010-11:*
- b) Copies of all bank statements for A Y2010-11 obtained from bank:*
- c) Provide copy of ledger account and confirmation with documentary evidence;*
- d) Details of share application money/share premium paid to above captioned assessee;*
- e) Furnish copies of your ITR, bank statements, audited balance-sheet, P & L account in your case so as to prove the identity, creditworthiness and genuineness.*
- f) Nature of business activities undertaken during A Y2010-11.*

The above information should reach the undersigned on or before 18.09.2017 failing which proceedings may be initiated against

you u/s 272A (2) of IT Act. Please note that this is time barring matter."

In response to the notices u/s 133(6) issued no replies have been furnished by the said parties till date. In most of the cases, these letters were received back unserved with postal remarks e.g. "no such company / left". as such the existence of these parties could not be proved either by these parties or by the assessee."

43. Since, none of the parties ever responded, therefore, he inferred that the genuineness and creditworthiness could not be proved. The said observation and the finding of the AO has also been confirmed by the Ld. CIT(A) on the same reasoning as given in the earlier years. Before us, Ld. Counsel submitted that the AO at no stage had confronted to the assessee that notices u/s 133(6) have been remained un-complied with and if the same would have been confronted, then assessee would have provided the correct addresses or further details or information regarding these companies. Simply because notices could not be complied with that does not mean that all the documents furnished by the assessee in support of identity, genuineness of the transaction and creditworthiness are to be discarded. He again referred and relied upon series of judgments that if assessee has discharged the onus found then no addition u/s 68 can be made without there being any adverse material on this regard.

44 On the other hand Ld. DR submitted that the very fact that these parties have not responded to the notices u/s 133(6) and the list of these companies giving share application money to the assessee has been found to be in the nature of accommodation entry arranged by Shri Surender Kumar Jain group, then the only inference which can be drawn is that the entire credit is not only bogus but also in the

nature of accommodation entries which deserved to be confirmed and in support he relied upon the same judgment as has been relied upon by him in the appeal for the assessment year 2006-07.

45. After considering the relevant finding given in the impugned orders as well as submissions made by the parties, we find that there is a slight change in the facts and circumstances in the present year as compared to the earlier years for the reason that in all the earlier years, all the subscribing companies have applied for share application money have duly responded to the AO in response to notice u/s 133(6) and had furnished all the documentary evidences as required by the AO, like copies of their bank accounts, copy of ledger account, confirmations along with documentary evidences, details of share application money/share premium paid, copy of income tax return, bank statement, audited balance sheet profit and loss account etc. Thereafter, AO without carrying any further inquiry or examining the details has simply made the addition on the basis of report of the investigation wing. Here in this case when the parties have not responded and have not furnished the relevant evidences to the AO in response to notice u/s 133(6), then it cannot be held that the facts and circumstances of the earlier years are the same. Though AO should have confronted these facts of non-compliance to the assessee that these parties have not responded or the notices could not be served, then it was the duty of the assessee to furnish all the relevant details of the companies, so that proper inquiry could have been done. Thus, for these two appeals, we are of the opinion that the entire issue of receiving of share application money should be remanded back to the file of the AO to examine the issue afresh, after seeking all the details from the assessee regarding the addresses and whereabouts of these companies and their creditworthiness so that AO can directly inquire from these parties. Assessee shall cooperate with the AO in

providing all the details and evidences in support of the facts of the transactions and also the creditworthiness of the parties. AO shall provide due and effective opportunity of hearing to the assessee and shall decide the issue afresh and in accordance with law.

46. Appeals for the assessment years 2006-07, 2007-08 & 2008-09 are partly allowed and appeals for the assessment year 2010-11 is allowed for statistical purposes.

Order Pronounced in the open court on 9th August, 2019.

sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 09/08/2019

Veena

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi