IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

ITA No:- 903/Del/2017
(Assessment Year: 2006-07)

M/s Ram Dev Rice Pvt. Ltd., Karnal	Vs.	ACIT, Circle, Karnal.
PAN No: AACCR7125A		
APPELLANT		**RESPONDENT**

Assessee by : None
Revenue by : Shri Surender Pal, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, AM

[A] This appeal has been filed by the assessee against the impugned appellate order dated 17.11.2016 passed by Learned Commissioner of Income Tax (Appeals), Karnal, [in short, "Ld.CIT(A)"] pertaining to Assessment Year 2006-07. The Assessee has raised following grounds of appeal:-

> *"1. On the facts and in the circumstances of the case as well as in the law the re-opening of Assessment is bad in law, ab initio void and without jurisdiction.*
>
> *2. On the facts and circumstances of the case as well as in the law the Ld. Commissioner of Income Tax Appeals grossly erred in upholding addition of Rs. 90,00,000/- made U/s 68 of the Income Tax Act, 1961.*

3. The appellant crave leave to add/ delete/ alter or modify any or all grounds of appeal.

These action of Ld. Income Tax Authorities below being arbitrary, unjust and invalid in the law liable to the quashed and it is prayed to Your honor that they please be quashed and / or any other relief just deem fit and proper please be directed.

Appellant pray accordingly."

[B] Vide Assessment Order dated 31.03.2014 passed under Section 143(3) / 147 of the Income Tax Act, 1961 (in short "the Act"). The relevant portion of the Assessment Order dated 31.03.2014 is reproduced as under:-

The assessee has filed its return of income on 19.11.2006 declaring income of Rs.52,59,189/-. Assessment in this case was completed u/s 143(3) on 27.10.2008 at income of Rs.66,17,980/- which was further revised at Rs.66,23,048/- vide order u/s 154 passed on 27.10.2011. Later on, on the basis of information received from Director of Income Tax (Inv.)-II, New Delhi, notice u/s 148 was issued on 25.03.2013 to the assessee after recording reasons as reproduced below:-

"REASONS FOR ISSUING NOTICE U/S 148 OF THE I.T. ACT, 1961

M/s Ramdev Rice Pvt. Ltd., Vill. Daha, A.Y. 2006-07

Return in this case was filed on 21.11.2006 declaring income of Rs.52,59,189/- and assessment u/s 143(3) was completed on 27.10.2008 at income of Rs.66,17,980/-. Now, an information has been received from the office of Director of Income Tax (Inv.)-II, New Delhi that assessee company has obtained accommodation entries of amount totaling to Rs.90,00,000/- during the F.Y. 2005-06 relevant to A.Y. 2006-07 in the form

of bogus share capital/premium/loan from Sh. Surender Kumar Jain Group (entry operator) where search/survey action u/s 132/133A had been conducted on 14.09.2010.

Therefore, I have reason to believe in terms of section 147 of the I.T. Act that income to the tune of Rs.90,00,000/- has escaped assessment. Issue notices u/s 148 of the I.T.Act for the A.Y. 2006-07.

Sd/-
Dated: 22.03.2013 ***(Gireeh Kumar Kohli)***
Asstt. Commissioner of Income-tax
Circle, Karnal."

2. In reply to this notice, assessee vide letter dated 03.04.2013stated that return filed on 29.11.2006 may be treated as return filed in response to notice u/s 148. Copy of reasons recorded for issue of notice u/s 148 was also supplied to the assessee as requested. Vide letter dated 21.01.2014, assessee objected to re-opening of assessment by way of issue of notice u/s 148 which was disposed off vide this office letter dated 07.03.2014 as reproduced below:-

"No:ACIT/KNL/13-14/

Office of the
Asstt.Commissioner of Income Tax,
Circle, Karnal.
Dated : 07.03.2014

To

M/s Ram Dev Rice Private Limited,
VPO – Daha, Karnal

Sir,

Sub:- ***Notice u/s 148 of the I.T. Act dated 25.03.2013- Regarding-***

***

Please refer to your letter dated 21.01.2014 on the captioned subject vide which you have objected to be issue of notice u/s 148 stating that no enquiry has been made independently and the notice has been issued merely at behest of the investigation wing and that the entire exercise is based upon pure guess and suspicion. You have further stated that no action can be initiated u/s 148 merely on change of opinion. It has also been stated that assessment was originally completed u/s 143(3) after due scrutiny and citing the judgement of Delhi High Court in the case of CIT vs Kelvinator India Ltd (2002) 256 ITR 1, it is impressed

upon that section 147 of the Act does not postulate conferment of power upon the Assessing officer to initiate reassessment proceedings upon a mere change of opinion. It has also been stated by you that share capital of Rs. 90,00,000/-was received during the assessment year under consideration from Private limited Companies as per detail given in the letter dated 21.01.2014 and that you have no association or transaction with Sh. Surinder Kumar Jain Group case.

2. You have contended that share capital under consideration has already been disclosed in the return and that action has been initiated upon suspicion and there is no material with the Department for formation of the necessary belief. As per proviso (i) to Sec147, where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of fur years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub- section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year. Explanation (1) to section 147 reads as under:-

"Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso."

In your case, no further query in respect of share capital introduced during the year was raised during the assessment proceedings, neither any detail is placed on file. In the return, only amount of share premium is mentioned. Notice u/s 148 has been issued on the basis of new tangible material received from the Departmental's sources, which is specific in nature and reliable in character. In the case of Pal Jain vs. ITO [2004] 267 ITR 540 (P&H), Punjab & Haryana High Court following Phool Chand Bajrang Lal's [203 ITR 456 (SC)] has held that mere disclosure of a transaction does not offer immunity from reassessment, where a transaction on further information is found to be not genuine and that the longer time limit of more than four years should have application in such cases.

Ratio of judgment of apex Court in the case of Phool Chand Bajrang Lal's case is squarely applicable in your case. Relevant portion of the said judgment is reproduced below:-

"From the plain phraseology of section 147, it appears that two conditions precedent which are required to be satisfied before an ITO can acquire jurisdiction to proceed under clause (a) of section 147, read with sections 148 and 149, beyond the period of four years but within a period of eight years, from the end of the relevant year, are: (a) that the ITO must have reason to believe that the income, profits or gains chargeable to tax had either been under assessed or escaped assessment, and (b) that the ITO must have reason to believe that such

escapement or under-assessment was occasioned by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Both these conditions must co-exist in order to confer jurisdiction on the ITO. The ITO is obliged before initiating proceedings under section 148 to record the reasons for the formation of his belief to reopen the assessment.

In the instant case the ITO did not seek to draw any fresh inference which could have been raised at the time of original assessment on the basis of the material placed before him by the assessee relating to the loan from the Calcutta company and which he failed to draw at that time.

Acquiring fresh information, specific in nature and reliable in character, relating to the concluded assessment which goes to expose the falsity of the statement made by the assessee at the time of original assessment is different from drawing afresh inference from the same facts and material which was available with the ITO at the time of original assessment proceedings. The two situations are distinct and different. Thus, where the transaction itself on the basis of subsequent information, is found to be a bogus transaction, the mere disclosure of that transaction at the time of

original assessment proceedings, cannot be said to be a disclosure of the 'true' and full facts in the case and the ITO would have the jurisdiction to reopen the concluded assessment in such a case. It is correct that the assessing authority could have deferred tie completion of the original assessment proceedings for further enquiry and investigation into the genuineness to the loan transaction but his failure to do so and complete the original assessment proceedings would, not take away his jurisdiction to act under section 147, on receipt of the information subsequently.

In the instant case, the subsequent information on the basis of which the ITO acquired reasons to believe that income chargeable to tax had escaped assessment on account of the omission of the assessee to make a full and true disclosure of the primary facts was relevant, reliable and specific. It was not at all vague or non-specific.

From a combined review of the judgments of the apex Court, it follows that an ITO acquires jurisdiction to reopen assessment under section 147(a) read with section 148 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income-tax has escaped assessment. He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the

untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the ITO, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and nonspecific information. To that limited extent, the Court may look into the conclusion arrived at by the ITO and examine whether there was any material available on the record from which the requisite belief could be formed by the ITO and further whether that material had any rational connection or a live link for the formation of the requisite belief It would be immaterial whether the ITO at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if on the basis of subsequent information, the ITO arrives at a conclusion, after satisfying the twin conditions prescribed in section 147(a) that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and, therefore, income chargeable to tax had escaped assessment. The argument that the question regarding truthfulness or falsehood of the transactions reflected in the return can only be examined during the original assessment proceedings and not at any stage subsequent thereto is not acceptable. The argument is too broad and general in nature and does violence to the plain phraseology of section 147(a) and 148 and is against the settled law. One has to took to the purpose and intent of the provisions. One of the purposes of section 147 appears to be to ensure that a party cannot get away by willfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say 'you accepted my lie, now your hands are tied and you can do nothing'. It would, be traversty of Justice to allow the assessee that latitude."

Twin conditions set out by the apex Court as above are met in your case.

In the case of AGR Investments Ltd. vs. Addl. CIT & others (Del.) 303 ITR 146, Hon'ble Delhi High Court held as under:-

"The word 'reason' in the phrase 'reason to believe' would mean cause or justification. If the Assessing Officer has a cause or justification to think or to suppose that income has escaped assessment, he can be said to have a reason to believe that such income had escaped assessment. The words 'reason to believe' cannot mean that the 'Assessing Officer' should have finally ascertained the facts by legal evidence. They only mean that he forms a belief from the examination he makes and if he likes, from any information he receives. If he discovers or finds or satisfies himself that the taxable income has escaped assessment, it would amount to saying that he has reason to believe that such an income has escaped assessment. The justification for his belief is not to be judged from the standards of proof required for coming to a final decision. A belief, though justified for the purpose of initiation of the proceedings under section 147, may ultimately stand altered after the hearing and while reaching the final conclusion on the basis of the intervening enquiry. At the stage where he finds a cause or justification to believe that such

an income has escaped assessment, the Assessing Officer is not required to base his belief on any final adjudication of the matter. [Para 9]
In the instant case, the assessee submitted with immense vehemence that it had entered into correspondence to have the documents but the Assessing Officer treated them as objections and made a communication. However, on a scrutiny of the order, it was perceivable that the authority had passed the order dealing with the objections in a very careful and studied manner. He had taken note of the fact that transactions involving Rs. 27 lakhs mentioned in the report of the Directorate of Investigation constituted fresh information in respect of the assessee as a beneficiary of bogus accommodation entries provided to it and represented the undisclosed income. The

Assessing Officer had referred to the subsequent information and adverted to the concept of true and full disclosure of facts. There was specific information received from the office of the Directorate of Investigation as regards the transactions entered into by the assessee-company with a number of concerns which had made accommodation entries and they were not genuine transactions. It was neither a change of opinion nor did it convey a particular interpretation of a specific provision which was done in a particular manner in the original assessment and was sought to be done in a different manner in the proceeding under section 147. The reason to believe had been appropriately understood by the Assessing Officer and there was material on the basis of which the notice was issued. The Court, in exercise of jurisdiction under article 226 of the Constitution of India pertaining to sufficiency of reasons for formation of the belief, cannot interfere. The same is not to be judged at that stage. [Para 22]
In the instant case, the assessee was desirous of an adjudication by the writ Court with regard to the merits of the controversy. In fact, it required the Court to adjudge the sufficiency of the material and to make a roving enquiry that the initiation of proceedings under sections 147 and 148 was not tenable. The same does not come within the ambit and sweep of exercise of power under article 226 of the Constitution of India. It was open to the assessee to participate in the reassessment proceedings and to put forth its stand and stance in details to satisfy the Assessing Officer that there was no escapement of taxable income. [Para 23]

Consequently, the writ petition was liable to be dismissed. [Para 24]"

Reliance is also placed on the judgments of apex Court delivered in the case of Parashuram Pottery Works Co. Ltd. vs. ITO [1977] 106 ITR 1 (SC) and Calcutta Discount Co. Ltd. vs. ITO [1961] 41 ITR 191 (SC) that the words 'omission or failure to disclose fully and truly all material facts necessary for his assessment for that year' postulates a duty on the assessee to disclose fully and truly all material facts necessary for his assessment.

3. Further you have contended that the Assessing Officer initiated re-assessment proceedings upon a mere change of opinion, citing the judgment of Delhi High Court in the case of CIT vs. Kelvinator India Ltd. (2002) 256 ITR-1. In this regard, it is stated that details of share premium received during the year under consideration were not disclosed in the return. Further during the course of assessment proceedings, no such details were called for or placed on

record. This issue was not discussed at all while framing original assessment u/s 143(3). Thus, question of change of opinion does not arise, since no opinion was formed earlier on this issue.

As such, recourse to section 147 read with explanation (1) of this section was rightly taken in your case after acquiring fresh information based on new tangible material, specific in nature and reliable in character, relating to the concluded assessment which goes to expose the falsity of the statement made at the time of original assessment. Re-assessment proceedings based on new information which has come from investigation wing are valid because a new opinion has formed based on tangible material obtained from investigation wing. Thus, this is not change of opinion which was formed as per material on record at the time of original assessment proceedings.

4. As regard your request for allowing inspection of the relevant records and to provide certified copies of the relevant documents on the basis of which reasons for issue of notice u/s 148 are recorded, it is stated that during the course of assessment proceedings, you will be confronted with all the documents/ information available in this office.

In terms with the above discussion, objections filed by you against issue of notice u/s 148 are disposed off. In order to complete the time-barring assessment for the A.Y. 2006-07 in your case, notice u/s 142(1) & 143(2) for 18.03.2014 are enclosed herewith for compliance.

Sd/-
(Himanshu Roy)
Asstt.Commissioner of Income Tax,
Circle, Karnal."

3. Notices u/s 143(2) & 142(1) were issued and hearing took place on various dates. Information called for from time to time was furnished. Vide letter dated 27.03.2014, assessee was asked to show cause why not Rs. 90 Lacs be added to the returned income u/s 68 as cash credit in the A.Y. 2006-07 as the explanation offered about the genuineness is not satisfactory in the opinion of AO because of reasons discussed in this show cause as reproduced below:-

"No.ACIT/KNL/2013-14/

Office of the
Asstt. Commissioner of Income tax,
Circle, Karnal
Dated : 27.03.2014

To

M/s Ram Dev Rice Pvt. Ltd.,
V&PO Daha, Distt. Karnal

D/Sirs,

Sub:- Show cause notice for completing assessment u/s 143(3) of the IT Act. for the A.Y. 2006-07 – Regarding-

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Please refer to the above.

2. *In this connection and in continuation to earlier correspondence in this regard, it is stated that various seized documents which were seized from S.K. Jain Group, accommodation entry provider in Delhi which has a bearing with your case form part of the enclosure attached with this show cause notice. From the perusal of statement of Sh. Surendra Kumar Jain, he has owned up annexure A-1 to A-163, seized by Investigation Wing, Delhi that they have been obtained from his premises and they belong either to him or to Sh. Virendra Kumar Jain. Of relevance to your case is pages 12, 18 and 22 of Annexure A-54 originally indexed by Investigation Wing, Delhi and passed to us. It contains hand written entry for companies who have subscribed to your share capital alongwith premium. It also provides detail of cheque number and date and amount and supposedly the name of commission agent, in this case, some Rishi Singhal. It contains detail of share Introducer Company and beneficiary company. The cheque number mentioned in this annexure match with cheque numbers as recorded in bank statement provided during reassessment proceedings.*

Various sheets which have been obtained from computers of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain and passed to this office by Investigation Wing, Delhi have been indexed by this office in the form of two annexures, i.e., B-I consists of bank communication letters of companies who have subscribed to your share capital and introduced Rs.90 Lakhs in A.Y. 2006-07. It is to be noted that this documents have been

obtained from the computers of Sh. S.K. Jain and Sh. Virendra Jain. Accommodation entry provides in Delhi. Similarly annexure B-II consists of bank account statements of companies who have subscribed to your share capital in A.Y. 2006-07. All this evidence point to the fact that Vogue Leasing and Finance Pvt. Ltd., KDG Property and Construction Pvt. Ltd., World Link Telecom Ltd. and M/s Karishma Industries Ltd., are paper concerns and are controlled by Sh. Surendra Jain and Sh. Virendra Jain (accommodation entry providers). This have been obtained from their computers thus putting genuineness of transaction into doubt.

Also M/s Karishma Industries Limited and M/s World Link Telecom Ltd. are operating from one address – 3198/15, 4th Floor, Gali No. 1, Sangatrashan, Paharganj, New Delhi-110055. Also two others concerns controlled by S.K. Jain Group are operating from the same premises, i.e., EuroAsia Mercantile Pvt. Ltd., and Mega Top Promoters Pvt. Ltd. All this fact lay credence to the claim that these are paper concerns controlled by Surendra Jain Group.

Upon perusal of data from MCA and ITR, it can be seen that all these capital introduces companies in the assessee company for A.Y. 2006-07 as mentioned earlier in the show cause letter have huge shareholder fund in the form of share capital and/or share premium and very less returned income including nil figure. A prudent business concern would have used its fund judiciously to earn more income out of capital. The subscriber companies in this context are not doing justice to their shareholders by not earning enough income by not investing wisely. Such correlation of huge shareholder fund with low returned income is the characteristic of entry operator companies, where huge shareholder fund in the form of share capital and share premium is built through routing of money to fund the beneficiary company with capital and share premium. It is this design which serves as conduit for accommodation entry.

Also, upon perusal of MCA data of one of the subscriber company to the assessee company one of the director Sh. Kumar Sharma as on 27.03.2014 is director in 11 companies.

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The investor companies and Sh. Surendra Jain and Sh. Virendra Jain were issued summons. But they did not attend the hearing.

What is apparent may not be real and test of human probability has to be applied to understand if the apparent is real and if the transaction fails to withstand the test of human probabilities it has to be taken as ingenuine transactions.

Further vide notice u/s 142(1) dated 07.03.2014, you were asked to furnish the following information/ documents on 18.03.2014 which were not furnished till date:

i) Produce complete books of account for the F.Y. 2005-06.
ii) Complete detail of share premium received during the year and name & address of the applicants.
iii) Give details of current share holding pattern and details of dividend paid, if any, from the date of incorporation of the company till date.
iv) Detailed computation for arriving at the basis of Share premium.
v) If the alleged share applicants have parted with their share holding, then at what rate shares were transferred and to whom.

Coupled with seized evidence obtained from Investigation Wing, Delhi and considerations which have been discussed in this show cause, you are hereby asked to show cause why not Rs.90 Lakhs be added to the returned income u/s 68 as cash credit in the A.Y. 2006-07 as the explanation offered about the genuineness are not satisfactory in the opinion of Assessing Officer because of reasons discussed in this show cause. Penalty proceedings u/s 271(1)(c) are also proposed to be initiated

For the purpose, case is fixed for hearing on 28.03.2014 at 4:30 P.M.

Encl. As above/ annexures as per list marked 'A'.

Sd/-
(Himanshu Roy)
Asstt. Commissioner of Income-tax
Circle, Karnal.

Annexure-A

Enclosures:-

1. Statement of Sh. Surendra Kumar Jain.
2. Statement of Sh. Virendra Kumar Jain.
3. Annexure A-54- Pages 12,18, and 22.

(Originally indexed by Investigation Wing, Delhi.)

Pertaining enclosures classified by this office after taking print put of seized material CD from Investigation Wing.

4. Annexure B-1 (Various Communication to the Bank).
5. Annexure B-II (Account statement of companies)."

4. Assessee replied to this show cause notice on 28.03.2014 & 29.03.2014 as reproduced below:-

"*28th March 2014*

The Assistant Commissioner of Income Tax,
Central Circle,
Karnal.

Ref: **-** ***M/s Ram Dev Rice Private Limited***
Assessment Year 2006-07.
Sub- ***Reply to Show Cause Notice***

Sir,

Please refer your show cause notice dated 27th March 2014, where in inter alia the assessee is show caused to explain why the share capital and share premium received by assessee during the year under review should not be charged to Tax u/s 68 of the Income Tax Act, 1961. In this regard without prejudice to our earlier submissions filed before Your Honor during the Assessment Proceeding, we on behalf of above named assessee respectfully wish to submit as follows:-

01. *During the year under review the assessee received share capital and Share Premium of Rs. 9000000/- from corporate assessee through proper Banking channel. The amount received through proper banking channel is not in doubt as per show cause notice. The genuineness of transaction is proved, as receipt of share capital is through proper banking channel.*

02. *To further substantiate the transactions,we would like to prove the identity of shareholders and creditworthiness of shareholders, the assessee has submitted the following documentary evidences. (The same is submitted with this reply also).*

a) *Share application form received from shareholders.*

b) *Allotment letter issued by appellant along with share certificate.*

c) *Certificate of incorporation & memorandum and article of association of share holders*

d) *Confirmation from shareholders.*

For Ram Dev International Ltd.

e) *Copy of Audited statement of account of shareholders showing investments made and disclosed in their accounts.*

f) *Form no. 2, i.e. Return of allotment of shares filed in ROC by assessee to show that shares were allotted.*

03. *The above details filed before Your Honor make crystal clear that all the transactions are through proper Banking Channel; shareholders are assessed to Income Tax and are existing. This fact is also proved from the record of Registrar of Company. (A Govt. of India Agency). All the above documents proved beyond doubt the identity of investors and genuineness of the investment and creditworthiness of shareholders. In view of above undisputed facts addition cannot be made on purely suspicious and assumption as law* ***decided by Hon'ble Supreme Court of India in the case of "UMA CHARAN SHAW & BROTHERS v. C.I.T., Reported in 37-ITR-271, held that "A suspicion however, strong cannot take place of evidences". Other authorities on the issue are 2009 – 30 – SOT – 44 (Kol.) where in it was held that suspicion cannot replace evidential documents. Simple arguments or allegation of manipulation is not sufficient without proper evidence.***

04. *Your Honorthe transaction are through proper Banking Channel, and nothing adverse found and assessee have proved the identify and genuineness of the shareholders, hence addition cannot be made,* ***in view of decision of Hon'ble Supreme Court of India in the case of C.I.T. v. Orrisa Corporation (P) Ltd. Reported in 1986-159-ITR-78(SC).***

05. *Your Honor it is now well settled law that in the case of share capital the onus is on the Assessee to prove that the shareholders are existing and the transaction is geniuness in the case our hand by filing the numerous documentary evidences make crystal clear and prove beyond doubt that the shareholders are genuine and existing and there creditworthiness is also proved.*

The kind attention to Your Honor is invited on following decisions which is squarely covering the case in our hands:-

a. ***The Hon'ble Supreme court of India in special leave petition no. cc. 375/ 2008 Dated 21.01.2008 in the case of commissioner of Income Tax V. Lovely Exports Pvt. Ltd. Reported in 216 – CTR - 195 Held That:-***

"The Share Application money is received by Assessee Company from alleged bogus Share Holders, whose names are given to the Assessing officer then the

Department is free to proceed to re-open their individual assessment in accordance with law. Hence we find no infirmity with the impugned judgment"

The Department SLP was dismissed by Hon'ble Apex Court of India in the above stated case, which arises from the decision of Hon'ble High Court of Delhi in the Case of divine Leasing & Finance Ltd. Reported in 2007-158-Taxmann-440(Del) wherein their lordship decided the issue in favor of Assessee.

b. ***The Hon'ble High Court of Delhi in its judgment dated 23rd December, 2011. In bunch of 11 appeals taking the lead case as ITA no. 972/2009 dated 23.12.2011 in the case of CIT vs. Kamdhenu Steel and Alloys Ltd. since Reported in 2012 – 68 – DTR – 38(Del) and approved by Apex Court of India by dismissing the appeal of revenue in SLP No. CC-15640/2012, Dated 17.09.2012 after discussing the catina of Judgment culled out the following ratio.***

Para 35, page. 28

"The important question which arises at this stage is as to whether on the basis of these facts, it could be said that it is the assessee which has not been able to explain the source and receipt of money. According to the assessee, he had given the required information to explain the source and was not obligated to prove source of the money. It is the submission of the assessee that even in case there is some doubt about the source of money in giving into coffers of the share applicants which they invested with the assessee, it would not automatically follow that the said money belongs to the assessee and becomes unaccounted money. According to us, the assessee appears to be correct on this aspect. We feel that something more which was necessary and required to be done by the AO was not done. The AO failed to carry his suspicious to logical conclusion by further Investigation. After the registered letters sent to the investing company had been received back undelivered, the AO presumed that these companies did not exist at the given address. No doubt, if the companies are not existing, i.e., they have only paper existence, one can draw the conclusion that the assessee had not been able to disclose the source of amount received and presumption under Section 68 of the Act for the purpose of addition of amount at the hands of the assessee. But, it has to be conclusively established that the company is non-existence".

Para. 36

The AO did not bother to find out from the office of the Registrar of Companies the address of those companies from where the registered letter received back undelivered. If the address was same at which the letter was sent or the Inspector visited and no change in address was communicated, perhaps it may have been one factor. In support of the conclusion which the AO wanted to arrive at, that by itself

cannot be treated as the conclusive factor. As pointed out above, these applicant companies have PAN and assessed income tax. No effort was made to examine as to

Whether these companies were filing the income tax return and if they were filing the same, then what kind of returns these companies were filing. If there was no return, this could be another factor leading towards the suspicion nurtured by the AO. Further, if the returns were filed and scrutiny thereof reveals that such returns were for namesake, this could yet another be contributing factor in the direction AO wanted to go. Likewise, when the bank statements were filed, the AO could find out the address given by those applicant companies in the bank, who opened the bank accounts and are the signatories, who introduced those bank accounts and the manner in which transactions were carried out and the bank accounts operated. This kind of inquiry would have given some more material to the AO to find out as to whether the assessee can be convicted with the transactions which were allegedly bogus and or companies were also bogus and were treated for namesake. We say so with more emphasis because of the reason that normally such kind of presumption against the assessee cannot be made as per the law laid down in various

Judgments noted above. Just because of the creditors/share applicants could not be found at the address given it would not give the Revenue a right to invoke Section 68 of the Act without any additional material to support such a move. We are reminding ourselves of the following remarks of a Division Bench of this Court in its decision dated 02.8.2010 in the case of Commissioner of Income Tax – IV Vs. M/s. Dwarkadhish Investment (P) Ltd. (ITA No.911 of 2010) in the following words:

"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".

(Emphasis supplied)

Para. 37

We are conscious of the malice of such kind of pernicious practice which is prevalent. In Divine Leasing and Finance Ltd. (supra), this Court had eloquently highlighted the same in the following manner:

"There cannot be two opinions on the aspect that the pernicious practice of conversion of unaccounted money through the masquerade or channel of investment in the share capital of a company must be firmly excoriated by the Revenue. Equally, where the preponderance of evidence indicates absence of culpability and complexity

of the assessee it should not be harassed by the Revenue's insistence that it should prove the negative. In the case of a public issue, the company concerned cannot be expected to know every detail pertaining to the identity as well as financial worth of each of its subscribers. The company must, however, maintain and made available to the Assessing Officer for his perusal, all the information contained in the statutory share application documents. In the case of private placement the legal regime would not be the same. A delicate balance must be maintained while walking the tightrope of Sections 68 and 69 of the Income Tax Act. The burden of proof can seldom be discharged to the hilt by the assessee; if the Assessing Officer harbors doubts of the legitimacy of any subscription he is empowered, nay duty bound. But if the Assessing Officer fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the company."

(Emphasis supplied)

Para. 39

We may repeat what is often said, that a delicate balance has to be maintained while walking on the tight rope of Sections 68 and 69 of the Act. On the on hand, no doubt, such kind of dubious practices are rampant, on the other hand, merely because there is an acknowledgement of such practices would not mean that in any of such cases coming before the Court, the Court has to presume that the assessee in questions as indulged in that practice. To make the assessee responsible, there has to be proper evidence. It is equally important that an innocent person cannot be fastened with liability without cogent evidence. One has to see the matter from the point of view of such companies (like the assessee herein) who invite the share application money from different sources or even public at large. It would be asking for a moon if such companies are asked to find out from each and every share applicant/subscribers to first satisfy the assessee companies about the source of their funds before investing. It is for this reason the balance is struck by catena of judgments in laying down that the Department is not remediless and is free to proceed to reopen the individual assessment of such alleged bogus shareholders in accordance with the law. That was precisely the observation of the Supreme Court in Lovely Export (supra) which holds the fields and is binding.

Para. 40

In conclusion, we are of the opinion that once adequate evidence/material is given, as stated by us above, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has "created" evidence, the Revenue is supposed to

make thorough probe of the nature indicated above before it could nail the assessee and fasten the assessee with such a liability under Section 68 and 69 of theAct.

Approved by Supreme Court of India in SLP No. CC. 15640/2012 dated 17.09.2012

c. ***The Hon'ble Punjab & Haryana High Court of Delhi in the case of CIT vs. G. P. International Pvt. Ltd. Reported in 2010 – 325 – ITR – 25 (P & H) held that:-***

"Head Note" *Income from undisclosed sources – company share application money – identity of contributors established – failure by some of them to respond to notice U/s 133. Not relevant amount not assessable and income of assessee – Income Tax Act, 1961.*

d. ***The Hon'ble High Court of Delhi in the case of CIT vs. Orbital Communication Pvt. Ltd. Reported in 2010 – 327 – ITR – 560 (Del) held that:-***

"Cash credits – share application money – substantial evidences produces by assessee to prove creditworthiness of creditor and geniuness of share application-failure to produce creditor not material – deletion of addition – no interference – Income Tax Act, 1961, s. 68"

e. ***The Hon'ble High Court of Delhi in the case of CIT vs. Value Capital Services Pvt. Ltd. Reported in 2010 – 307 – ITR – 334 (Del) held that:-***

"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 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 applicant actually emanated from the coffers of the assessee so as the enable it to be treated as the undisclosed income of the assessee. This has not been done in so far as the present case is concerned and that has been noted by the tribunal also under the circumstances, we are of the view that the tribunal has not committed any error in deleting the addition. No substantial question of law arises. Dismissed"

f. ***The Hon'ble Jurisdictional High Court of Delhi in the case of CIT V. Divine Leasing & Finance Ltd, General Export & Credits Ltd. And Lovely Exports P. Ltd. Reported in 2008-299-ITR-268 (Del) held that:-***

Head Note:-

Cash credits – company – Amounts shown as share capital effect of section 68 – burden of proof – assessee must prove identity of shareholders, genuineness of

transaction and creditworthiness of shareholders – No adverse inference if shareholders fail to respond to notice by Assessing officer – Duty of Assessing Officer to investigate credit worthiness of shareholders – finding that Assessee company had proved genuineness of shareholders- Additions of part of Share Capital under section 68 – Not justified – income tax Act, 1961, s. 68.

Approved by Apex Court of India in 2009 – 216 – CTR – 195 (SC) CIT vs. Lovely Exports Pvt. Ltd.

g. ***The Hon'ble Supreme Court of India in the case of E.P. Royappa vs. State of Tamil Nadu Reported in 1974 – AIR – 555 – SC Held that:-***

"The Intention of establishing mala fide is very heavy on the person who allege it the allegation of mala fide are often more easier made than proved and very seriousness of such an allegation demand proof of a high order of credibility"

Other authorities on above view are:-

- ***1974 – AIR – 171 – SC Jay DalalPoddar vs. BibiRagra***
- ***2007 – 108 – ITD – 639 (Hyd).***

6. *Another aspect of the case is that, the show cause notice is solely based on the report of Investigation wing of Income Tax Department, Delhi in the case of Sh. Surendra Kumar Jain.*

7. *At the outset it is most respectfully submitted that even for the sake of argument if it is assumed that the alleged report is correct, additions in the hands of assessee cannot be made.* ***In the case in hand the alleged report of Investigation Wing do not belongs to the assessee. This is not the case that,the certain documents belongs to the appellant were found and seized from the possession Sh. Surendra Kumar Jain. Hence it is ample clear that even in search operation of Mr. S. K. Jain no documents belongs to assessee was found and seized hence the Ld. Assessing Officer is not authorized to take the recourse of section 143 of the Income Tax Act, 1961. This is admitted facts no incriminating documents were found and seized either during the search operation on Sh. Surendra Kumar Jain. Hence the Item of regular assessment not pending on the date of search cannot be disturbed, hence additions proposed by Ld. Assessing Officer is bad in law and same please be dropped.***

For Ram Dev International Ltd.

Authorities on this point are:-

- ***S.S.P. Aviation Ltd. Vs. Dy. C.I.T. 346 – ITR – 177 (Del).***
- ***Singad Technical Education society Vs. ACIT, 57 - DTR – 241 (Pune) (Trib.)***
- ***LMJ International Ltd. Vs. Dy. C.I.T. – 119 – TTJ – 214 (Kol.)***

During the year under review the appellant issued its 90,000 Equity shares of Rs. 10/- each at a premium of 80/- each to 4 Corporate assessee and received total share capital and share premium amounting to Rs. 90,00,000/- through proper banking channel by way of account payee cheque. The assessee company allotted the shares to these shareholders. The case of assessee for the year under review was picked up for scrutiny by Ld. Assistant Commissioner of Income Tax, Circle-Karnal, and after detail investigation the share capital and share premium of the assessee was accepted as genuine. ***Hence action of Ld. Assessing Officer to re-examine the same issue which is decided in favor by assessee by his predecessor after detail examination amount to review, and review is not allowed in law.***

Authorities on these points are:-

CIT vs. Kelvinator of India Reported in 2010 – 320 – ITR – 561 (SC), where in the Apex Court of India held that "the AO does not have power to review",

2012 – 77 – DTR – 396 (Del) (FB) CIT vs. Usha International Ltd.

a. *From the perusal of the reason, it is evident that the action has been initiated upon suspicion and there is no material with the department for formation of the necessary belief. The assessee has already requested that the Return of Income filed on 29th November 2006 may kindly be treated as filed in compliance to the notice under section 148 of the Act.*

b. *The relevant extracts from the Supreme Court decision in the case of GKN Driveshaft (India) ltd. V. ITO (2003) 259 ITR 19 are reproduced herein below:*

> *"We clarify that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing officer is bound to furnish reasons with a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years."*

c. *To enable the assessee to raise the objections in a meaningful manner and to provide the assessee with a level playing ground, the assessee had requested for allowing inspection of the relevant records and to provide certified copy of the relevant documents on the basis of which the reasons are recorded. The assessee had requested for the below mentioned documents in the objection filed in response to notice under section 148:-*

(i) Copy of all Statements (including surrender statement) of Sh. Surender Kumar Jain in Investigation Wing.
(ii) Final fate of block assessment in Central Circle.

During the proceedings under section 148, Assessing Officer has not provided the copies of documents requested. In the show cause notice, your good self has provided copy of the statement recorded. But it seems that, the AO has not gone through the statement. In the statement, Sh. Surender Kumar Jain has never admitted that, the accommodation entries are provided to Assessee Company. We are not able to find the single instance of his admission in the statement.

Further, we would like to mention that, the returned income of the corporate assessee (shareholders in the case) is accepted by the Central Circle, Delhi, where cases of the Sh. Surender Kumar Jain group are assessed under section 153 or 143(2). This important fact was not considered by the assessing officer, while disposing the objections.

To sum up, the very initiation of action u/s. 147 and issue of notice u/s. 148 are illegal for the following reasons:

It is evident from the reasons recorded u/s. 148 that no enquiry has been made by your goodself independently and the notice has been issued merely at behest of the investigation wing.
Kindly permit us to mention that the entire exercise is based upon pure guess and suspicion.

When the department seeks to allege that the share capital received during the year by assessee are "ACCOMODATION ENTRIES", it is settled principal of law that the department has to prove the same by laying positive, cogent, specific and reliable evidence about it. Reference may kindly be made to the following:

KalwaDevadattam v. UOI (1963) 49 ITR 165, 174 (SC)
CIT v. Durga Prasad More (1971) 82 ITR 540 (SC)
CIT v. DaulatramRawatmull (1973) 87 ITR 349, 360-1 (SC)

For Ram Dev Internation

In similar circumstances, special bench of ITAT has held that any general information contained in letter of Assistant Commissioner, Investigation Circle, is not relevant material to sustain initiation of reassessment proceedings. Since information coming to assessing officer was neither specific, nor reliable and relevant against the assessee, it would not prove that what was disclosed by the assessee in return filled earlier was not true and correct. Kindly refer-

Durga Prasad Goyal v. ITO (2006) 98 ITD 227 (Asr.)(SB)

An assessing officer has no power to review his own order. No action can be initiated merely on change of opinion as per decisions in following cases:

SardarKehar Singh v. CIT (1992) 195 ITR 769 (Raj).
Shiv Prasad Agarwal v. ITO (1996) 85 Taxman 243(Cal.)(AT).
CIT v. Smt. PremKumariSurana (1994) 206 ITR 715 (Raj.).

In this case, the assessment was originally completed u/s. 143(3) after due scrutiny. There is a presumption u/s. 114(e) of the Indian Evidence act, 1872 that all judicial and official acts have been regularly performed. Kindly permit us to refer to a recent decision of Delhi High Court Full Bench in the case of CIT v. Kelvinator India Ltd. (2002) 256 ITR 1 wherein they have held as under:

"It is well known that a presumption can also be raised to the effect that in terms of clause (e) of section 114 of the Indian evidence act, 1872, judicial and official acts have been regularly performed. If it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the assessing officer to reopen the proceedings without anything further, the same would amount to giving a premium to an authority exercising quasi-judicial function to take benefits of its own wrong. Hence, it is clear that section 147 of the Act does not postulate conferment of power upon the Assessing officer to initiate reassessment proceedings upon a mere change of option."

The disposal of objection filed is not as per the directions given in Supreme Court decision in the case of GKN Driveshaft (India) ltd. V. ITO (2003) 259 ITR 19. In the disposal letter, no proper documents are provided by the assessing officer and the reopening of assessment after expiry of 4 years period is bad in law and not sustainable and legal under the provisions of income tax act.

Another serious allegation of Ld. Assessing Officer is that the notices sent to these shareholders were received back and in few cases no reply was received. In this regard it is most respectfully submitted that ***the alleged inquiry was conducted at the back and behind of the assessee and these facts were never brought on***

record by your good self in assessment proceedings. Hence, it do not have any evidential value. For this proposition reliance is placed on following decisions, where in it was held that:-

"if the copy of adverse material gathered behind the back of assessee relied by Assessing Officer without providing/ disclosing the same to assessee would be lack of opportunity and this right is so fundamental that it cannot rectified by appellate authority by giving such opportunity".

- *2001 – 249 – ITR – 554(SC) Vijay Kumar Sharma*
- *2001 – 249 – ITR – 216 (SC) Tin Box Co.*
- *1980 – 125 – ITR – 713 (SC) Kishan Chand Chela Ram*

Another allegation of in show cause notice is that the directors of Share Holders Company and their Books of Account are not produced for verification. In this regard we most respectfully wish to submit that, it was never asked to produce theDirectors of share Holdings Company or their Books of Account. Let it be as it is Your Honor, the appellant respectfully wish to put it record and submit that the shareholders are existing, assessed to Income Tax and the appellant is ready to produce the Directors/Principal officer of shareholder's company before any authority of law. Your Honor may please direct the assessee to produce the directors/principal officer of Share Holders Company before Your Honor for verification and examinations.

The another allegation of Ld. Assessing Officer the share holders have shown the meagre income in their Income Tax Return and assessee routed its unaccounted money through share capital & share premium as well as investment made by share holders on huge premium hence this is unaccounted money of assessee.

In this regard it is submitted that allegation of Ld. Assessing Officer is baseless and imaginary. It is well settled law laid down by Apex Court of India in the case of CIT vs. Walchand& Co. Pvt. Ltd. Reported in 65 – ITR – 381 (SC) that commercial decision of tax payer cannot be questioned by revenue authorities. The appellant at this juncture seek to refer the judgment of Delhi High Court in the case of CIT vs. Value Capital Services P. Ltd. Reported in 307 – ITR – 334 (Del) where in it has been held that:-

".....the additional burden on revenue. It must be shown that even if the assessee does not have 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 undisclosed income of the assessee. This has not been done in so far as the present case is concerned.

Reliance is also placed on the decision of Hon'ble High Court of Delhi in the case of CIT vs. Real Time Marketing P. Ltd. Reported in 306 – ITR – 35 (Del)".

In view of above facts and legal position it is submitted that there is no material to allege that share capital represented the funds provided by Assessee Company. Moreover it is admitted fact that neither as a result of search and nor as a result of investigation by investigation wing on Sh. Surender Kumar Jain group, any evidences was found to allege that the share capital and share premium received represent the undisclosed income of the assessee company. Whereas the evidences furnished during the assessment proceeding before Ld. Assessing Officer has fully substantiated the claim of assessee. Hence no addition U/s 68 of the Income Tax Act, 1961 can be validly made.

1. ***The kind attention of Your Honor is also invited on the latest decision of Hon'ble High Court of Delhi. In the case of CIT vs. KansalFincap P. Ltd. Reported in 2013 – TIOL – 814 – HC – Del – IT dated 04.10.2013, where in it was held that:***

"The AO should objectively examine the whole issue and in case if he finds that the transactions are genuine and fully recorded by share holders, then no addition shall be made in hands of assessee" In other words two conditions have to be satisfied, firstly the transaction should be genuine, true and not camouflage and secondly the transaction should duly recorded in the Books of share applicants, if these two conditions are satisfied then no addition should be made".

2. ***In addition to above the assessee place reliance on following decision.***

   a. ***The Hon'ble Supreme court of India in special leave petition no. cc. 375/ 2008 Dated 21.01.2008 in the case of commissioner of Income Tax V. Lovely Exports Pvt. Ltd. Reported in 216 – CTR - 195 Held That:-***

   "The Share Application money is received by Assessee Company from alleged bogus Share Holders, whose names are given to the Assessing officer then the Department is free to proceed to re-open their individual assessment in accordance with law. Hence we find no infirmity with the impugned judgment"

   b) 2013 – 354 – ITR – 296 (Del)-CIT vs. Kinetic Capital Finance Ltd.,

   c) 2013 – 354 – ITR – 282 (Del), Mod Creation P. Ltd. Vs. ITO

   d) 2013 – 357 – ITR – 143 (Del) CIT Vs. Fair Finvest P. Ltd.

e) *2013 – 96 – DTR – 299 (Del) CIT Vs. Gangeshwari Metal P. Ltd.*

f) *2013 – 89 – DTR – 342 (Del) CIT vs. Nipuan Auto Pvt. Ltd.*

g) *2013 – TIOL – 516 – ITAT – Del CIT Vs. CNR Leading Softech P. Ltd.*

(Note:- the cases cited at S. No. b to g are decided in favor of assessee after the decision of Nova Steel & Finance P. Ltd. Reported in 2012 – 342 – ITR – 169 Del)

h) *2010 – 325 – ITR – 25 (P & H) CIT vs. GP International Ltd.*

i) *299 – ITR – 268 (Del) CIT vs. Divine Leasing & Finance P. Ltd.*

j) *330 – ITR – 603 (Del) CIT Vs. Winstrol Petro Chemical P. Ltd.*

k) *248 – CTR – 33 (Del) CIT vs. Kamdhenu Steel and Alloys P. Ltd.*
Approved by Supreme Court in SLP no. 15640/2012 dated 12.09.2012

3. *The appellant respectfully submit that none of the shareholders companies had ever denied the contribution made by them towards share capital and share premium.* ***As in formed by shareholders, their Income Tax Assessment for the Assessment year 2005-06 is completed u/s 143(3) of the Income Tax Act, 1961 and investments made by them in assessee company are duly accepted by Income Tax Department as genuine.***

4. *From the above submissions, fact of the case as well numerous authorities cited here about it is un ambiguous crystal clear that the additions proposed by Ld. Assessing Officer is unjust, invalid and has no legs to stand in the eyes of judicial scrutiny. The additions proposed by Ld. Assessing Officer are result of surmise and conjecture.*

In view of above submissions it is unambiguous crystal clear that by tendering numerous documentary evidences the identity, geniuness and creditworthiness of share applicant proved beyond doubt. Hence it is most respectfully submitted that share capital and share premium received by assessee please be accepted.

Thanking you,
For Ram Dev Rice Private Limited

Counsel"

Ram Dev Internationa

5. Reply of the assessee has been duly considered but not found sustainable. The evidence obtained from Investigation wing which were discussed in the show cause notice and a copy of which was sent to the assessee for perusal and reply were all seized from Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain and belong to them. The threadbare analysis of evidence alongwith statement of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain will reveal the nature of their work. This threadbare analysis is necessary because assessee contends that no incriminating documents have been found from S.K. Jain Group and they have not admitted anything in this statement. This will also establish how they operated and managed hundreds of companies and concern including 4 shareholders companies namely KDG Properties and Construction Pvt. Ltd., Karishma Indutries Ltd., Vogue Leasing and Finance P. Ltd. and Worldlink Telecom Ltd. For a search which took place on 14.09.2010, it will be difficult to exactly find all the evidence from cash book to bank entry for a period belonging to F.Y. 2005-06. Seizure of certain documents which point towards the fact that investor companies are controlled by entry operators should itself be sufficient to establish ingenuineness of the transaction. Also, as can be made out from the statements of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain, even to most obvious reference to the accommodation entry evidence obtained from them, they have remained evasive. So it is hardly expected that only when reference to assessee company is made then only presumption of unexplained credit can be made. These companies who are shareholder in the assessee company, being controlled by the entry operator, itself points towards the doubt towards the genuineness transaction between these companies and assessee company.

Following is the discussion on statement of Sh. Surendra Jain and Sh. Virendra Jain.

Discussion on statement of Sh. Surendra Jain:-

As is evident from Q. No.25 of the statement, annexure A-1 to A-163 seized by the Investigation Wing is owned up by him and his brother, that it belongs to them. (of this is Annexure A-54 and its relevant pages 12, 18 and 22 which have been written by Sh. Surendra Kumar Jain or Sh. Virendra Kumar Jain. This annexure A-54 has already been discussed in the show cause and forms part of the order.)

Discussion on statement of Sh. Virendra Kumar Jain:-

On page 3, to reply of Q.No.3, Sh. Virendra Kumar Jain also owns up document.

Sh. Virendra Jain has been evasive to most of the queries raised in his statement, to the contents which he has handwritten, to the print outs which have been obtained from his computer, saying that he needs more time to explain.

Iunstrations from his statements:

To a reply to Q.No.7 on page 9 of statement, to a reference to annexure A-3, Sh. Virendra Jain says that it does not have any financial value.

To a reply to Q.No.9 on page 12 of the statement to a reference to Annexure A-163, the contents of which belong to his computer, Sh. Virendra Jain says that he is not able to tell then.

-Another reference to Annexure A-163 (contents derived from his computer by means of Q.No.10 on page 13, the reply is evaded.

-via Q.No.11 on page 13, on reference to unsigned cheques of different companies and signed cheques of different companies which form part of Annexure A-122 and A-123 he is evasive.

-via Q.No.12 on page 14 another reference to blank signed cheques, he is evasive.

-via Q.No.13 when cheques books and pass book pertaining to different individual entities, companies totaling 198 in no. was asked from him he again remained evasive.

-via Q.No.17 on page no.19 of the statement when confronted with his evasive tendency with regard to self explanatory descriptive contents, he is again uncooperative.

-via Q.No.18 on page 21 of the statement, on a reference to Annexure A-163, he remains evasive.

-via Q.No.19 on page 22 of the statement, a self explanatory entry pertaining to accommodation entry to a beneficiary company, from page 315 of the Annexure No.A-163, he remains evasive.

Inference

Thus it can be seen that KDG Properties and Construction Pvt. Ltd., Karishma Indutries Ltd., Vogue Leasing and Finance P. Ltd. and Worldlink Telecom Ltd. are entities controlled by S.K. Jain Group as can be evidenced from the copy of evidence as part of enclosure attached with show cause notice.

Ram Dev International

6. Assessee's contention that no incriminating document related to them have been found is not acceptable as documents related to investor company particularly in the nature of being controlled entity (bank statement of investor companies, pay order of investor companies, specimen signature verification letter, statement in the form of bank instructions – have all been obtained from computers of Sh. S.K. Jain and Sh. V.K. Jain)

7. Vide order sheet entry dated 28.03.2014, when AR was confronted with copy of evidence. He replied that documents pertaining to investor companies of the assessee may be there because their director, financial advisors and consultants of these companies. However the AR says that they do not know Sh. S.K. Jain and Sh. V.K. Jain, they know only the investor companies.

8. AR's contention is not tenable and untrue. Sh. Virendra Kumar Jain is the director of M/s KDG Properties & Construction Pvt. Ltd. For the remaining 3 investor companies neither Sh. S.K. Jain or Sh. V.K. Jain is the director. In M/s Vogue Leasing and Finance P. Ltd. Sh. Shish Ram Bharara and Sh. Anil Kumar Bansal are directors. It is implausible that even bank operation documents such as pay order or specimen signature verification application document will be left by investor concerns i.e. Karishma Indutries Ltd., Vogue Leasing and Finance P. Ltd. and Worldlink Telecom Ltd. with the financial advisors i.e. Sh. S.K. Jain and Sh. V.K. Jain, as claimed by the counsel of the assessee. Thus, the claim that Karishma Indutries Ltd., Vogue Leasing and Finance P. Ltd. and Worldlink Telecom Ltd. are entities not controlled by S.K. Jain Group is not found tenable. No company will leave this kind of documents with their financial advisors. Furthermore, Sh. S.K. Jain and Sh. V.K. Jain were established entry operators. Documents related to concerns found from the premises of Sh. S.K. Jain and Sh. V.K. Jain do point towards their being controlled by S.K. Jain Group. Also adverse inference can be drawn from the fact that none of them attended hearing.

9. Assessee's contention that this is review, has already been dealt by means of disposal of objection to notice of 148. Assessee's contention with regard to re-assessment proceedings have comprehensively been dealt by means of disposal of objection. Assessee has already been provided copy of evidence, which formed the basis for re-assessment along with show cause notice dated 27.03.2014. The Department has already by means of cogent evidence pointed out towards ingenuineness of transaction by means of show cause notice. Assessee contention that notices sent to shareholders have been received back is not true. Summons were issued to the Directors of investor company with the object of enquiry about nature and source of share capital. Also, the

idea was to give opportunity to the assessee to cross examine these investors but they never turned up.

10. As has already been discussed in the show cause notice with regard to characteristic of investor companies that they show tell tale signs of entry operator companies. It is not necessary to establish that money has originated from the coffers of assessee. The contention that the Revenue must have evidence to show circulation of money from the assessee to the third party is fallacious and has been repeatedly rejected, even when Section 68 of the Act was not in the statute. In A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807, Supreme Court observed that it was not the duty of the Revenue to adduce evidence to show from what source, income was derived and why it should be treated as concealed income. The assessee must prove satisfactorily the source and nature of cash received during the accounting year. Similarly observations were made in CIT vs. M. Ganapathi Mudaliar [1964] 53 ITR 623 (SC), inter alia holding that it was not necessary for the Revenue to locate the exact source. This principle was reiterated in CIT vs. Devi Prasad Vishwanath Prasad [1969] 72 ITR 194 (SC), wherein the contention that the Assessing Officer should indicate the source of income before it was taxable, was described as an incorrect legal position. Thus when there is an unexplained cash credit, it is open to the Assessing Officer to hold that it was income of the assessee and no further burden lies on him to show the source. In Yadu Hari Dalmia vs. CIT [1980] 126 ITR 48, a Division Bench of Delhi High Court has observed:- "It is well known that the whole catena of sections starting from s. 68 have been introduced into the taxing enactments step by step in order to plug loopholes and in order to place certain situations beyond doubt even though there were judicial decisions covering some of the aspects. For example, even long prior to the introduction of s. 68 in the statute book, courts had held that where any amounts were found credited in the books of the assessee in the previous year and the assessee offered no explanation about the nature and source thereof or the explanation offered was, in the opinion of the ITO, not satisfactory, the sums so credited could be charged to income-tax as income of the assessee of a relevant previous year. Section 68 was inserted in the I.T. Act. Only to provide statutory recognition to a principle which had been clearly adumbrated in judicial decisions."

11. The above discussed issue has also been supported by a recent judgement of Delhi High Court i.e. in the case of CIT vs. Independent Media (P) Ltd., 210 Taxmann 14 (Delhli) 2012, Hon'ble High Court held that if explanation addressed by the assessee with regard to identity and creditworthiness of subscriber companies and genuineness of transaction was not acceptable for valid reasons, AO could make addition under section

68 and for that purpose he would not be under any duty to further show or establish that monies emanated from coffers of assessee company. The Hon'ble High Court further observed that "we are unable to uphold the view of the Tribunal that it is incumbent upon the AO, on the facts and circumstances of the case, to establish with the help of material on record that the share monies had come or emanated from the assessee's coffers. Section 68 of the IT Act casts no such burden on AO. This aspect has been considered more than 50 years back by Supreme Court in the case of A Govindarajulu Mudaliar vs. CIT [1958] 34 ITR 807 where previously the same argument was adduced before the Supreme Court on behalf of the assessee. The argument was rejected by Court.

12. The evidences as discussed in show cause notice are sufficient to prove that these companies are controlled by entry operator and thus transactions are ingenuine. Reliance is placed on the decision of CIT vs. Durga Prasad More [1971] 82 ITR 540 and Sumati Dayal vs. CIT [1995] 80 Taxman 85/214 ITR 801 (SC). The Courts have laid emphasis on test of human probabilities. What is apparent may not be real and test of human probabilities has to be applied to understand if the apparent is real and if the transaction fails to withstand the test of human probabilities it has to be taken as ingenuine transactions even if documentary evidence suggest otherwise. The same principle has been enunciated in a recent case of Somnath Maini vs. CIT [2008] 306 ITR 414 (P&H).

In view of the above, amount of Rs.90,00,000/- claimed to be received as share capital shown in the share premium account is added to the income of the assessee u/s 68 of the IT Act, being unexplained cash credits. I am satisfied that assessee has concealed particulars of its income of Rs.90,00,000/- as above, therefore, penalty proceedings u/s 21(1)(c) are being initiated separately.

With the above observations, income of the assessee is computed as under:-

Income assessed vide order u/s 143(3) dated 27.10.2008 / 154 dated 27.10.2011	=	Rs.66,23,048/-
Add: as discussed in para above	=	Rs.90,00,000/-
Total taxable Income	=	**Rs. 1,56,23,048/-**
Rounded off	=	**Rs.1,56,23,050/-**

Assessed at income of Rs.1,56,23,050/-. Charge interest u/s 234B & 234C of the I.T.Act. Issue penalty proceedings u/s 274 read with section 271(1)(c) of the IT Act. Issue requisite documents.

Sd/-
(Himanshu Roy)
Asstt. Commissioner of Income Tax,
Circle, Karnal

Copy to the Assessee

Himanshu Roy
ACIT

[C] The Assessee filed appeal before the Ld. CIT(A). Vide impugned appellate order dated 17.11.2016, the Ld. CIT(A) dismissed the assessee's appeal. The relevant portion of the order dated 17.11.2016 of the Ld. CIT(A) is reproduced as under:

3.1 On going through the assessment order, the main observations of the AO on this issue can be summarized as follows:-

a) The AO has observed that specific information has been received from the O/o DIT(Inv.), New Delhi that the assessee's company had obtained accommodation entries of Rs. 90 Lacs relating to the A.Y. 2006-07 in the form of bogus share capital/premium/loan from Sh. Surrender Kumar Jain Group (entry operator) where search/survey operation have been conducted on 14.09.2010.

b) The AO has also observed that copy of reasons recorded for issue of notice u/s 148 was also supplied to the assessee and the objections were disposed off.

The AO has also highlighted that the decision of Kelvinator India Ltd. 256 ITR was not applicable since at the time of earlier assessment proceedings, no details have been placed on file and also in the present case, new tangible material had been received. The AO relied upon the decisions of Pal Jain 267 ITR (P & H) & Phool Chand Bajrang Lal (203 ITR) (SC) to argue that in this case there were valid reasons and justification for reopening of the assessment even beyond four years. From Pages 4 to 7 the AO has elaborately discussed the fresh information available with the AO, the due procedure followed for reopening of the assessment, as well as various judicial pronouncements on the basis of which on the facts of the present case, the reopening of the assessment was fully justified.

c) The AO has reproduced various letters and details which were sent alongwith notice u/s 143(2) and 143(1) seeking various

details and relying upon various judicial pronouncements on this issue.

The AO has therefore emphasized that fresh material was available with the assessee and proper procedure had been followed before reopening of the assessment u/s 147 of the I.T. Act.

3.2 **A.R. Submissions :-**

During the course of appellate proceedings, the AR of the appellant also made various submissions which can be summarized as follows:-

a) The AR has submitted that in the present case, the original assessment had been completed u/s 143(3) of the I.T. Act and the notice u/s 148 was issued on 25.03.2013, i.e. after expiry of four years from the end of the relevant assessment year. The AR has argued that in view of the Proviso of Section 147, reopening of the assessment and only be done if there is failure on the part of the assessee to disclose full and true facts necessary for assessment. However, in the present case there was no allegation by the AO that the appellant had failed to disclose fully and truly all material facts before the AO.

b) The AR relied upon various judicial pronouncements to argue that considering the reasons recorded by the AO and the facts of the case, since there was no case to establish that the assessee had failed to disclose all material facts necessary for assessment, there was no justification for reopening of the assessment beyond four years.

The AR has submitted that the reopening of the assessment was not justified as there was no material to show that the assessee had failed to disclose all material facts necessary for assessment.

3.3 **Findings :-**

After going through the facts and submissions, it is observed that the AO has followed the due procedure of law and also had specific information in his possession, received from the DIT(Inv.) which indicated that certain amounts had been received in the form of bogus share capital/premium/loan from Sh. Surinder Kumar Jain who were entry operators.

The AO has elaborately discussed in the assessment order as to how the amounts received in the form of share capital/share premium etc, had not been properly examined at the time of earlier assessment and also how this information was fresh information and specific in nature, which clearly indicated that there was omission/failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.

The AO has also relied upon various judicial pronouncements stated in the assessment order to highlight such omission or failure to disclosed fully and truly all material facts what clearly justified reopening of the assessment beyond four years.

Though the AR of the appellant had argued that since there was no fresh material available with the AO to justify reopening of the assessment, the facts clearly indicate that specific details and evidences based upon survey/search action had been obtained and passed on to the AO with regard to amounts received from entry operators. It is therefore clear that such information passed on investigation and search/survey operation were not

available with the AO at the time of original assessment u/s 143(3) of the I.T. Act.

In view of the present facts, and also keeping in view various judicial pronouncements of **Rajat Import Ltd. 341 ITR Delhi (2012)** and the decision of **AGR Investments (2011) 333 ITR (Delhi)** as well as the decision of **Contel Medicare System (349 ITR) (DEL) (2012),** it is clear that in the present case there was enough evidence and justification with the AO to reopen the assessment beyond period of four years. It has been widely held by the Courts that it is not necessary to prove beyond doubt that income has escaped assessment and it is sufficient that the AO has recorded his reasons and followed the due procedure of law for reopening of the assessment. In view of factual matrix of the present case, I do not find any reason to interfere with the findings of the AO that this was a fit case for reopening of the assessment and accordingly the contentions and Grounds of the appellant are **dismissed.**

4. **Ground Nos. 2 & 3 :-**

These Grounds relate to addition of Rs. 90 Lacs on account of share capital and share premium.

4.1 On going through the assessment order, the main observations of the AO can be summarized as follows:-

a) The AO has elaborately discussed from Pages 8 to 29, the circumstances and facts which indicated that the amount of Rs. 90 Lacs taken for the S.K. Jain Group of cases were only bogus transactions pertaining to entry operator. The AO has highlighted that on the basis of specific documents in the form of Annexure A1 to A163 as well as other documents marked BI and BII, it was clear that accommodation entries

have been taken by the firm from four concerns which were actually paper concerns and controlled by Sh. Surender Jain and Sh. Virender Jain, who were the accommodation entries provider.

b) The AO has highlighted that all these firms were operating from only one address where several other paper entities were being run by Sh. S. K. Jain Group.

c) The AO has also highlighted that on analysis of these paper concerns, it was observed that there was huge share holder funds in the form of share capital and share premium and very less returned income. These specific characteristics were typical of accommodation entries providers.

d) The AO has also highlighted that there was no justification for the share premium paid by the assessee relating to these concerns, since there was not enough profit or potential to justify the payment of premium made by the appellant.

e) The AO has also stated that after considering the replies of the assessee and also considering the material available with the AO it was clear that seizure of various documents from the S.K. Jain Group and detailed investigation conducted by the Department, it was clear that large no. of entities were being operated and managed by S.K. Jain Group to provide bogus entries to different parties including the assessee.

f) The AO has also referred to statements of Sh. Virender Kumar Jain and Sh. Surender Jain where during the course of the statements, both the persons have owned up various incriminating documents which were related to provide

entries to different parties through shell companies operating from same addresses and not having any genuine activity or income. In this regard, the AO has elaborately discussed from Para 6 to 10 of the assessment order, as to how there was specific material relating to the assessee company to establish that artificial paper companies with no genuine business activity had been used to provide accommodation entries to the assessee.

g) The AO has relied upon various judicial pronouncements including CIT Vs. Independent Media Ltd. (201 Taxman)(Delhi)(2012) to argue that under similar facts Courts have held that considering the overall test of human probabilities as well as facts of the case, addition of Rs. 90 Lacs in the case of the assessee was fully justified.

4.2 **A.R. Submissions :-**

The AR of the appellant also made various submissions which can be summarized as follows:-

a) The AR of the appellant has stated that during the assessment proceedings, the assessee had provided various documents and details relating to M/s Krishna Industries Ltd. (Rs. 30 Lacs), M/s KDG Property and Construction Pvt. Ltd. (Rs. 10 Lacs), World Link Telecom Ltd. (Rs. 30 Lacs) and Vogue Leasing and Finance (Rs. 20 Lacs). The appellant had provided details of address, PAN share certificates, copy of income tax returns, copy of bank statement and copy of audited statement of the account of these shareholders. The AR emphasized that all the four parties were existing income

tax assesses and transactions were through proper bank channels.

b) The AR has further emphasized that the AO has not conducted any independent enquiry before making the additions and also not disposed the identity, genuineness and creditworthiness of the shareholders. It was also emphasized that in the case of three shareholders assessment had been completed u/s 143(3)/153 of the I.T. Act. The AR therefore highlighted that since Department had accepted the I.T. returns of three parties u/s 143(3), there was no justification for disputing the genuineness and creditworthiness of the parties from whom the amounts had been received.

c) The AR of the appellant has also emphasized that the assessee had discharged its onus for establishing the identity, genuineness and creditworthiness of the parties. The AO has also emphasized that in the statement given by Sh. Surender Kumar Jain and Sh. Virender Jain, their contentions have mostly been evasive and there was no specific information on the basis of which the documents found during survey/search at their premises could be used for making additions in the hands of the assessee.

The AR of the appellant has therefore strongly argued that in view of the facts and circumstances of the case and keeping in view various judicial pronouncements, there was no justification for making this addition.

4.3 **Findings :-**

for Ram Dev International Ltd.

After going through the facts and submissions as well as various judicial pronouncements, these Grounds are being finalized after making the following observations:-

a) On going through the assessment order and the contentions of the AR, there is no dispute that the amount of Rs. 90 Lacs had been received by the appellant as share capital/share premium from four parties as discussed in detail in the assessment order. The AO has made addition by observing that these four parties were actually only paper companies run by Sh. S. K. Jain Group on whom search and survey operations had been conducted by the Investigation wing. Incriminating documents relating to the appellant company had also been found and statements of Sh. Surender Jain & Sh. Virender Jain had been recorded. The AO has elaborately discussed the specific documents as well as the nature of income and activity carried out by the four parties from whom the share capital/share premium had been received. It is clear that these four entities had characteristics of being only paper entities operating from a common address with negligible or no business activity but with large amount of shareholder funds and impressive Balance Sheets.

b) In the present case, it is important to keep in mind that even though these four entities did not have any significant business activity or high returned income, nor there was any potential for earning huge profits in future, the appellant also paid large amount of share premium for their shares. There was clearly no justification for paying premium

towards shares of such companies. Even though the AR of the appellant has argued that in the three cases out of the four entities assessments had been completed u/s 143(3) and no adverse inference had been drawn by the respective AOs, the fact that these companies were part of a large group involved in providing accommodation entries cannot be denied. Even the statements of Sh. Surrender Jain and Virender Jain have only indicated that various companies in this group were not carrying out bonafide business activities and there was no transparency and justification for such huge amounts in the Balance Sheet of these companies with negligible income earned during the year. Merely because PAN Nos. were provided alongwith income tax returns and the transactions were conducted through banking channels does not lead to the conclusion that the transactions with these four entities were bonafide.

c) Reliance is being placed upon the following judicial pronouncements in this regard:-

i) CIT Vs. Nova Promoters & Phinlies in ITA No. 342 of 2011 (Delhi).
ii) CIT Vs. Independent Media Taxman Delhi (2012).
iii) CIT Vs. N.R. Portfolio Pvt. Ltd. in ITA No. 134/2012 (Delhi).
iv) A. Govinda Rajulu Mudaliyar (34 ITR 807) (SC)(1958).
v) Aggarwal Coal Corporation Pvt. Ltd. Vs. ACIT 63 DTR 201 (ITAT, Indore).

On the basis of the above and various other decisions, it is clear that in the factual matrix of the present case, where entries had been taken from paper companies and

creditworthiness of the parties as well as the genuineness of the transaction had not been discharged by the appellant, there was no justification to accept the contentions of the AR of the appellant that the additions were not justified. Accordingly, after careful consideration of the facts of the present case, there is no material or submissions provided by the AR of the appellant, which calls for any interference in the decisions of the AO. Accordingly, this addition of Rs. 90 Lacs made by the AO is upheld. These Grounds are therefore **dismissed.**

5. In the result, the appeal is **dismissed.** "

[D] This present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 17.11.2016 of the Ld. CIT(A). At the time of hearing, Revenue was represented by Shri Surender Pal, the learned Senior Departmental Representative ("Ld. Sr. DR", for short). However, none was present from the assessee's side. In the absence of any representation from assessee's side, at the time of hearing before us, we heard the Ld. Sr. DR; who relied upon the order dated 31.03.2014 of the Assessing Officer and the aforesaid impugned order dated 17.11.2016 of the Ld. CIT(A). After perusal of the materials on record, including the order of the AO and the aforesaid impugned order dated 17.11.2016 of the Ld. CIT(A), we find that the Ld. CIT(A) has passed speaking order on merits. Relevant portion of the impugned order of the Ld. CIT(A) has already been reproduced in foregoing paragraph **[C]** of this order. We find that the Ld. CIT(A) has given detailed reasons for his decision on merits in the aforesaid impugned appellate order dated 17.11.2016 of

Ld. CIT(A). During appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short) no material has been brought for our consideration to persuade us to take a view different from the view taken by the Ld. CIT(A) in the impugned order on merit. After hearing the Ld. Sr. DR and after perusal of materials on record, and further, in view of the foregoing discussion, we decline to interfere with the aforesaid impugned appellate order dated 17.11.2016 of Ld. CIT(A), and accordingly, this appeal is dismissed.

[E] Before we part; **we explicitly clarify that the assessee will be at liberty to approach ITAT for restoration of the appeal in accordance with Proviso to Rule 24 of Income Tax (Appellate Tribunal), Rules, 1963. If the assessee does approach ITAT for restoration of the appeals in ITAT, the matter will be considered in accordance with law having regard to the facts and circumstances.**

[F] In the result, appeal filed by Assessee is dismissed.

Order pronounced in the open court on 12/12/2019.

Sd/-	Sd/-
(AMIT SHUKLA)	**(ANADEE NATH MISSHRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 12/12/2019
Pooja/-
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	