

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1418/JP/2018
निर्धारण वर्ष/Assessment Year :2008-09

M/s Shree Silica Product Pvt. Ltd. (Now M/s Rajshree Alloys India Ltd.) (Formerly Badaya Ispat Ltd.) 17, Near Hotel Aakash, IC Bose Road, Howrah, Kolkata	बनाम Vs.	ITO, Ward-4(1), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCB4084H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Dileep Shivpuri (Adv.)
राजस्व की ओर से/ Revenue by : Sh. K. C. Gupta (JCIT)

सुनवाई की तारीख/ Date of Hearing : 03/12/2019
उदघोषणा की तारीख/ Date of Pronouncement: 07/01/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Udaipur dated 28.09.2018 wherein the assessee has taken the following grounds of appeal:-

- "1. The Ld. CIT(A) has erred on facts and in law in upholding the validity of the order passed by AO u/s 147 of the IT. Act, 1961.
2. The Ld. CIT(A) has erred on facts and in law in confirming an addition of Rs. 45 lacs u/s 68 by treating the share capital money received from the following parties as unexplained.

S. No.	Name of company	Amount
1.	VIP Leasing & Finance Pvt. Ltd.	Rs. 15 lacs
2.	Singhal Securities Pvt. Ltd.,	Rs. 15 lacs
3.	Finance Lease & Finance India Ltd.	Rs. 15 lacs
	Total	Rs. 45 lacs

2. Briefly, the facts of the case are that a search and survey action was carried out on Sh. Surendra Kumar Jain and his group by Investigation Wing, New Delhi on 14.09.2010 wherein various incriminating documents were found and seized which shows that he was engaged in providing accommodation entry the various concern basis the said information. The Assessing Officer issued notice u/s 148 dated 26.03.2015 stating that the assessee company has obtained bogus accommodation entry of share capital/share premium/ loan amounting to Rs. 45,00,000/- which has escaped assessment u/s 147 of the Act. In response, the said notice, the assessee filed its return of income on 22.12.2015 declaring total income at Nil during the course of assessment proceedings. The assessee company was asked to justification share capital money receipt during the year. In absence of any response receipt from the assessee company and relying on the statement of the Sh. Surendra Kumar Jain. It was held by the Assessing Officer. The assessee has introduced accounting cash amounting to Rs. 45,000,00/- in the form share capital the source of which could not be explained and the same was treated as unexplained cash credit u/s 68 of the Act. On appeal, the Id. CIT(A) has sustained the said addition and now the assessee is in appeal before us.

3. During the course of hearing, the Id. AR submitted that a perusal of the notice u/s 148 issued on 27.03.2015 to reopen the assessment of M/s Rajshree Alloys India Ltd. for A.Y. 2008-09 shows the following name and address:

"M/s Shree Silica Products Pvt. Ltd., Shree Silica Products, F 947, Road No. 14, VKIA Area, Jaipur, Rajasthan 302013"

It was submitted that the Assessing Officer had verified from the Registrar of Companies and confirmed that the name of M/s Shree Silica Products Pvt. Ltd. was changed first to 'M/s Badaya Ispat Pvt. Ltd' and then to 'M/s

Rajshree Alloys India Ltd.' The AO himself admits that the notice u/s 148 of the Act was served by affixture on 31.03.2015 at the address given above. A copy of the notice u/s 148 was received by the A/R of the Appellant only on 27.10.2015. It is pertinent to mention here that the return for A.Y. 2009-10 was filed with ITO, Ward 1(1), Jaipur on 30.03.2010 showing the following name and address:

"Badaya Ispat Limited, 17, Near Hotel Aakash, I.C. Bose Road, Howrah, West Bengal 711101"

Therefore, it was within the knowledge of the AO, had he tried to verify the name and address before issue of notice u/s 148 that the current name and address was as above, and the current jurisdiction was with ITO, Ward 1(1) wherein the said return was filed. Thereafter, on 18.11.2015, the Appellant's Counsel informed the AO about the current address and the contents of the said communication reads as under:

"With reference to above and your aforesaid letter, we are to submit as under:

1. The name of Shree Silica Products Pvt. Ltd. has been changed to Badaya Ispat Limited and thereafter changed to M/ s Rajshree Alloys India Limited. Address of registered office of the company is as under:

17, Near Aakash Hotel, I. C. Bose Road, Howrah, West Bengal

Address of director of company Shri Suresh Kumar is as under:

E-8, Badaya Bhawan, Kanti Chandra Road, Bani Park, Jaipur.

It is thus requested to make all the correspondence at the address of registered office of company or alternatively at the residential address of director of the company.

2. It is submitted that jurisdiction of assessee company lies with Income Tax Officer, Ward 1(1), Jaipur as per PAN jurisdiction and assessee company is filing its return of income with Income Tax Officer, Ward 1(1), Jaipur. Thus any correspondence or notice issued by your good self to company is without jurisdiction and therefore void abinitio..”

4. In this connection, it is relevant to refer to the binding decision of the Hon’ble Rajasthan High Court in the case of CIT v. Poonam Chand Surana [2014] 221 Taxman 0151 (Raj.) in which notice u/s 148 issued from a wrong jurisdiction was struck down as invalid. That even if the AO was not aware of the correct address earlier, he was made aware of the same vide letter dated 18.11.2015. A perusal of the address on the assessment order would show that it has been sent on 31.03.2016 on the following address:

*"M/s Shree Silica Products Pvt. Ltd (now M/s Badaya Ispat Pvt. Ltd.)
F-947, Road No. 14, VKI Area, Jaipur "*

Hence, the assessment order was passed in the name of a non-existent company and with wrong address.

5. The CIT(A) has dealt with this issue in the following words:

" 3.2 I have considered the facts of the case, gone through the assessment order and the submission of the appellant. It is seen that both are the name of the assessee company and therefore on this

procedural defect, the order can't be said to be illegal. Accordingly this ground of appeal is dismissed."

In other words, he treated this to be a mere procedural defect, and dismissed the objection accordingly. It is pertinent, at this juncture to refer to the case of *Spice Entertainment Ltd. v. Commissioner of Service Tax 2012 (280) ELT 43 (Del.)*, in which at para 11 it has been so stated:

"11. After sanction of the scheme on 11th April, 2004, the Spice ceased to exist w. e.f. 1st July, 2003. Even if Spice had filed the returns, it became incumbent upon the Income-Tax Authorities to substitute the successor in place of the said 'dead person'. When notice under section 143(2) was sent, the appellant/ amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of M/s Spice which was non-existing entity on that day. In such proceedings assessment order passed in the name of M/s Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppel against law."

6. It was further submitted that in a recent decision, the Hon'ble Supreme Court has upheld the view that issuance of jurisdictional notice and assessment order thereafter passed in name of non-existing company, i.e., amalgamating company having ceased to exist as a result of approved scheme of amalgamation, is a substantive illegality and not a procedural violation of nature adverted to in section 292B and, hence, without jurisdiction, was to be set-aside - *Principal Commissioner of Income-Tax v. Maruti Suzuki India Ltd.* [2019] 107 taxmann.com 375 (SC). In view of the

decision of the Hon'ble Supreme Court cited above, the issue of notice u/s 148, and passing of assessment order in incorrect name, may be treated as null and void, and the assessment so framed may be quashed.

7. It was further submitted by the Id AR that a perusal of the reasons recorded by the AO would show that he had received information from the Investigation Wing of Delhi in the following manner:

"As intimated by the DGIT (Inv.) the assessee M/ s Shree Silica Products Pvt. Ltd. has also obtained bogus accommodation entries of share capital/ Share premium/ loan as per the following details:

<i>Entry providing company</i>	<i>Nature of entry</i>	<i>Amount</i>
<i>VIP Leasing & Finance P. Ltd.</i>	<i>Bogus share capital/share premium/loan</i>	<i>15,00,000/-</i>
<i>Singhal Securities P. Ltd.</i>	<i>Bogus share capital/ share premium/ loan</i>	<i>15,00,000/-</i>
<i>Finage Lease & Finance India Ltd.</i>	<i>Bogus share capital/share premium/loan</i>	<i>15,00,000/-</i>
	<i>Total</i>	<i>45,00,000/-</i>

The above details regarding the accommodation entries have been forwarded by the DIT (Inv.)-II, New Delhi through his office letter F.No. DIT/(Inv.)-II/ U/ s 148/ 2012-13/ 293 dated 15th March, 2013.

Therefore , looking to the facts mention above, it is seen that the above person is liable to pay tax on bogus accommodation entries of share capital/ Share premium/ loan. Hence, I have reason to believe that income of Rs. 45,00,000/ -

has escaped from assessment within the meaning of section 147 of the I.T. Act, 1961. Therefore, it is a fit case for issue notice u/ s 148 of the I.T. Act, 1961."

8. It is clear from the language of the reasons recorded that the Assessing Officer did not have in his possession any material other than a letter of the DIT(Inv.) dated 15.03.2013. Hence, he carried out no independent verification at his end, but blindly accepted whatever had been written in the said letter dated 15.03.2013. His satisfaction, therefore, is a case of 'borrowed satisfaction'. Attention is drawn to the decision of the Hon'ble Gujarat High Court in the case of Harikishan Sunderlal Virmani v. Dy. CIT [2017] 394 ITR 146 (Gujarat) wherein it was stated as under:

"5.3 Thus from the reasons recorded, the reopening of the assessment is on the information/ data supplied by the office of the Principal Director of Income-Tax (Investigation), Ahmedabad and the information received from the Principal Director of Income-Tax (Investigation), Ahmedabad vide his confidential letter dated 8/3/2016. On the plain reading of the reasons recorded what emerges is that the AO on considering the information received from the Principal Director of Income Tax (Investigation) Ahmedabad, reassessment proceedings have been initiated on the ground that the income has escaped assessment. However, there is no assertion regarding the basis on which material on record, he has come to such conclusion. Therefore, the material on the basis of which the AO seeks to assume jurisdiction under section 147 of the Act is the information received from an external source viz. the Principal Director of Income Tax (Investigation), Ahmedabad. It cannot be disputed that on the basis of the information received from another agency, there cannot be any reassessment proceedings. However, after considering the information/ material received from other source, AO is

required to consider the material on record in case of assessee and thereafter is required to form an independent opinion on the basis of the material on record that income has escaped assessment. Without forming such an opinion, solely and mechanically relying upon the information received from other source, there cannot be any reassessment for the verification....”

9. It was accordingly submitted that the Hon'ble Gujarat High Court held that the AO cannot act mechanically on the basis of information received from another source. Similar sentiments were expressed by the Bombay High Court in the case of (i) *Principal Commissioner of Income-Tax -5 v. Shodiman Investments (P.) Ltd.* [2018] 93 [taxmann.com](#) 153 (Bombay); (ii) by the Calcutta High Court in the case of *Principal Commissioner of Income-Tax, Kolkata v. More Overseas* [2018] 97 [taxmann.com](#) 657 (Calcutta); (iii) and by the Delhi High Court in the case of *Sabh Infrastructure Ltd. v. Asst. CIT, WP(C) 1357/2016 delivered on 25.09.2017.*

10. It was submitted that a perusal of the reasons recorded, as reproduced above, shows that the AO has completely relied on the letter of the DIT(Inv.), Delhi mechanically. In the assessment order, the AO states that in his statement recorded during the course of search Shri Surendra Kumar Jain have explained his modus operandi (see page 7 of the assessment order). Further, he has also stated in the last para on page 8 that statement of Shri Ravinder Goel, one of the brokers, was also recorded. None of this finds mention in the reasons recorded. Moreover, it is clear that copies of statements were not with the AO. The AO has also mentioned about enquiries made before and during search. This also does not find mention in the reasons recorded. Hence, it is clear from the reasons recorded, that except for the letter of the DIT(Inv.), Delhi, the AO did not have any other evidence with him to support or authenticate what was written in the letter of the DIT(Inv.), Delhi. The

Hon'ble Delhi High Court in the case of *Sabh Infrastructure Ltd.* has stated as follows:

"11. Thus it is also now well settled that the reasons to believe have to be self-explanatory. The reasons cannot be thereafter supported by any extraneous material. The order disposing of the objections cannot act as a substitute for the reasons to believe and neither can any counter-affidavit filed before this court in writ proceedings. "

Thus we have to confine ourselves to what has been written in the reasons recorded by the AO. A perusal of the reasons recorded show that the AO speaks of only a letter received from DIT(Inv.), Delhi and that also more than 2 years earlier. No other evidence or proof has been referred to. Thus there is no material with the AO, but for the letter, to form an independent opinion that income chargeable to tax has escaped assessment. He has, therefore, accepted the satisfaction of the DIT(Inv.), Delhi to be his own. Thus, this is a case of 'borrowed satisfaction'.

11. It was further submitted that even on merits, there is no case with the AO to prove that the credits appearing in the books of the assessee is assessee's own money. Briefly put, the assessee company has received the following amounts during the year:

- VIP Leasing & Finance Co. 15,00,000/-
- Singhal Securities P. Ltd. 15,00,000/-
- Finage Lease & Finance India Ltd. 15,00,000/-.

In support of the fact that these credits are genuine, the assessee has furnished the following evidence:

VIP Leasing & Finance Pvt. Ltd:

- Share application Form
- Confirmation of Accounts
- ITR Acknowledgement
- Financial Statements
- List of Directors
- Bank Statement
- Assessment orders for A.Y. 2005-06 to 2011-12 passed u/s 153C/153

Singhal Securities Pvt. Ltd.

- Share application form
- Confirmation of accounts
- Director's confirmation
- ITR Acknowledgement
- Financial statements
- List of directors
- Assessment orders for A.Y 2005-06 to 2011-12 passed u/s 153C/153A

Finage Leasing & Finance India Ltd.

- Share Application Form
- Confirmation of Account
- Director's confirmation
- ITR Acknowledgment
- Financial statements

- List of Directors
- Form no. 32
- Assessment orders for A.Y. 2005-06 to 2011-12 passed u/s 153C/ 153A

Thus, the following facts which emerge from the case need to be highlighted:

1. There is enough evidence in the nature of share application form, ITR acknowledgment, bank accounts etc. to prove that the creditors were genuine, their identity was proved, and that they had the financial wherewithal to advance the credits, and that such a credit was indeed given.

2. The assessment of these companies were framed u/s 153C/ 153A on 28.03.2013 wherein their genuineness was accepted and no addition or adverse finding was recorded in their cases. A perusal of the assessment orders passed after the search prove this fact. The notices u/s 148 were issued on 26.03.2015 full 2 years after the said companies had been accepted as genuine. Once, the companies are treated as genuine, their financial capability is proved, and they are assessed to tax even after the search, the credits given by them cannot be doubted.

3. The payment of the credits were by cheque and each of the company has enough capital in their financials to have the capacity to advance the credit:

i) VIP leasing & Finance Pvt. Ltd.	
Share capital + reserves	17,14,54,900.00
ii) Singhal Securities Pvt. Ltd.	
share capital + reserves	10,49,97,000.00
iii) Finage Leasing & Finance India Ltd.	
Share capital + reserves	14,57,42,032.90

4. Still further there is no evidence of introduction of cash of the assessee anywhere. Hence, there is no proof to say that the unaccounted cash of the assessee has been routed through these companies.

12. It was further submitted that in case of M/s Layak Fabrics P. Ltd. in ITA No. 491/Del./2016 decided by the ITAT, Delhi Bench, on 15.07.2016 wherein Singhal Securities Ltd. was the creditor. There, the ITAT has deleted the addition made and one of the grounds is that M/s Singhal Securities Ltd. has not been held to be a non-existent entity.

13. In this connection it is important to point out that in similar circumstances, when the existence of the creditor companies was never doubted, the Hon'ble Supreme Court in the case of *CIT v. Lovely Exports (P.) Ltd. [2008] 216 CTR 195 (SC)* stated as under:

"2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if share application money is received by the assessee company from alleged bogus shareholders whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.

2. Subject to above, Special Leave Petition is dismissed." (Annexure A-08).

In other words, the Hon'ble Supreme Court stated very clearly and lucidly that whatever action that has to be taken, should be taken in the hands of the creditors, if the names of the creditors have been supplied to the AO.

14. The CIT(A) has cited, inter alia, the decision of the Delhi High Court in the case of *CIT v. Sophia Finance Ltd.*[1993] 205 ITR 98 (Delhi) to support his finding. The above said decision is not applicable in this case because :

i) It is a decision delivered in 1993 while the decision in the case of *Lovely Exports P. Ltd.* is of 2003;

ii) It is a decision of the Delhi High Court while the decision in the case of *Lovely Exports P. Ltd.* is a decision of the Hon'ble Supreme Court and overrides the decision of the High Court;

15. In addition to the case of *Lovely Exports P. Ltd. supra*, other cases cited in support are:

1. CIT v. Supertech Diamond Tools Pvt. Ltd. 229 Taxman 62 (Rajasthan);
2. CIT v. Shree Barkha Synthetics Ltd. 270 ITR 477(Raj.);
3. CIT v. Pooja Agarwal [2011] ,D.B.ITA No. 603/2011 delivered on 11.0.2017
4. CIT v. First Point Finance Ltd., 286 ITR 477 (Raj);
5. CIT v. Nipuan Auto (P.) Ltd. [2013] 89 DTR 342(Del HC);
6. CIT v. Vacmet Packaging (India) Pvt. Ltd., 367 ITR 217(A11.).

In view of the above, the addition of Rs. 45,00,000/- made by the AO and confirmed by the CIT(A) needs to be deleted both in law and on facts.

16. The Id. DR submitted that the jurisdiction of the assessee M/s Shree Silica Products Pvt. Ltd lies with ITO, Ward-4(1), Jaipur as per the information gathered from the CBN PAN based query-ITD system. Thereafter, the name of

the assessee company has been changed as M/s Badaya Ispat Ltd and another PAN of the company is lying with ITO, Ward-1(1), Jaipur. It was submitted that the case was selected u/s 148 in the name of M/s Shree Silica Products Pvt. Ltd. and not in the name M/s Badaya Ispat Ltd. Hence, the jurisdiction over this case lies with ITO Ward – 4(1) and not with the ITO, Ward-1(1), Jaipur. It was further submitted that the assessee has raised the similar contentions at the time of filing of objection u/s 148 of the I.T. Act, 1961 and the same was disposed off by the AO vide letter No. 1790 dated 03.12.2015. It was further submitted that the Assessing Officer was having tangible material in the form of information received from DDIT (Inv.), Unit VI (2), New Delhi that the assessee company has obtained bogus accommodation entries amounting to Rs. 45,00,000/- and accordingly action was taken u/s 148 after seeking necessary approval from the appropriate authority. On merits, it was submitted that the assessee was asked to furnish justification with regarding to share application money introduced by providing ample opportunities during the course of assessment proceedings, however no reply was filed by the assessee company. Further, only during the appellate proceedings before the Id. CIT(A), the assessee company has filed certain documentation and the Id CIT(A) after going through the documentation submitted by the assessee has confirmed the addition made by the Assessing Officer. It was accordingly submitted that there is no infirmity in the order passed by the Id. CIT(A) and the same may kindly be confirmed.

17. We have heard the rival submissions and perused the material available on record. In ground no. 1, the Id AR has raised two broad contentions: firstly, the notice u/s 148 and assessment order has been passed in wrong name and address and secondly, there is non-application of mind by the Assessing officer while recording reasons before issuance of notice u/s 148 of the Act.

18. Regarding the first contention, it is noted that the assessee company was originally incorporated on 8.02.1988 with corporate identity no. 17-04274 of 1987-88 with name of Shree Silica Products Private Limited and had applied for and allotted PAN No. AACCS4046D with name and address of Shree Silica Products Private Limited, F-947, Road No. 14, VKI Area, Jaipur. Thereafter, on 13.01.2008, consequent upon change of name, a fresh certificate of incorporation was issued to the assessee company by the Assistant Registrar of Companies, Jaipur with corporate identity no. U24117RJ1988PTC004274 with name of Badaya Ispat Private Limited with mailing address of F-947-949, Road No. 14, VKI Area, Jaipur. The assessee company applied for a fresh PAN and was allotted PAN No. AADCB4084H with name and address of Badaya Ispat Private Limited, F-947, Road No. 14, VKI Area, Jaipur. Thereafter, the name of the company was changed to Badaya Ispat Limited and currently, the name of the company is Rajshree Alloys India Ltd with same corporate identity no. U24117RJ1988PTC004274 and mailing address of F-947-949, Road No. 14, VKI Area, Jaipur. We therefore find that there has been only a change in name of the entity and besides that, there is no change in the corporate identity of the assessee company. It is therefore not a case where the assessee company ceases to exist and/or amalgamated with any other existing/new entity. Therefore, it is not a case where the notice u/s 148 has been issued and assessment u/s 143(3) r/w 147 has been completed in the name of non-existent entity. The decisions relied upon by the Id AR therefore doesn't support the case of the assessee company. Further, we find that PAN No. AACCS4046D with name and address of Shree Silica Products Private Limited, F-947, Road No. 14, VKI Area, Jaipur continue to exist in the Income Tax Department database and the assessee company has been allotted a fresh PAN No. AADCB4084H with name and address of Badaya Ispat Private Limited, F-947, Road No. 14, VKI Area, Jaipur. The same is apparent from the fact that notice u/s 148 dated 27.03.2015 has been issued in name of Shree Silica

Products Private Limited (PAN No. AACCS4046D) and the assessee company had earlier filed its return of income for A.Y 2009-10 on 30.03.2010 in name of Badaya Ispat Private Limited (PAN No. AADCB4084H). Therefore, it is a strange to note that the same legal entity has been holding two PAN numbers though in two different names and both continue to exist in Income Tax Department database as on the date of issuance of notice u/s 148 and passing of the assessment order u/s 143(3) r/w 147 of the Act. Under section 139A of the Act, it has been provided that "No person who has already been allotted a permanent account number under the new series shall apply, obtain or possess another permanent account number." Therefore, where the assessee is prohibited from applying for a new PAN where a PAN has already been issued to it, the fact that such a new PAN has been applied and thereafter issued, to our mind, the new PAN and filing of return of income doesn't confer any jurisdiction to the Assessing officer over such matter with such new PAN and the Assessing officer with earlier PAN continues to exercise jurisdiction over the assessee company. In the present case, therefore, the ITO Ward 4(1), Jaipur continues to exercise jurisdiction over the assessee company and not ITO Ward 1(1), Jaipur. Therefore, we do not find any infirmity in the action of ITO Ward 4(1), Jaipur in issuing the notice u/s 148 and completing the assessment u/s 143(3) r/w 147 of the Act.

19. Regarding the second contention advanced by the Id AR, we find that it is a case where no return of income has been originally filed by the assessee company and on perusal of reasons, we find that the Assessing officer has received tangible information from Investigation wing that the assessee has obtained accommodation entries basis which he has come to believe that income to the extent of Rs 45 lacs has escaped assessment. There is a linkage between the material and formation of belief that income has escaped assessment. At the stage of recording reasons, the Assessing officer has to

record his prima facie opinion that the income has escaped assessment. It is not the case of the assessee company that the details of the transaction recorded by the Assessing officer was not correct or false in terms of name of entity, nature of transaction and the amount involved. In the instant case, where the Assessing officer has received information that the assessee has obtained accommodation entries, the same constitute a tangible material and basis examination thereof, where he has held that income has escaped assessment, we do not see any infirmity in the action of the Assessing officer in exercising jurisdiction u/s 148 of the Act.

20. In the result, the ground no. 1 of assessee's appeal is dismissed.

21. Now coming to merits of the case. In this case, the assessment was completed u/s 148 read with 143(3) wherein addition of Rs. 45,00,000/- was made by the Assessing Officer for the reason that the assessee could not satisfactorily explained the source of the money and the same was treated as unexplained cash credit u/s 68 of the Act. In support of the share application money received from three concerns namely VIP Leasing & Finance P. Ltd., Singhal Securities P. Ltd. and Finage Lease & Finance India Ltd, the assessee has submitted Share Application Forms, Confirmation of Accounts, ITR Acknowledgment and Financial Statements, List of Directors, Bank Statement and copy of the assessment orders for A.Y 2005-06 to 2011-12 passed under u/s 153C read with 153A of the Act.

22. We find that in assessment order passed in case of VIP Leasing & Finance P. Ltd. for A.Y 2008-09, the returned income has been accepted and there is no finding recorded by the Assessing Officer to the effect that the said company is involved in providing any accommodation entries and the relevant contents of the assessment order dated 28.03.2013 reads as under:-

"1. A search and seizure operation was carried out at various premises of S.K. Jain Group and its group concerns and associated persons on 14/09/2010. During the course of search and seizure operation at various premises of S. K. Jain group of cases many books of account and documents belonging to the assessee company were found and seized and hence prerequisite condition to initiate proceedings u/s 153C of the Income Tax Act, 1961 (hereinafter called the Act'), was fulfilled. Therefore, after recording the necessary satisfaction for initiation of proceedings u/s 153C of the Act, notice u/s 153C/15,3A of the Act was issued on 26/02/2013 directing it to file its return of income within 15 days of the service-of the notice. This notice was duly served on the assessee vide speed post. In response to this notice u/s 153C/153A of the Act the assessee filed letter dated 04/03/2013 requested to treat the return filed on 24/09/2008 as return in response to notice u/s 153C/153A of the Act declaring income of Rs, 1,00,838/-. Notice u/s 143(3) & 142(1) alongwith detailed questionnaire dated 05/03/2013 was issued and was duly served upon the assessee by speed post. In response to the said notices from time to time, Shri S. K. Jain, Advocate, attended the office on behalf of the assessee & submitted the details & clarifications which are placed on record. The case is discussed with him.

2. After discussion income of the assessee is assessed at income of Rs. 1,00,838/- u/s 153C/153A of the Act. Charge interest u/s 234 A/B/C/D as per law. Computation of income tax & interest is as per ITNS 150 enclosed. Issue requisite documents.

3. This assessment order is being passed after obtaining the approval of the Additional Commissioner of Income Tax, Central Range-6, New Delhi, communicated vide his office letter Addl. CIT/CR-6/2012-13/419 dated 28.3.2013."

23. On similar lines, the assessment orders for AY 2008-09 have been passed in case of other two entities namely, Singhal Securities P. Ltd and Finage lease & Finance India Ltd wherein again, there is no finding recorded by the Assessing officer to the effect that the said companies are involved in providing any accommodation entries. It is relevant to note that in all these three cases, the assessment proceedings were reopened basis the search and seizure operation in case of S.K. Jain Group on 14.09.2010, which is the same search operation basis which, the notice u/s 148 has been issued to the assessee company. In the reasons recorded u/s 148, the Assessing Officer has referred to the communication received from DIT (Inv.)-II, New Delhi through his letter dated 15th March, 2013 wherein the certain details have been given regarding bogus accommodation entries obtained by the assessee company. By the time of issuance of notice u/s 148 on 28.03.2015, the assessment in case of all these three entities were already completed on 28.03.2013 and in the assessment so completed, there is no finding that these entities have provided any accommodation entries to the assessee company. In other words, the investment made by these three entities in the assessee company was accepted as genuine investments. Therefore, once the assessee company has furnished necessary documentation as we noted above and the assessment in case of these share holder entities have been completed whereby there is no finding recorded by the Assessing Officer that they have provided accommodation entries to the assessee company and investment thus made have been accepted as genuine investment, we find that no adverse view can be taken in the hands of the investee assessee company u/s 68 of the Act.

Further, we find that the Assessing Officer has stated in the assessment order that the assessee has introduced its unaccounted cash in the form of share capital through racket of entry providers operated in New Delhi, however the said finding has not been corroborated by any material on record and therefore, the said finding recorded by the Assessing Officer cannot be accepted in absence of clear linkage/nexus established by the Revenue that the money belonging to the assessee company has been advanced and routed back in the form of share capital. We find that similar findings have been recorded by the Co-ordinate Bench in case of M/s Layak Fabrics Pvt. Ltd. (supra) and the relevant finding reads as under:-

"14. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the AO reopened the assessment on the basis of information received from the Investigation Wing that during the course of search & seizure operation of various premises of Sh. S.K. Jain Group of cases, money, books of accounts and documents belonging to M/s Singhal Securities Pvt. Ltd. were found and seized and the AO on this basis that the assessee received an accommodation entry from M/s Singhal Securities Pvt. Ltd. issued the notice u/s 148 of the Act while recording the reasons on 28.03.2013 that the assessee received accommodation entry from M/s Singhal Securities Pvt. Ltd. (copy of the said reasons recorded is placed at page no. 8 of the assessee's paper book). It is also noticed that on same date i.e. 28.03.2013, the AO of M/s Singhal Securities Pvt. Ltd., framed the assessment u/s 153C/153A of the Act at the same figure of the loss amounting to Rs.51,528/- which was declared by the said assessee in its return of income. It is also noticed that Sh. S.K. Jain in whose premises search took place was not a shareholder of M/s Singhal Securities Pvt. Ltd. and was also not connected with the assessee. In the present case, when the assessment

of M/s Singhal Securities Pvt. Ltd. from whom the assessee received share application money was assessed at the same figure of the loss which was declared by the said assessee, on the same date when the AO recorded the reasons that the income of the assessee escaped assessment for a sum of Rs.14,00,000/- i.e. the amount received as share application money from M/s Singhal Securities Pvt. Ltd. In the present case, it cannot be said that the AO was having any material in his possession except the information received from the Investigation Wing. Therefore, the reopening was done by the AO only on the basis of the information received from Investigation Wing.

15. An identical issue was a subject matter of the assessee's appeal in the case of M/s Dhanuka Agritech Ltd. Vs ACIT in ITA No. 1003/Del/2014 for the assessment year 2003-04 wherein vide order dated 11.05.2016 this bench of the Tribunal has held as under:

"9. On a similar issue, their lordships of the Hon'ble Jurisdictional High Court in the case of Principal Commissioner of Income-tax vs. G. & G. Pharma India Ltd. (supra) observed in para 12 & 13 of the order dated 8th October, 2015 as under : "

"12. In the present case, after setting off four entries, stated to have been received by the Assessee on a single date i.e. 10th February, 2003 from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: " I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries."The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what

those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November, 2004 and was processed under Section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the ITA No. 491/Del/2016 Layak Fabrics Pvt. Ltd. 15 income of the Assessee escaped assessment is missing in the present case."

13. Mr. Sawhney took the Court through the order of the CIT(A) to show how the CIT(A) discussed the materials produced during the hearing of the appeal. The Court would like to observe that this is in the nature of a post mortem exercise after the event of reopening of the assessment has taken place. While the CIT may have proceeded on the basis that the reopening of the assessment was valid, this does not satisfy the requirement of law that prior to the reopening of the assessment, the AO has to, applying his mind to the materials, conclude that he has reason to believe that income of the Assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analyzing materials produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity."

10. *In the present case also the AO in the reasons recorded mentioned that it had come to his knowledge that the persons from whom amount was received were entry operator and provided the entries to the assessee after receiving the amount in cash, however, nothing was brought on record that how and in what manner the persons from whom the assessee received the loans were entry operator and that as to how the cash was paid by the assessee. In fact the aforesaid conclusion of the A.O. is unhelpful in understanding as to whether the AO applied his mind to the material, particularly when he did not describe how and what manner it came to his knowledge that the assessee receive the accommodation entries. We, therefore, by keeping in view the ratio laid down by the Hon'ble Jurisdictional High Court in the aforesaid referred to case of Principal Commissioner of Income-tax vs. G & G Pharma India Ltd., are of the view that the reopening done by the AO u/s 147 of the Act was not valid and accordingly the ITA No. 491/Del/2016 Layak Fabrics Pvt. Ltd. 16 subsequent assessment framed by the AO was void-ab-initio and therefore the same is quashed. Since, we have quashed the reassessment order of the A.O., therefore no findings are given on the Ground no. 4 raised by the assessee."*

16. *In the present case also the AO in the reasons recorded mentioned that it has come to his knowledge that the person from whom assessee received share application money was entry operator. However, in the assessment of the said company i.e. M/s Singhal Securities Pvt. Ltd., no such findings has given neither any addition was made while framing the assessment u/s 153C/153A of the Act on 28.03.2013 i.e. the same date on which the reasons were recorded for reopening the assessment u/s 147 of the Act in assessee's case.*

17. So, respectfully following the aforesaid referred to order dated 11.05.2016, the impugned order passed by the Id. CIT(A) is set aside and it is held that the reopening done by the AO u/s 147 of the Act was not valid and accordingly, the subsequent assessment framed was void ab-inito. Therefore, the same is quashed."

24. In light of above discussions, the addition so made by the Assessing Officer u/s 68 of the Act is hereby directed to be deleted. In the result, the ground no. 2 of the assessee's appeal is allowed.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 07/01/2020.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 07/01/2020

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Shree Silica Product Pvt. Ltd., Kolkata
2. प्रत्यर्थी / The Respondent- ITO, Ward-4(1), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1418/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

