

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.6276/Del./2018  
Assessment Year 2011-2012

M/s. Saurashtra Color Tones Pvt. Ltd., H-1, DSIDC, Rohtak Road, Nangloi, Delhi. PAN AAGCS2343P (Appellant)	vs.,	The Income Tax Officer, Ward – 22 (4), Delhi. (Respondent)
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For Assessee :	Shri R.S. Singhvi, C.A.
For Revenue :	Shri Pradeep Singh Gautam, Sr. D.R.

Date of Hearing :	16.01.2020
Date of Pronouncement :	22.01.2020

**ORDER**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-31, New Delhi, Dated 31.08.2018, for the A.Y. 2011-2012.

2. Briefly the facts of the case are that the assessee-company was incorporated on 11.05.2001 under the Company Act, 1956. The business of the assessee is manufacturing of printed duplex and corrugated boxes The assessee-company filed its return of income on

28.09.2011 for the assessment year 2011-12 under appeal declaring income at Rs.5,90,260/- Thereafter the return was processed under section 143(l) of the I.T. Act, 1961. Subsequent to the processing of the return of income under section 143(1) on 20.01.2012, an information was received from the office of the Director of Income-tax (Investigation-II), New Dated 12.03.2013 mentioning therein that a search operation was carried out in the case of Shri Surendra Kumar Jain group of cases whereby after intensive and extensive enquiry and examination of document seized during course of search it has been noticed that the said group is involved in providing accommodation entries to the persons which were named in the report. The assessee-company also figured in the list. The A.O. on the basis of material available on record and reasons recorded for reopening of the assessment, issued notice to the assessee under section 148 of the I.T. Act, 1961. The A.O. noted in the assessment order that perusal of the return of income filed shows that assessee has received share capital of Rs.50,000/- and premium of

Rs.24,50,000/- during the assessment year under appeal. As per the information provided by Investigation Wing, the assessee-company has obtained accommodation entries amounting to Rs.25 lakhs as tabulated in the assessment order. Copy of the relevant documents seized from Jain Brothers is also enclosed as Annexure-B to the assessment order. It shows that on 20.05.2010 assessee-company received Rs.25 lakhs from M/s. Blue Bell Finance Ltd., through Axis Bank through intermediary Shri Vijay Kumar Gupta through cheque. A.O. also noted that on the basis of the said seized documents from Jain Brothers, it has been noticed that Jain Brothers has received Rs.1.20 crores in cash from intermediary Shri Vijay Kumar Gupta in lieu of accommodation entry to the assessee and other beneficiaries. This cash has been received during the same period when accommodation entries has been given to the assessee. Copy of the seized documents is available as Annexure-D to the assessment order which is also reproduced at page-3 of the assessment order. The A.O, thereafter, noted the modus operandi of Jain Brothers and

other evidence on record. The order of the Ld. CIT(A) in the case of Shri S.K. Jain is also reproduced. Show cause notice was issued to the assessee before making the addition. The assessee filed detailed reply before the A.O. However, the A.O. did not accept the contention of assessee and noted that the evidence filed by assessee are self-serving documents because they do not stand on the test of truthfulness and genuineness in view of overwhelming evidence seized from Jain Brothers clearly establishing that transaction in question is not genuine. The A.O. referred to certain decisions in the assessment order and referred to some statements recorded and made the addition of Rs.25 lakhs on account of unexplained income under section 68 of the I.T. Act based on incriminating evidence on record. The A.O. also made addition of Rs.45,000/- on account of commission paid. The A.O. accordingly passed the assessment order under section 143(3) r.w.s. 147 of the I.T. Act, 1961.

3. The assessee challenged the reopening of the assessment as well as both the additions on merit before the

Ld. CIT(A) and approval granted under section 151 of the I.T. Act, 1961. The detailed written submissions of the assessee is reproduced in the impugned order. However, the Ld. CIT(A) did not accept the contention of assessee and dismissed the appeal of assessee.

4. I have heard the Learned Representative of both the parties and perused the material available on record.

5. The assessee has filed an application for admission of following additional grounds :

(i) *“That on facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding the validity of notice u/s 148 in total disregard to the fact that reassessment proceedings u/s 148 were based on material found during search from third party and in the view of non-obstante clause in section 153C, the same is invalid and wholly without jurisdiction.*

(ii) *That proceedings in respect of material seized from third party ought to have been framed u/s 153C*

*and in absence of compliance of jurisdictional requirements of section 153C, the assessment order u/s 147 is illegal and void-ab-initio.”*

5.1. Learned Counsel for the Assessee submitted that the only issue in dispute in this appeal is addition based on material found from third party as a result of search under section 132(1) of the I.T. Act, 1961. This fact is as evident from the reasons recorded by the A.O. However, as a matter of an inadvertent omission, the legal ground relating to issue of jurisdiction and regarding validity of assessment proceedings under section 147/143(3) being based on material found during the course of search under section 132 from third party was not taken. He has, therefore, submitted that since it is a legal ground and based on facts already available on record and no new fact or evidence shall have to be considered, therefore, the same may be admitted in the interest of justice. He has relied upon Judgment of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., vs., CIT [1998] 229 ITR 383 (SC).

6. After considering the rival submissions, I am of the view that since it is a legal issue and arise out of the Orders of the authorities below and no new facts or material shall have to be considered and it goes to the root of the matter and validity of the assessment order in the matter, therefore, same is admitted for disposal of the appeal.

7. Learned Counsel for the Assessee referred to PB-44, which is copy of the reasons recorded for reopening of the assessment. PB-48 is reply of the assessee before A.O. in which it was explained that Shri S.K. Jain is not Director /Signatory in the Investor Company. Copy of the allotment of shares filed with the Registrar of Companies for allotment of share was also filed. It was, therefore, submitted that there was no willful concealment on the part of the assessee-company and all the details are provided on record. He has submitted that Jain Group has no connection with the Investor Company. Therefore, reasons recorded are incorrect. PB-82 is information under section 133(6) filed by the Investor Company to the A.O. confirming the transaction with the assessee-company supported by

bank statements/balance-sheet and acknowledgment of the return. PB-84 is copy of the income tax return of Investor. PB-93 is balance-sheet of the Investor Company M/s. Blue Bell Finance Ltd., the source of the funds available with this Company are Rs.1002,458,670.00. PB-96 shows name of assessee has been mentioned in Schedule-III under the Head "*Investments*" in the Company. PB-102 is the bank statement of Investor Company showing Rs.25 lakhs have been invested through banking channel and that there is no cash deposit in their account. PB-104 is another reply by the Investor Company under section 133(6) to the A.O. submitting the required documents. PB-105 is ledger account of the assessee-company in books of the Investor Company confirming the transaction. He has submitted that Ld. D.R. in his reply has admitted that the statements recorded at the back of the assessee-company were not provided to assessee-company and that no right of cross-examination have been allowed. He has submitted that in the case of Investor M/s. Blue Bell Finance Ltd., similar matter have been decided by ITAT, Delhi A-Bench in the

case of ITO vs., L.R. Finvest Pvt. Ltd., ITA.No.4551/Del./2015, Dated 30.11.2018, in which Departmental appeal have been dismissed, in which the Ld. CIT(A) has deleted the similar addition. PB-149 is another reply before Ld. CIT(A) in which also assessee-company explained that the Investor Company has no relation with any entry provider, which fact have not been disputed. The report of Investigation Wing is not provided to the assessee-company. The authorities below have not doubted the documentary evidences produced by the assessee-company. He has submitted that since the entire re-assessment proceedings have been initiated on the basis of documents found during the course of search in the case of Jain Group, therefore, as a consequential to the search, A.O. could only assume jurisdiction under section 153C of the I.T. Act, 1961. In support of the contention, he has relied upon Order of ITAT, Delhi A-Bench, New Delhi in the case of Shri Meer Hassan & Shri Ali Hassan, Dehradun in ITA.Nos.1571 & 1573/Del./2015 Dated 28.02.2019, in which, in similar circumstances, it was held that *“reopening of the assessment is invalid as*

*A.O. shall have to proceed under section 153C only*". Learned Counsel for the Assessee submitted that A.O. without applying his mind has reopened the assessment. He has relied upon several decisions in his written submissions and also submitted that addition on merits is also unjustified. He has submitted that additional ground of appeal of assessee may be allowed and all additions may be deleted.

8. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that in the last page of the assessment order's finding, it is mentioned that "*all the Annexures-A, B, C and D which are part of the assessment record*". Annexure-B and D have been referred to by the A.O. in the assessment order which clearly reveal that assessee-company has received accommodation entries, which were found during the course of search in the case of Shri S.K. Jain and Shri Virender Kumar Jain. The Ld. D.R. also referred to other seized documents filed as Annexures with the assessment order in support of the contention. The Ld. D.R. submitted that there is *modus operandi* to have cash for providing accommodation entry.

He has submitted that additional ground is liable to be dismissed because the issue is covered in the case of Mannat Hospitality P Limited vs., ITO Dated 07.06.2019 passed by ITAT, Delhi E-Bench, Delhi and the gist of the same is reproduced in the submissions of the Ld. D.R. The Ld. D.R. also submitted that the issue of cross examination is not relevant as Department has not relied upon statement of Shri S.K. Jain and Shri V.K. Jain while framing the assessment. The Ld. D.R. on merits relied upon several decisions in his submissions. The Ld. D.R, therefore, submitted that appeal of assessee has no merit and the same may be dismissed.

9. I have considered the rival submissions and perused the material on record. The ITAT, Delhi A-Bench in the case of Shri Meer Hassan & Shri Ali Hassan, Dehradun (supra), in paras 16 to 21 held as under:

*“16. Bare perusal of the provisions contained u/s 153C which is a non-obstante provision shows that when the assessment order shows that the assessment*

*proceedings were to be initiated on the basis of incriminating material found in search of a third party, as in the present case, the provisions contained u/s 153C are applicable which specifically excludes application of [sections 147 & 148](#) of the Act.*

*17. In the instant case, undisputedly, originally assessment proceedings were initiated against the present assesseees u/s 153C read with [section 153A](#) of the Act which was completed vide order dated 30.12.2011 but the same were annulled by ld. CIT (A) vide order dated 28.08.2012 on the ground that proper course in this case was to initiate proceedings u/s 147 of the Act and make assessment accordingly. The said assessment u/s 153C read with [section 153A](#) was completed on the basis of some seized material/document LP-103 A-1 pages 30, which is a memorandum of understanding alleged to have been entered into between the assesseees and M/s. R.B. Enterprises.*

18. So, we are of the considered view that when provisions contained u/s 153C are applicable in this case to initiate assessment proceedings on the basis of seized material seized in case of some third party, notice issued u/s 148 of the Act and subsequent assessment framed u/s 147 of the Act is void ab initio and as such, assessment framed u/s 147/143(3) of the Act is liable to be quashed.

19. Identical issue has been decided by the coordinate Bench of the Tribunal in case cited as Rajat Shubra Chatterji vs. ACIT - ITA No.2430/Del/2015 order dated 20.05.2016 by returning following findings :-

"7. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of *ITO vs. Arun Kumar Kapoor* (supra), we find that in that case as in the present case before us, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged

*by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec. 153C, reassessment order was rightly quashed by the Learned CIT(Appeals). In the present case before us, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information received from the Directorate of Income-tax (Inv.) on*

*the basis of search & seizure operation conducted at the premises of Rock Land Group of Cases and the documents related to the assessee found during the course of search were made available to the Assessing Officer of the present assessee. We thus respectfully following the decision of Coordinate Bench of the ITAT in the case of [ACIT vs. Arun Kapur](#) - 140 TTJ 249 (Amritsar) hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the Act, hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. The reassessment in question is accordingly quashed. The ground No.1 is accordingly allowed."*

20. Similarly, coordinate Bench of the Tribunal in case cited as [ITO vs. Arun Kumar Kapoor](#) - (2011) 140 TTJ

*249 has upheld the reassessment order quashed by the ld. CIT (A) by returning following findings :-*

*"Reassessment - Validity-Reassessment on the basis of incriminating material found in search of third party-Provisions of s. 153C are applicable which exclude the application of ss. 147 and 148 - Hence notice issued under s. 148 and proceedings under s. 147 are illegal and void ab initio - AO having not followed procedure under s. 153C, reassessment order was rightly quashed by the CIT (A)."*

*21. Following the mandate of [section 153C](#) and orders passed by the coordinate Bench of the Tribunal in cases of [Rajat Shubra Chatterji vs. ACIT](#) and [ITO vs. Arun Kumar Kapoor](#) (supra), we are of the considered view that assessment framed in this case u/s 147/143 (3) of the Act on the basis of incriminating material unearthed in case of a third party is not sustainable, hence ordered to be quashed without entering into the merits*

*of the case. So, other grounds of appeal raised by the assessee have become infructuous. Consequently, both the appeals filed by the assesseees are allowed.”*

9.1. The ITAT, Delhi A-Bench recently in the case of Shri Adarsh Agrawal, Delhi vs., ITO, Ward-61(1), New Delhi in ITA.No.777/Del./2019 for the A.Y. 2010-2011 vide Order Dated 14.01.2020 held as under :

*“IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES “A”: DELHI*

*BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER*

*ITA.No.777/Del./2019  
Assessment Year 2010-2011*

<i>Shri Adarsh Agrawal, N-57, Naveen Shahdra, Delhi. PAN AACPA1775E</i>	<i>vs.,</i>	<i>The Income Tax Officer, Ward-61(1), Room No.2007, 20<sup>th</sup> Floor, E-2 Block, Civic Centre, JLN Marg, New Delhi - 110002</i>
<i>(Appellant)</i>		<i>(Respondent)</i>

<i>For Assessee :</i>	<i>Shri Ashwani Kumar, C.A. Shri Rohit Jain, Advocate, Shri Deepesh Jain, C.A. And Shri Arpit Goel, C.A.</i>
<i>For Revenue :</i>	<i>Shri Ved Prakash Mishra, Sr. DR</i>

<i>Date of Hearing :</i>	<i>08.01.2020</i>
<i>Date of Pronouncement :</i>	<i>14.01.2020</i>

**ORDER****PER BHAVNESH SAINI, J.M.**

*This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-27, New Delhi, Dated 20.11.2018 for the A.Y. 2010-2011.*

2. *Briefly the facts of the case are that in this case information has been received from Central Circle, Jammu, Dated 09.04.2014 that during the course of search under section 132 of the I.T. Act, 1961 on 07.04.2011 in the case of Shri Naresh Sabharwal of New Delhi, loan agreement was found. As per the loan agreement assessee has given cash loan of Rs.1 crore to Shri Naresh Sabharwal on 17.02.2009 @ 24% interest per annum. Both the assessee as well as Shri Naresh Sabharwal has claimed that this loan was never advanced. However, as per the agreement it was clearly mentioned that loan has been given. Both the parties have denied the transaction as the same was not accounted for in the books of account. The A.O. on that basis reopened the*

*assessment in the case of the assessee and questionnaire was issued seeking explanation of assessee. Assessee was directed to file return of income under section 147/148 of the I.T. Act. The assessee submitted that earlier return filed originally may be treated as return having been filed in response to notice under section 148 of the I.T. Act. The assessee at the re-assessment stage denied to have given any cash loan to Shri Naresh Sabharwal. It was explained that assessee had agreed to arrange the loan for him through the Financer which was not materialised, therefore, original agreement was scrapped. It may be possible that photocopy have been retained by the said party. The A.O, however, did not accept the contention of assessee and made addition of Rs.1 crore on account of cash loan given to Shri Naresh Sabharwal as well as made addition on account of interest of Rs.6,96,774/-.*

3. *The assessee challenged the reopening of the assessment as well as addition on merit before the Ld. CIT(A). The detailed written submissions of the assessee is*

*reproduced in the appellate order. The Ld. CIT(A), however, dismissed the appeal of assessee.*

4. *The assessee in the present appeal has challenged the reopening of the assessment as well as both the additions on merit.*

5. *We have heard the Learned Representatives of both the parties and perused the material on record.*

6. *Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to PB-8 which is original return of income filed on 09.12.2010. PB-1 is notice under section 148 Dated 12.02.2015. PB-9 is letter of the A.O. extracting the reasons for notice under section 148. PB-10 is reply of the assessee denying giving any loan to Shri Naresh Sabharwal supported by the affidavit which was filed during the assessment proceedings in the case of Shri Naresh Sabharwal. PB-25 is copy of the loan agreement provided by the Department. PB-27 is assessment order in the case of Shri Naresh Sabharwal under section 153A r.w.s. 143(3) Dated 21.03.2014. PB-32 is reasons for*

reopening of the assessment. Learned Counsel for the Assessee submitted that since Shri Naresh Sabharwal as well as assessee have denied giving of any cash loan and that no evidence have been found giving loan by assessee to Shri Naresh Sabharwal, therefore, reopening of the assessment is bad in law. Further the loan agreement was found during the course of search in the case of Shri Naresh Sabharwal and assessment under section 153A have been completed in his case, therefore, assessment in the case of assessee should have been made under section 153C only which is a special provision. Therefore, re-assessment in the matter is wholly unjustified, invalid and bad in law. In support of his contention, he relied upon the following decisions :

01.	<i>ITO vs., Arun Kumar Kapoor [2011] 140 TTJ 249 [Amritsar-ITAT].</i>
02.	<i>Order of ITAT, Delhi D-Bench, Delhi in the case of Rajat Shubra Chatterji, New Delhi vs., ACIT, Circle 37(1), New Delhi in ITA.No.2430/Del./2015 Dated 20.05.2016.</i>
03.	<i>Order of ITAT, Delhi SMC-Bench, Delhi in the case of Sushil Gaur &amp; Shelly Agarwal, New Delhi vs., ITO, Ward-2(3), Ghaziabad in ITA.No.1500 &amp; 1501/Del./2017, Dated 08.08.2017</i>

04.	<i>Order of ITAT, Delhi SMC-Bench, Delhi in the case of Shri Girish Chandra Sharma, Bulandshahr vs., ITO, Ward-3(1), Bulandshahr in ITA.No.987/Del./2018, Dated 30.11.2018.</i>
05.	<i>Order of ITAT, Mumbai SMC-Bench, Mumbai in the case of M/s. Rayoman Carriers Pvt. Ltd., Mumbai vs., ACIT, Central Circle-12, Mumbai in ITA.Nos.3275 &amp; 3276/Mum/2015, Dated 16.03.2018.</i>
06.	<i>Order of ITAT, Visakhapatnam Bench, Visakhapatnam in the case of G. Koteswara Rao vs., DCIT, Central Circle-1, Visakhapatnam [2015] 64 taxmann.com 159.</i>

6.1. *The Learned Counsel for the Assessee also submitted that since both the parties denied to have entered into loan transactions and there is no other corroborative evidence on record, therefore, no addition could be made. In support of this submission, he has relied on the following decisions.*

01.	<i>Commissioner of Income Tax (Central)-1, New Delhi vs., Ved Prakash Choudhary [2008] 169 Taxman 130 [Delhi] [HC]</i>
02.	<i>Commissioner of Income Tax, Central-II, New Delhi vs., S.M. Aggarwal [2007] 293 ITR 43 [Del.] [HC].</i>
03.	<i>ACIT vs., Kences Foundation (P.) Ltd., [2007] 289 ITR 509 [Madras] [HC].</i>
04.	<i>Commissioner of Income Tax, Central-III vs., Suneet Verma [2007] 145 DLT 280 [DB] [Del.] [HC].</i>
05.	<i>Commissioner of Income Tax vs., Lubtec India Ltd., [2009] 311 ITR 175 [Del.] [HC].</i>

06.	<i>Order of ITAT, Delhi C-Bench, Delhi in the case of Amarjit Singh Bakshi (HUF) vs., ACIT [2003] 86 ITD 13 [Del.] [TM].</i>
07.	<i>Order of ITAT, Guwahati Bench, Guwahati in the case of M/s. Fantastic Buildcon Pvt. Ltd., Guwahati vs., ITO, Ward-2(1), Guwahati in ITA.No.104/Gau/2011 &amp; SP.No.09/Gau/2011, Dated 07.02.2012.</i>
08.	<i>Order of ITAT, Mumbai D-Bench-T.M. Mumbai in the case of S.P. Goyal vs., DCIT [2002] 82 ITD 85 [Mum.].</i>
09.	<i>Judgment of Hon'ble Supreme Court in the case of Commissioner of Income Tax vs., Smt. P.K. Noorjahan [1999] 237 ITR 570 [SC].</i>

7. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that re-assessment proceedings have been rightly initiated based on the agreement found during the course of search in the case of Shri Naresh Sabharwal.

8. We have considered the rival submissions. It is well settled Law that validity of the re-assessment proceedings are to be determined with reference to the reasons recorded for reopening of the re-assessment. Learned Counsel for the Assessee filed copy of the reasons recorded for reopening of the assessment as provided under RTI Act,

*copy of the same is filed at Page-32 of the Paper Book which reads as under :*

*“ANNEXURE- A*

*Sh. Adarsh Aggarwal (PAN-AACPA1775E) A.Yr. 2010-11*

*FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS U/S 147/148 AND FOR OBTAINING THE APPROVAL OF THE ADDITIONAL COMMISSIONER OF INCOME TAX : COMMISSIONER OF INCOME TAX / CENTRAL BOARD OF DIRECT TAXES :*

*Letter F.No.DCIT/CC/JMU/2014-15/5 dated 09/04/2014 was received from DCIT, Central Circle. Jammu intimating that during the course of search u/s 132 of the I.T. Act on 07/04/2011 in the case of Sh. Naresh Aggarwal, 8/11, Jangcura Extension, Hospital Road, Delhi, it was found that Sh. Adarsh Aggarwal s/o Sh. Murari Lal Aggarwal, R/o.N-57, Naveen Shahdra, Delhi-32 has given a cash loan of Rs.1 crore to Sh. Naresh Sabharwal on 17/12/2009 at an interest of 24% per annum. Both Sh. Adarsh Aggarwal as well as Sh. Naresh Sabharwal have claimed that this loan was never advanced. However as per the agreement, which is placed on file, it is clearly mentioned that this loan has been given. Thus it is obvious that the parties*

*are denying the transaction as the same has not been accounted for in the books of accounts.*

*In view of the information as above the case Explanation 2(b) to section 147 is applicable in the case, which lays down, "where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income..... "*

*In view of the above facts, I have the reason to believe that income to the tune of Rs.1 crore chargeable to tax has escaped assessment. Therefore, notice u/s. 148 of the I.T. Act is hereby issued.*

*Sd/- P.K. Malik,  
Income Tax Officer,  
Ward-61(1), New Delhi".*

8.1. *In the reasons A.O. has mentioned that search was conducted in the case of Shri Naresh Aggarwal [wrongly mentioned the name] and that during the course of search it was found that assessee has given cash loan of Rs.1 crores to Shri Naresh Sabharwal on 17.12.2009. Copy of the agreement is filed at page-25 of the PB. A.O. has also mentioned in the reasons that both the parties have denied to*

*have given or taken any cash loan. Thus, Shri Naresh Sabharwal has never agreed that he has taken any cash loan from the assessee. Copy of the agreement is filed in the paper book which is signed by 02 witnesses, but, none have been examined by the A.O. to confirm the genuineness of the transaction in the matter. No original agreement have been brought on record or examined by the A.O. No report of handwriting expert have been obtained by the A.O. before recording the reasons for reopening of the assessment. Thus, only photo copy have been taken on record without examining the validity of the same agreement. Since Shri Naresh Sabharwal has denied to have taken any loan from the assessee, therefore, before recording the reasons, it is the duty of the A.O. to bring some concrete and corroborative material on record to justify his conclusion that there is escapement of income in this case. The Hon'ble Bombay High Court in the case of Indian Express Newspapers (Bombay) P. Ltd., & Another vs., Union of India & Others [2008] 300 ITR 351 [Bom.] held as under :*

*“Held that it was the contention of the Revenue that subsequent to the finalization of the assessment of the petitioners for the assessment year 1980-81, it was found that one P was paid interest. When questioned about this, the petitioners had initially denied having any transaction with the party. However, when the evidence pertaining to loans was pointed out to the petitioners and more particularly, they were confronted with the evidence of deduction of tax at source, the petitioners had nothing to say. Further, in the course of search and seizure operation at the premises of the Calcutta party, they had stated on oath that certain loans alleged to have been paid by the petitioners were not genuine and the entries relating thereto were hawala entries. The reasons for the notice of reassessment as contained in the affidavit in reply filed at the stage of admission was based upon the statement of B who expired after retracting the statement. The documentary evidence indicated the existence of the loan and the payment of interest after*

*deduction of tax deducted at source. As against this documentary evidence, the Revenue had relied upon the statement of B to the effect that these were only hawala entries There was no sufficient reason for reopening the assessment. The notice was not valid.”*

8.2. *Since Shri Naresh Sabharwal has retracted from the fact of taking any loan from assessee and genuineness of the agreement is itself in doubt which was found during the course of search and is not corroborated by any evidence or material on record, therefore, such photo copy of the agreement cannot be relied upon by the A.O. for the purpose of initiating the re-assessment proceedings in the case of the assessee. It is an admitted fact that in the present case the agreement in question was found during the course of search in the case of Shri Naresh Sabharwal and proceedings under section 153A have been initiated against him. Therefore, the agreement in question have been transferred by A.O. of the person searched to the A.O. of the assessee for the purpose of taking remedial action in the matter. It is well settled Law that in the case of assessment made on assessee consequent*

*to the search in another case, A.O. is bound to issue notice under section 153C and thereafter proceed to assess the income under section 153C and if A.O. had proceeded with re-assessment under section 147/148 of the I.T. Act and passed the Order under section 143(3)/148 of the I.T. Act, the same would be illegal and arbitrary and without jurisdiction. We rely upon the Order of ITAT, Visakhapatnam Bench in the case of G. Koteswara Rao (supra). In the case of ITO vs., Arun Kumar Kapoor [2011] 140 TTJ 249 (ASR-ITAT) [Paper Book at Page-71], the ITAT, Amritsar Bench held as under :*

*“On a perusal of section 153C, it would be clear that the provisions of this section are applicable, which supersedes the applicability of provisions of sections 147 and 148. In the instant case, the documents were seized during the search under section 132 and the same were sent to the Assessing Officer of the assessee and, thus, the Commissioner (Appeals) has correctly observed that only the provision in which any assessment could be made against the assessee was section 153C, read with section 153A. It was also apparent from the record that the officer in the case of*

*'T' Ltd. had mentioned in his letter that the necessary action may be taken as per law under section 153C/148. Hence, notice issued under section 148 and proceedings under section 147 by the Assessing Officer were illegal and void ab initio. In view of the provisions of section 153C, section 147/148 stands ousted. In the instant case, the procedure laid down under section 153C has not been followed by the Assessing Officer and, therefore, assessment has become invalid. The Commissioner (Appeals) was justified in following the ratio laid down by the Supreme court in the case of Manish Maheshwari v. Asstt. CIT [2007] 289 ITR 341 / 159 Taxman 258 wherein it has been held that if the procedure laid down in section 158BD is not followed, block assessment proceedings would be illegal. The Commissioner (Appeals) has correctly observed that the provisions of section 153C are exactly similar to the provisions of section 158BD in block assessment proceedings. Thus, considering the entire facts and the circumstances of the case, the Commissioner (Appeals) was fully justified in quashing the reassessment order."*

8.3. *The other decisions relied upon by the Learned Counsel for the Assessee are on the same proposition. Considering the facts of the case in the light of above decisions, it is clear that loan agreement was found during the course of search in the case of Shri Naresh Sabharwal which is handed-over to the A.O. of the assessee and addition is made only on that basis. Therefore, there was no justification for the A.O. to have been initiated proceedings under section 147/148 of the I.T. Act. The correct course of action would have been to proceed against the assessee under section 153C of the I.T. Act. Therefore, initiation of re-assessment proceedings under section 147/148 of the I.T. Act is wholly invalid, void and bad in Law. Since the correct procedure have not been adopted by the A.O. and there is no justification to initiate the re-assessment proceedings against the assessee, we set aside the Orders of the authorities below and quash the reopening of the assessment. Resultantly, all additions stands deleted.*

9. *In the result, appeal of Assessee allowed.*

9.2. Considering the facts of the case in the light of above decisions and provisions contained under section 153C of the I.T. Act, it is clear that the A.O. should consider the issue of share capital and share premium based on the documentary evidences seized from Jain Brothers, copies of the seized documents are attached with the assessment order particularly as Annexures B and D. It would, therefore, show that incriminating material was found during the course of search in the case of search operation carried out in the case of Shri S.K. Jain Group of cases. The same seized documents were relied upon by the A.O. while framing the assessment in the case of the assessee and initiating the re-assessment proceedings. It is well settled Law that validity of the re-assessment proceedings is to be determined with reference to the reasons recorded for reopening of the assessment. The Counsel for Assessee has filed copy of the reasons recorded for reopening of the assessment at pages 44 and 45 of the PB. The same is reads as under :

Name of the assessee: M/S Saurashtra Color Tones P. Ltd.

PAN: AAGCS2343P

ASSESSMENT YEAR: 2011-12

**REASONS FOR ISSUE OF NOTICE U/ 148 OF THE INCOME TAX ACT,1961**

The return of income for the A.Y. 2011-12 has been filed by the assessee company on 28.09.2011 declaring a total income of Rs. 5,90,260/-. The same was processed u/s 143(1) on 20.01.2012.

In this case information has been shared by DIT (Investigation),-II (letter flagged as Annexure A-1) on the basis of search in the case of Sh. Surendra Kr. Jain group of cases (entry operator) New Delhi that during the financial year 2011-12 the aforementioned assessee has introduced its own money by way of taking bogus accommodation entries provided by Sh. S.K. Jain group of cases (entry operator) the details of accommodation entry amount received as beneficiary is given as under as provided by investigation wing:

S. No.	Beneficiaries	Name of Entry Provider	Amount	Total Amount
1	M/s Saurashtra Color Tones P. Ltd.	Sh. Surendra Kumar Jain Group	25,00,000/-	25,00,000/-

I have perused balance sheet of the assessee for year ending 31.03.2010 and 31.03.2009 it is revealed that issued subscribed and paid up capitals has increased by Rs. 50,000/- and the securities premium has increased by Rs. 24,50,000/-. In this way there is an total increase of Rs. 25 lacs.

In this regard I have also tallied the above with information details of the cheques/PO received by the above company, the amount the issuing company, the receipt company, middleman bank etc. as tabulated/reproduced below which are found tally with fresh share capital received as detailed below to.

S. No.	From company name	To Company name	Name of the issuing bank	Chq./R TGS/PO	Ch./ Date	Amount	Name of the Middle Men
1	Blue Bell Finance P. Ltd.	Saurashtra Color Tones P. Ltd.	Axis	Ch. No. 022790	20.05.2010	25,00,000/-	Vijay Gupta

*In view of the above information I have reason to believe that the income pertaining to the Asstt. Year 2011-12 has escaped assessment to the extent of Rs.-25,00,000/-. The same has escaped assessment on account of failure on the part of the assessee to truly and fully disclose all material facts necessary for assessment for the AY 2011-12. In order to verify the genuineness, identification and creditworthiness of the aforesaid transaction the case needs to be reopened u/s 147 of the I.T. Act, 1961.*

*Sd/- R.O. Butia,  
Income Tax Officer,  
Ward-22(4), New Delhi.”*

9.3. The above reasons for reopening of the assessment shows that during the course of search incriminating material pertaining to assessee-company were found and seized and that M/s. Blue Bell Finance Ltd., has made investment in assessee-company. The A.O. has specifically referred to the seized documents during the course of search as Annexures B & D and also attached

various other documents found during the course of search to the assessment order. The Ld. D.R. also admitted that the aforesaid Annexures were found during the course of search in the case of Jain Group. Therefore, when incriminating documents were found during the course of search, the same have been used in the case of the assessee-company. The proper course the A.O. should have adopted is to proceed against the assessee-company under section 153C of the I.T. Act instead of recording reasons for reopening of the assessment under section 147/148 of the I.T. Act. The issues involved in the additional grounds are, therefore, covered by the Orders of the Division Bench of the ITAT, Delhi A-Bench in the cases of Shri Meer Hassan & Shri Ali Hassan, Dehradun (supra) and in the case of Shri Adarsh Agarwal, Delhi vs., ITO, Ward-61(1), New Delhi (supra). In view of the above, we are of the view that A.O. was not justified in initiating the re-assessment proceedings under section 147 of the I.T. Act, 1961. The A.O. should have proceeded against the assessee under section 153C of the I.T. Act. The Ld. D.R. however submitted that the issue is

covered in favour of the Revenue by Order of ITAT E-Bench in the case of Mannat Hospitality P Limited vs., ITO Dated 07.06.2019 (supra), the gist of which is reproduced in the submissions of the Ld. D.R, in which, it is specifically noted by the Tribunal that *“no material belonging to assessee was either found from the residence of Shri S.K. Jain or handed over to the A.O. of the assessee by the A.O. of the searched person”*. Therefore, the said decision would not support the case of the Revenue. Considering the totality of the facts and circumstances of the case, A.O. was not justified in initiating the re-assessment proceedings against the assessee under section 147/148 of the I.T. Act. The A.O. did not apply his mind to the facts and circumstances of the case and material on record. Therefore, we set aside the Orders of the authorities below and quash the reopening of the assessment in the matter. In the result, additional grounds of appeal of assessee challenging the reopening of the assessment are allowed and resultantly, all additions stand deleted. I may also briefly note here that in the present case the Investor Company M/s. Blue Bell Finance

Pvt. Ltd., has directly filed confirmation to the A.O. in reply to notice under section 133(6) of the I.T. Act, 1961, supported by copy of the bank statements, copy of the balance-sheet and others. The same have not been doubted by the authorities below. The Investor Company has sufficient funds to make investment in assessee-company as noted above. No cash was found deposited in the account of the Investor Company. Therefore, even on merits, it may not be a case of making addition under section 68 of the I.T. Act. In view of the above, I allow the appeal of assessee.

10. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 22<sup>nd</sup> January, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "SMC" Bench
6.	Guard File

// BY Order //

Assistant Registrar, ITAT, Delhi Benches, Delhi.