

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

**BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM**

**I.T.A. No.5262/M/2017  
(Assessment Year: 2008-09)**

ITO 1(2)(3) 527, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	M/s. Money Matters Properties Pvt. Ltd. 1-B, 1 <sup>st</sup> Floor, 35 Court Chambers, Sir Vithaldas Thackersey Marg, Mumbai- 400020.
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**I.T.A. No.5116/M/2017  
(Assessment Year: 2008-09)**

M/s. Money Matters Properties Pvt. Ltd. 1- B, 1 <sup>st</sup> Floor, 35 Court Chambers, Sir Vithaldas Thackersey Marg, Mumbai- 400020.	Vs.	ITO 1(2)(3) 527, Aayakar Bhavan, M.K. Road, Mumbai-400020.
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. : AAECM9600P		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by:	Shri Jitendra Jain (AR)
Revenue by:	Ms. Jothi lakshmi Nayak (DR)/ Ms. Bharati Singh

**Date of Hearing: 06/03/2020  
Date of Pronouncement: 20/03/2020**

**ORDER**

**PER AMARJIT SINGH, JM:**

The revenue as well as assessee have filed the above mentioned appeal against the order dated 07.04.2017 passed by the



ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09

Commissioner of Income Tax (Appeals)-2, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the assessment year 2008-09.

**ITA. NO. 5262/Mum/2017**

2. The revenue has filed the present appeal against the order dated 07.04.2017 passed by the Commissioner of Income Tax (Appeals)-2, Mumbai (hereinafter referred to as the “CIT(A)”) relevant to the assessment year 2008-09.

3. The revenue has raised the following grounds: -

- “1. *Whether on facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of the Rs.6,90,00,000/- made u/s 68 of the IT Act by the assessing officer for the failure of the assessee to prove the genuineness of share application money and security premium satisfactory.*
2. *The applicant craves leave to add to, amend or withdraw the aforesaid ground of appeal.”*

4. The brief facts of the case are that the assessee filed its return of income on 25.09.2008 declaring total income to the tune of Rs.7,40,474/- for the A.Y. 2008-09. The return was processed u/s 143(1) of the I.T. Act, 1961 accepting the income returned. Thereafter, the case of the assessee was reopened by issuance of notice u/s 147/148 of the Act. The reasons for reopening the assessment is hereby mentioned below.: -

“2.1 *In the case of above mentioned assessee, the case was initially reopened for A.y.2009-10 u/s 147 for the reason that the assessee was in receipt of huge share premium amount to Rs.1,12,40,000/- during the F.Y.2008-09. During the course of reassessment proceedings, it is*



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

*learned from the balance sheet and details submitted, that the assessee has received share premium amounting to Rs.8,91,00,000/- in the Financial Year 2007- 08 which is relevant to A.Y.2008-09. The nature of the share application received (the intrinsic value of share as per NAV method does not command and share premium of Rs.90/- per share for the face value of Rs.0/-. Therefore, the nature of share capital received on premium is not substantiated. In these circumstances, the reassessment proceedings for the AY. 2009-10 were approved and case for A.Y.2008-09 was reopened.*

*2.2 In addition to the above, information was received from the Dy. DIT-(Inv.) Unit 3(1) & 3(2) Mumbai vide his letter dated 14.02.2015, wherein it was stated that a Survey was conducted on the Capri Group (Earlier known as Money Matter Group) on 09.10.2014. During the survey it was noticed that m/s-. Money Matter Properties Pvt. Ltd. AAECM9600 has received share premium of Rs. 4.90 Crore. The share capital were received by the assessee company from the companies arc mere entry provider and allotted share at high premium to them. The same were brought back by the Group, Companies of the assessee very low price.*

*2.3 The Dy. Director of Income Tax (Inv.) Unit-3(l) & 3(2), Mumbai has also informed that a survey u/s. 133A was conducted on Microsec Capital at 8, Shanti Niketan, Carnax Street, Shakespeare Sarani, Kolkata-700017 on 02.15.2015. During the course of survey, statement of Shri Manoj Sarma, Akash Chatterjee, Pritam Ghosh and Mantosh Yadav was recorded. During the statement they have accepted that the transactions Capri Group are merely entries. They also accepted that all the companies where these- four are directors are dummy companies providing accommodation entries. In statement of Mantosh Kumar Yadav has accepted the accommodation entry amounting to Rs.3,25,00,000/- has been provided in the form of share application money to the assessee company by M/s. Prism Impex Pvt. Ltd. during the F.Y.2007-08.*

*2.4. In view of the above reasons, the income represented as share application money shown to be credited in the books of accounts of the assessee amounting Rs.8,91,00,000/- and the nature of source of such credits are found to have remained unexplained. The assessment for A.Y. 2008-09 has accordingly been re-opened by issuing of notice u/s. 148 of the 1.T. Act. 1961."*



ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09

5. The assessee company engaged in the business of Real Estate and Investment. In response to the notice u/s 148 of the Act, the assessee filed the objection which was disposed of vide letter dated 16.10.2015 & 18.01.2016. The assessee requested to treat the return already filed in response to the notice u/s 148 of the Act. The AO conducting the inquiry in connection with the bogus entry with the assessee and found that an amount of Rs.6,90,00,000/- has been introduced by assessee as accommodation entry which was unexplained cash credit u/s 68 of the I. T. Act, 1961, therefore, the same was added to the income of the assessee and the total income of the assessee was assessed to the tune of Rs.6,97,40,470/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

### **ISSUE NO. 1**

6. We have heard arguments advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of revenue has argued that the CIT(A) has wrongly deleted the addition, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.: -



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

*“4.5. I have perused carefully the Assessment Order of the AO, detailed submissions of the Appellants, various supporting evidences filed by the Appellants in its Compilation. On perusal of the Assessment Order, the AO is of the opinion that the share capital and share premium amount received by the appellant is taxable u/s 68 of the I.T. Act.*

*On the other hand, the AR of the Appellant argued that the share capital and share premium amount received by the company is capital in nature and cannot be brought to tax. The Appellant also submitted, in the light of documents, filed during the course of assessment proceedings, the identity and creditworthiness of the investors as well as genuineness of the transactions are proved beyond doubt; therefore, the action of the AO in taxing the share capital and share premium u/s 68 of the I.T. Act, is not justifiable one. The Appellant, in support of its claim relied upon the following judicial pronouncements:*

- *Green infra Ltd vs ITO [159 TTJ (Mum) 728]*
- *Gagandeep Infrastructure Pvt. Ltd [2014-TIOL-656-ITAT-Mum]*
- *CIT vs Lovely export (P) Ltd 1319 ITR 5 SC*
- *ACT vs Anjara India Ltd [135 TTJ 430 Del]*
- *CIT vs Winstral Petrochemicals P. Ltd 1330 ITR 603 Del]*
- *CIT vs Dwarkadhish Investment Pvt. Ltd [330 ITR 298 Del]*
- *CIT vs GP International Ltd [325 ITR 25 P H)*
- *ACT vs Ruchi Credit Corporation Ltd 12010-TIOL-738-ITAT-Mum]*
- *CIT vs Stellar Investment Ltd [251ITR 263 SC]*
- *CIT vs Electro Polychem Ltd [294 ITR 661Mad]*
- *Prana Studios Pvt. Ltd vs DCIT [2010-TIOL-244-ITAT-Mum]*
- *ITO vs Ashirwad Metals Pvt. Ltd [2009-TIOL-810-ITAT-Mum]*

*In order to decide the issue in appeal, section 68 of the I.T. Act has been perused. On perusal thereof it is evident that whenever an assessee is in receipts of funds either by way of loans and advances or by way of share capital, section 68 of the I.T. Act casts an obligation on the assessee to prove the identity and credit worthiness of the parties from whom the funds have been received and the genuineness of the transaction. If the*



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

*assessee failed to prove the identity and credit worthiness of the parties from whom the funds has been received and the genuineness of the transaction or if the AO is not satisfied with the explanation filed by the assessee then, the AO can make addition u/s 68 of the I.T. Act.*

*Bearing the above legal position in mind, I have gone through all the documents filed by the appellant in order to determine the identity and credit worthiness of the investors and genuineness of the transaction.*

*The Appellant, in order to prove the identity of the investors filed {wherever applicable} (iii) Acknowledgement of Income Tax return filed by the investors (iv) Bank statement of investors, etc. The AO has neither record. any valid reason nor brought on record any evidence as to why the above documents are not sufficient enough to prove the identity of the investors seems that the AO has ignored the above documentary evidences filed by the Appellant. In view of the above facts, I'm of the opinion that the Appellant has proved of the investors beyond any doubt.*

*As far as genuineness of the transaction is concerned the Share capital and share premium has been received through the Banking channels. Appellant filed its-own bank statement as well as Bank statement of the investors which duly shows the investments made by the investors in the Appellant Company. The said investments are duly supported by the share application form filled by the investors and Form 2 filed by the Appellant wit? the Registrar of the Company. The AO has not given any justifiable why the genuineness of the transaction, in view of the above documents, is no proved. In the light of the above supporting documents, the genuineness of the transaction cannot be doubted and hence section 68 of the Act not be invoked.*

*With respect to the creditworthiness of the investors, I am of the opinion that the that the assessee is under obligation to prove the source of the investors. In the case of the appellant, it has duly prove the source of the share premium received by it by way of filing the audited financial statement of investor companies. In many cases, the Appellant has also filed the source of funds investors companies for making investment in appellant companies. Therefore, I am of the considered view that the Appellant had duly proved the creditworthiness of the investors. In view of the above discussion and fact: stated hereinabove I'm of the view that the Appellant has beyond discharged its onus to prove the identity and creditworthiness of and genuineness of the transactions. Therefore, the addition made by the AO unjustified.*



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

*Apart from the above submissions and facts and record, I have also gone through the judicial decisions relied by the Appellant company as under:*

*In the case of Green Infra Ltd vs ITO [159 TTJ 728 Mum], wherein it has been held that:*

*"Income of every kind which is not to be excluded from the total income is chargeable to tax under s. 56(1)- Emphasis is on 'Income of every kind'- Thus, to tax any amount under this section, it must have some characters of income - Receipts directly relating to share capital of company are capital receipts and therefore cannot be taxed under s 56(1)- As regards the contention of the Revenue that the impugned transactions falls within the parameters of s. 68, confirmations of the payments have been received by the AO in response to notices issued s. 133(6)and thus, the identity of the subscribers has been established beyond all reasonable doubt- Revenue authorities have not questioned the identity of the share-holders - Genuineness of the transaction can also be safely concluded as the entire transaction has been carried out through banking channel and the same is duly recorded in the books of accounts and reflected in the financial statement of the assessee - Capacity of the shareholders cannot be doubted as 98% percent of the shares are held by IDFCPE Fund II and the contributors to this funds are public sector undertakings - Thus, s 68 is not attracted.*

*I have also gone through the judicial citation in the case of CIT vs Lovely Exports P. Ltd (216 CTR 195] where in it is held that:*

*"If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AD, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company"*

*Further, I have gone through the judgment of Vodafone India Services Pvt Ltd vs Union of India & Ors (368 ITR 1) wherein Hon'ble Bombay High Court held that the receipt of share capital is capital in nature; hence, the same cannot be brought to tax.*

*I have also gone through the decision of ITAT Mumbai, in the case of Infrastructure Pvt. Ltd(2014-TIOL-656-ITAT-Mum) it was held as under:-*

*'...There is no dispute that the assessee has given details of names and addresses of the share-holders, their PAN Nos, the bank details and the confirmatory letters. Considering all these undisputed facts, it can be*



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

*safely concluded that the initial burden of proof as rested upon the assessee has been successfully discharged by the assessee . Even if it is held that excess premium has been charged, it does not become income as it is a capital receipt. The receipt is not in the revenue field. What is to be probed by the AO is whether the identity of the assessee is proved or not. in the case of share capital, if the identity is proved, no addition can be made u/s. 68 of the Act. We draw support from the decision of the Hon'ble Supreme Court in the case of Lovely Exports Pvt. Ltd. 317 ITR 228. We, therefore do not find any error or infirmity in the findings of the Ld. CIT(A). Ground No. 1 is accordingly dismissed.*

*Further, recently in the above case of Gagandeep infrastructures, the Bombay High Court in ITA 1613 of 2014 dt. 20.03.2017 has dismissed the Revenue appeal by holding as under:*

*'...It was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in CIT v/s. Lovely Exports (P)Ltd. 317 JTR 218 in the context to the pre-amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assesses income as unexplained cash credit.*

*So after considering the fact on record and respectfully following the jurisdictional Bombay High Court's decision in the case of Vodafone India Services Pvt. Ltd. Vs Union of India & Others (2014) 368 ITR 01 (Bom HC) and jurisdictional ITAT "G" Bench decision order in the case of Green Infra Ltd.ITANo.7762/ Mum/ 2012 dated23.08.2013 and also considering the Board's Instruction, I am of the considered opinion that the addition of Rs.6,90,00,000/- made by the AO is not justified and fair. I therefore, direct the AO to delete the above addition."*

7. On appraisal of the above mentioned finding, we noticed that the case of the assessee was reopened on the basis of the information received to the effect that the assessee has received accommodation entries of share premium amounting to Rs.6,90,00,000/- from 12 parties. During the course of inquiry, the AO found that the share



ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09

application money received by the assessee is not genuine and therefore, the AO added the same i.e amounting to Rs.6,90,00,000/- to the income of the assessee. The CIT(A) examined the matter in the light of identity , credit worthiness and genuineness of the transactions. The assessee filed PAN Cards, Certificates of Registrations from RBI, Acknowledgments of Income Tax return, invoices, Bank-statements of investor which were not considered by AO without giving sufficient and cogent reasons. Accordingly, identities is nowhere seems doubtful. So far as the genuineness of the claim is concerned, the assessee filed its own bank-statements as well as bank-statements of the investors which shows that the investments made by investors in the appellant company genuinely. The investments were duly shown by share applicants / investors in their respective balance sheets and also correspondingly by the assessee and also in form -2 filed by assessee with the registrar of the company. The AO nowhere discussed all these documents. Hence, in the said situation, the genuineness nowhere seems doubtful. So far as the creditworthiness is concerned the financial statements of the investors have been placed on record and explained. In the said circumstances, the identity, genuineness and creditworthiness of the transactions is not required to be doubted. The CIT(A) has relied upon the decision of Hon'ble ITAT Mumbai Bench in the case of **Green Infra Ltd. Vs. ITO (159 TTJ 728, CIT Vs. Lovely Exports P. Ltd. (216 CTR 195, Vodafone India Services Pvt. Ltd. Vs. Union of**



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

**India & Ors (368 ITR 1).** Further, the CIT(A) has also considered the said receipt of share capital as capital in nature, hence, cannot be taxed . Accordingly the CIT(A) deleted the addition made by the AO. We nowhere found any illegality and infirmity in the finding of the CIT(A)'s order and therefore, we affirm the finding of the CIT(A) and decide this issue in favour of the assessee against the revenue.

**ITA. NO.5116/Mum/2017**

**8.** The assessee has filed the present appeal against the order dated 07.04.2017 passed by the Commissioner of Income Tax (Appeals)-2, Mumbai (hereinafter referred to as the "CIT(A)") relevant to the assessment year 2008-09.

**9.** The assessee has raised the following grounds.: -

*"1. (a) The Commissioner of Income Tax (Appeals) — 2, Mumbai [hereinafter referred to as 'the CIT(A)] erred in confirming the action of AO in re-opening of the assessment by invoking the provisions of section 147 read with section 148 of the Income Tax Act,1961 ("the Act").*

*The Appellant submits that the notice issued u/s 148 of the Act and reopening of assessment tils 147 of the Act is had in law, illegal, ultra-virus and contrary to the provision of the Act and shall be quashed.*

*(b) The CIT(A) erred in confirming the assessment order u/s 147 of the Act passed by the AO, without valid service of notice u/s 148 of the Act.*

*The Appellant submit that there is no valid service of notice u/s 148 of the Act on the Appellant hence the reopening of assessment is bad in law, illegal, ultra-virus and contrary to the provision of the Act and same shall be quashed.*

*(c) The CIT(A) erred in confirming the re-opening of the assessment u/s 148 of the Act on the basis of general statement recorded of third*



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

*parties, and without appreciating that those statements were also subsequently retracted by such parties.*

*(d) The CIT(A) erred in confirming the Order u/s 143(3) r.w.s. 147 of the Act passed by the AO without allowing verification and cross examination of the parties, and without appreciating that the said order is passed in gross violation of principle of natural justice; thus, void in law and needs to be quashed.*

*(e) The CIT(A) erred in confirming the action of AO in reopening the assessment u/s 148 of the Act, without obtaining the requisite prior approval/sanction as required u/s 151 of the Act and without providing the same to the Appellant inspite of repeated request by the Appellant during the reassessment proceedings.*

*(f) The CIT(A) erred in confirming the action of AO in issuing the notice u/s 148 of the Act after expiry of four years from the end of relevant assessment year. The Appellant submits that in its case assessment proceeding has been completed u/s 143(1) of the Act after considering full details/disclosure filed by the Appellant; hence, the same cannot be reopened after expiry of four years from the end of relevant assessment year.*

*Your Appellant craves leave to add, to alter or to amend the aforesaid ground of appeal.”*

**10.** The facts of the present case are quite similar to the facts of the case narrated above while deciding in ITA. No.5262/Mum/2017, therefore, there is no need to repeat the same. In this appeal, the assessee has challenged the reopening u/s 147/148 of the Act on the ground of this fact that the notice was not served upon the assessee.

### **ISSUE No.1**

**11.** Under this issue the assessee has challenged the service of notice us/ 148 of the Act. The plea of the assessee is that notice has not been served upon the assessee. Upon the acknowledgement, the



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

name of the 'Sona' has been mentioned who received the notice but the assessee was not having any employee with the name of Ms. Sona, therefore, the alleged service is not a valid service. The assessee has furnished the details of the employees before the CIT(A) and prayed that re-opening was without a valid notice, therefore, the reopening is liable to be set aside in the interest of justice. However, on the other hand, the Ld. Representative of the Department has strongly relied upon the order passed by the CIT(A) in question. Before going further we deem it necessary to advert the finding of the CIT(A) on record.:-

*“3.4 (a) Notice not served to the appellant*

*The Appellant had contended that the notice u/s 148 of the Act was not served to the appellant and therefore the entire re-assessment proceeding is invalid. The Appellant submitted that the claim of the AO that the impugned notice u/s 148 of the I.T. Act was served at the address of the Appellant on a person named 'Sona' is not correct. The Appellant had also tiled an affidavit of the Director stating the fact that there was no person named "Sona" employed by the Appellant or working at the premises mentioned by the AO. Further, there was no stamp of the Appellant company on the acknowledgment copy on record. In view of the same, the Appellant contended that notice u/s 148 of the I.T. Act has never been served upon the Appellant prior to 23.11.2015. Further, it is submitted that the AO has simply brushed aside the contentions raised by the Appellant in this regard and passed the Order u/s 143(3) rws 147 of the I.T. Act. On the other hand, the AO in the assessment order vide para 3 of the page 2 categorically mentioned that vide letters dated 16.10.2015 and 18.01.2016, he has rebutted all the objections raised by the appellant and passed an order u/s 143(3) rws 147 of the I.T. Act. The AO has further stated that the reasons for reopening was also provided to the appellant company on 23/11/2015. Therefore, I am of the opinion that the objections raised by the appellant company is not found to be in order Hence, the contention of the appellant is rejected.”*



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

12. We observed that the assessee filed an affidavit that the 'Sona' was not his employee and also furnished the list of employee but it is not sufficient to prove this fact that the service was not effected upon the assessee. It is not a case that the revenue has forged and fabricated the signature of the 'Sona'. Stamping the acknowledgment depends upon the staff. No legal action was initiated. Initially, the notice u/s 148 of the Act was issued on 18.03.2015 which was served on 25.03.2015. Presumption of truth with regard to the service of notice lies with the department unless rebutted. Full record of employees with designation is not on record. The Address was correct. There is no plea of the assessee that the Address of the Assessee was wrong. In subsequent notices, the assessee raised the objection vide letter dated 21.07.2015, 06.11.2015 & 29.12.2015 which was disposed of vide letter dated 18.01.2016. However, CIT (A) decided the issue on the basis of the finding of AO. The finding of the AO is hereby reproduced as under for ready reference:-

*To*

*The Principal Officer,*

*MIS. Money Matters Properties Pvt. Ltd. 1-B, 1<sup>st</sup> Floor, Court Chambers,*

*35, Sir V.T Marg, New Marine Lines, Mumbai —400020*

*PAN:AAECM9600P*

*Sub: Reassessment Proceedings u/s.147 in your case for A.Y. 2008-09 - regarding. - reg.*



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

*Ret: (i) Notice u/s.148 dated 18.03.2015 served on 25.03.2015.*

*(ii) Your Letter dated 29.12.2015 raising objection against notice u/s.148 dated 18.03.2015.*

*Please refer to your letter dated 29.12.2015 received in this office on 30.12.2015, which was filed in response to this office letter of even number dated 23.11.2013, whereby objections raised by you against service of notice u/s.148 have already been disposed off by this office.*

*2 In your letter dated 29.12.2015 you have raised certain allegations, as given below:*

*1) There is no reason to believe' and the reasons were recorded on the basis of 'reasons to suspect'*

*2) The reassessment proceeding were resorted to on the basis of 'borrowed satisfaction'.*

*3) All material facts were disclosed fully and truly while filing return Since full and true disclose was made reopening of assessment beyond the period of four years is not valid.*

*4) Assessment was reopened merely to make roving enquiries' or 'phishing enquiries.*

*5) The AO acted on the third party evidence without having any adverse evidence.*

*6. The reopening of the assessment is bad in law and the notice u/s.148 should be the material received and formation of belief.*

*7. There is no live link or direct nexus between the material received and the formation of belief.*

*8) Relied on decisions rendered by judicial authorities in various case laws.*

*3. The contentions put forth by the assessee and the objections raised therein have been duly considered. However, the same are not found to be acceptable and are rejected for the reasons discussed in elaborate in subsequent paragraphs.*



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

*3.1. It is clear that the assessee is influenced from a huge obsession of the fact that the re-opening of assessment, as done in the instant case, is nothing but merely based on third-party information and there is no failure on its part to disclose fully and truly all material facts necessary for the assessment.*

*3.2 The assessee has further objected that all material facts were fully and truly disclosed as such reopening of the assessment is bad in law and requires to be dropped. In this connection the assessee has placed reliance on various judicial decisions and contended that re-opening of assessment in its case is void ab-initio. The contention of the assessee is not acceptable considering the fact that the assessment was re-opened on the basis of a concrete reason to believe that the income chargeable to tax has escaped assessment Hence reopening is lawfully valid and justified. As stated above the reassessment proceedings have been initiated after recording reasons to believe only and there is no change of opinion. The notice u/s 148 was issued in this case on the basis of details available on record, which formed the sufficient basis for reason to believe that the income has escaped from assessment thereby necessitating the issuance of notice u/s 148. As a matter of fact, the case of assessee for A.Y.2008-09 was never selected for scrutiny.*

*3.3 Under the provisions of section 147 as amended w.e.f. assessment year 1989-90, an assessment can be re-opened by AO if he has reason to believe that any income chargeable to tax has escaped assessment It is settled legal position that for re-opening of an assessment there should be a direct nexus between material available before AO and formation of reasonable belief for escapement of income. The material available should be relevant to the formation of belief for escapement of income and it is not necessary that the material should be sufficient for making the addition in the reassessment*

*3.4 After the insertion of explanation to S. 147, the position remains that so far as primary facts are concerned, it is assessee's duty to disclose all of them, including particular entries in account books, particular portion of documents, documents and other evidences which could have been*



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

*discovered by the assessing authority from the documents and other evidences disclosed.*

*3.5 It is to be pointed out here that sufficiency of material for re-opening of the assessment was not required. What was required is relevant material for formation of belief which is abundantly available in this case. As regards the argument relating to no failure on part of the assessee in disclosing truly and fully all material facts, it is pointed out that in this case no assessment had been made under section 143(3) earlier and the case had only been processed under section 143(1). It is thus to be borne in mind that the re-opening of the assessment is proper.*

*3.6 In this case, the return filed by the assessee had only been processed under section 143(1) and no assessment under section 143(3) had been made. Thereafter, the (AO had issued notice under section 148 re-opening the assessment which was within six 2 years from the end of relevant assessment year. The provision section 147 provides that in case, assessment has already been made under section 143(3), the same cannot be reopened after expiry of four years from the end of relevant assessment year unless there was failure on the part of the assessee to disclose truly and fully all material facts. Since in this case, no assessment had been made under section 143(3), the argument that there was no failure on the part of the assessee in disclosing truly and fully all material facts is not relevant The objection raised is thus rejected.*

*3.7 The concept of 'borrowed satisfaction' advocated by you in your letter dated 29.12.2015, does not hold much water since the 'satisfaction' recorded by the Assessing Officer before issuing notice u/s.140. though originates from the information received from other Agency of the Income Tax Department. the same was formed by the Assessing Officer on his own 'belief after independent verification/examination of the information/material so received. Hence, it is incorrect to misconstrue the 'Weft formed by the Assessing Officer as a 'borrowed belie.*

*3.8 The assessment had been re-opened on the basis of information/material received from DDIT(Inv.) on 14.02.2015 as per which the assessee had taken accommodation entries to*



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

*the tune of Rs325 Crore from M/s. Prism Impex Pvt.Ltd. in Financial Year 2007-08 and based on such material, the AO had formed the bend that income chargeable to tax had escaped assessment Therefore, one has to see whether on the basis of material contained in the letter dated 14.02.2015 of DDIT (Inv.) a reasonable belief could be formed regarding escapement of income. A copy of the said letter has been placed on record. The letter clearly mentions that a survey as conducted on the Capri Group [earlier known as Money Matter Group] on 09.10.2014. That the assessee had received share premium of Rs.4.90 Crore. That*

*of the company and that one such company, namely Prism Impex pvt. Ltd. has provided an accommodation entry of Rs.3.25 Crore to the assessee company,*

*3.9 There is no dispute that the assessee had claimed share capital-cum-security premium on the basis of entries issued by M/s. Prism Impex Pvt. Ltd. Therefore, based on such material one can form a reasonable belief that income chargeable to tax has escaped assessment. It is not necessary that at the time of re-opening itself, the AO should be able to make a fool-proof case for making addition. As held by the Hon'ble High Court of Delhi in the case of Rapt Export Import India Pvt Ltd., (341 ITR 135), the AO at the stage of recording reasons for re- opening of the assessment, is not required to build a fool-proof or a fort like case for making addition to the assessee's income. The only requirement is that there should be some tangible material based on which a reasonable belief can be form.id regarding escapement of income.*

*3.10 Re-opening could not be invalidated particularly when the AO applied mind to the material which was receipt of share capital-cum-security premium based on accommodation entries which had resulted into escapement of income. it is not the*

*be initiated. Admittedly, the amount involved was Rs.3.25 Crore which is quite substantial for formation of belief for escarpment of income. The AO had re-opened the assessment on the basis of information/material contained in the letter of DDIT(Inv.) dated 14.02.2015 which was a relevant material for formation of belief for escapement of income. There was material to show*



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

*that the assessee had received amounts without there being any evidence of real transaction and the persons managing the companies had stated that they were issuing only accommodation entries without any actual transaction. To conclude, the AO is necessarily required to record reason to believe as contemplated in S. 147. While doing so, he can rely on third party statement as a material only when transaction is specially stated to be dubious or mala fide. On the facts of the case, it is evident that there was tangible material before AO for formation of reasonable belief for escapement of income and, therefore, re-opening of assessment is well within the jurisdiction.*

*3.11 Your apprehension that the assessment is reopened merely to make 'roving enquiries' & 'phishing enquiries' is incorrect. The Department is in possession of a clear finding that you have received accommodation entries to the tune of Rs.3.25 Crore as discussed elaborately in the reasons recorded for reopening as also discussed precisely in subsequent paragraphs. Therefore, the present proceedings cannot be equated with a 'roving' or 'phishing' enquiry. You may note that the proceedings were initiated on the strength of a clear finding which is supported by corroborative evidences in the form of statements recorded on oath. In fact the finding itself has come to light during the course of survey mounted on Capri Group of cases, who are indulged in availing accommodation entries in the form of share capital-cum-security premium / share application money.*

*3.12 With regard to merits of the issue and the relevance of case laws related to the issue involved, all the contentions raised by you would be taken into consideration while examining the issue. Various judgments relied upon by the assessee with regard to validity of reassessment proceedings are distinguishable on facts and are not applicable to the facts of the present case. As stated earlier, the reassessment proceedings will continue and decisions would be taken as per merit and law and the issues involved would be considered afresh with an open mind.*

*3.13. The facts of the above cases on which the assessee has placed reliance and the facts of the instant case are completely different in all the cases on which the assessee has relied, the*



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

*Courts are held that assessee disclosed all relevant facts at the time of original assessment, there was change of opinion and there was no new material, cause or justification before the revenue to have shown or presumed that income had escaped assessment, reopening of assessment by the A.O. was unjustified. In the present case, there is a new vital, tangible material, in the form of statements of dummy directors which were recorded by the Investigation Wing of the IT Dept Mumbai. The assessee has not disclosed true picture of its business affairs, truly all material facts. The action of reopening assessment based on vital, new tangible material available on the records is justified.*

*Reliance is also placed on following decisions.*

*i) AGR Investments Ltd. Vs Addl. CIT & Anr (Del) 331 ITR 146 & Shalimar Buildcon (P) Ltd. Vs ITO (ITAT, Jaipur) 136 TTJ 701 : Wherein it is held that, Information received from Investigation Wing is a valid reason to issue notice u/s.148.*

*ii) Sterlite Industries (India) Ltd. Vs ACT (Mad) 302 177 275: Wherein it is held that, Information from Enforcement Directorate showing possible inflation of purchases. Notice issued under sec. 148 valid.*

*iii) ITO Vs Purushottam Das Bangur & Anr. (SC) 224 ITR 362 & ITO Vs Selected Dalurband Coal CO. (P) Ltd. (SC) 217 ITR 597*

*Elphinstone Picture Palace Vs Union of India & Anr (Pat) 74 ITS 115*

*HA Nanji & Co. Vs ITO (Cal) 120 ITR 593*

*Sohan Singh Vs CIT (DéI) 158 ITR 174*

*Rattan Gupta Vs CIT (P&H) 234 ITR 220*

*Wherein it is held that, Communication received by Assessing Officer in discharge of official duties is information for issue of 147 notice.*

*iv) sShree Gouri Shankar jute Mills (P) Ltd. it. ITO, (112 ITR 1031), It was held by the Calcutta High Court that at the stage*



**ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09**

*of reopening the assessment not of necessary for the Assessing Officer to come to a definite conclusion and the court will only have to look into the existence of relevant material requisite belief.*

*4. Your objection regarding 'service of notice u/s. 148 has adequate discussed & disposed off in this office's earlier communication dated 16.10.2015. Hence, no separate discussion is considered necessary at this juncture.*

*5. In view of the foregoing discussion and for the given earlier. I am of the considered view that re-opening of the assessment u/s 147 of the Act done in your case is legally in order. Therefore, the objection raised by you are hereby rejected.*

*6. You may appreciate that re-assessment proceedings in your case A.Y.2009-10 were dropped consequent to a finding that no security premium was received in relevant previous year. This finding assessment proceedings. As such you proceedings deserve to be dropped based on merits of the issue.*

*7. All the objections raised by you are disposed off in a speaking' you are requested to refrain from raising unending Objections, which would only delay the reassessment proceedings. You are, therefore, requested to participate in the proceedings and co-operate this office in early completion of the proceedings. You may file your explanation/submissions to justify your claim that all the funds comprised in share application money, share capital & security premium received by you during the FY 2007-08 are genuine in all respects within the provisions of Income Tax Act & Rules."*

**13.** We find from the perusal of the records that subsequent to the notice dated 18.03.2015, statutory notices u/s 143(2) and u/s 142(1) of the Act were duly issued and served upon the assessee. Taking into all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is



ITA. Nos. 5262/M/2017  
& 5116/M/2017  
A.Y.2008-09

not required to be interfere with at this stage. Accordingly, this issue is decided in favour of the revenue against the assessee.

**14.** In result, appeal filed by the revenue is hereby dismissed and appeal filed by the assessee is also hereby ordered to be dismissed.

Order pronounced in the open court on 20/03/2020.

Sd/-

**(RAJESH KUMAR)**

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :20/03/2020

Vijay Pal Singh/Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील)/ The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

Sd/-

**(AMARJIT SINGH)**

JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार

(Dy./Asstt. Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai