

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.3009 & 3010/DEL/2017  
Assessment Year: 2007-08 & 2008-09

Suraj Pulses Pvt. Ltd., 4062-630, Naya Bazar, Delhi.	Vs.	Pr.CIT-8, New Delhi.
TAN/PAN: AAKCS4913P		
(Appellant)		(Respondent)

I.T.A. No.3011/DEL/2017  
Assessment Year: 2007-08

Suraj Buildmart India Pvt. Ltd., 4062-630, Naya Bazar, Delhi.	Vs.	Pr.CIT-8, New Delhi.
TAN/PAN: AAKCS3598L		
(Appellant)		(Respondent)

I.T.A. No.3012/DEL/2017  
Assessment Year: 2009-10

Suraj Pulses Processors Pvt. Ltd., 4062-630, Naya Bazar, Delhi.	Vs.	Pr.CIT-8, New Delhi.
TAN/PAN: AAKCS3598L		
(Appellant)		(Respondent)

Appellant by:	S/Shri Shantanu Jain, Adv.		
Respondent by:	Shri H.K. Choudhary, CIT-D.R.		
Date of hearing:	08	04	2021
Date of pronouncement:	06	07	2021

**ORDER****PER AMIT SHUKLA, JM :-**

The aforesaid Appeals have been filed by the assessee against impugned order dated 14.03.2017 and 17.03.2017, passed by Id. PCIT-VIII, New Delhi u/s 263 of the Income Tax Act, for the Assessment Year 2007-08, 2008-09 and 2009-10, respectively. Since the issues involved in all the appeals are common arising out of almost identical set of facts, therefore, same were heard together and are being disposed off by way of this consolidated order.

2. We will first take up the appeal in the case of **Surya Pulses Pvt. Ltd.** for the Assessment Year **2007-08 in ITA No.3009/Del/2017.**

3. The facts of the case are that original return of Income for this year was filed on 25.10.2007 at NIL income. The notice under section 148 of the Income Tax Act was issued on 25.03.2014 after recording the 'reasons' and taking prior approval from the competent authorities. The case was reopened on the basis of information received from the office of CIT, New Delhi vide letter dated 28.03.2013 wherein it was stated that during the course of search conducted in the premises of Shri Surinder Kumar Jain it was found that assessee has obtained an entry of Rs.25 lac during the relevant year. The assessee in response to the statutory notice vide letter dated 01.04.2014 submitted that the original

return filed may be treated as a return filed in response to the notice under section 148 of the I.T. Act; and also vide letter dated 15.04.2014 requested to provide reasons recorded, which were duly provided. The assessee filed its objections which were disposed off. The A.O. the issued notices to prove the source of credits which were duly complied by the assessee and filed all the evidences and details as called for Assessing Officer. The assessee had furnished the details of the parties from whom assessee received share capital/share application money and furnished income tax return, confirmation, financial statements, audited accounts, bank statements and other related materials. Assessing Officer then conducted independent inquiry and issued notices u/s 133(6) to the companies who have invested and in response all these parties duly replied and sent to the Assessing Officer. After the inquiry the Assessing Officer and after discussing the case with the assessee, he accepted the returned income and passed the re-assessment order under section 147/143(3) of the I.T. Act, 1961, on dated 27.01.2015.

4. The Ld. Pr. CIT on examining the assessment record noticed that though the assessment was reopened under section 148 of the I.T. Act on the allegation of accommodation entry amounting Rs. 25,00,000/- taken from Shri S.K. Jain group of concerns who were searched on 14.09.2010 by the Investigation Wing of the Income Tax Department, some of the A.O's did not examine the seized material in the form of cash

book and books containing the details of cheques issued by such concerns seized from the premises of Shri S.K. Jain during the course of search. The Investigation Wing, Delhi, forwarded the hard copy of appraisal report to the then Commissioner, Delhi-III, which was received by him on 15.03.2013, the relevant seized material (containing many thousands of pages) was scanned and sent to the Commissioner of Income Tax in soft copy. However, while completing the assessment under section 147 r.w.s. 143 of the I.T. Act, though the A.O. referred the appraisal report but did not look into the relevant seized material in soft copy. Accordingly, a show cause notice under section 263 of the I.T. Act was issued to the assessee on 13.01.2017 which is reproduced in the impugned order. In the show cause notice it is stated that the case was reopened on the allegation of accommodation entry of Rs.25 lakhs on account of share application/capital received from M/s. Euro Asia Venture Capital (India) Ltd. a concern of S.K. Jain group of cases. Search and seizure operation was carried out on 14.09.2010 at the premises of Shri Surender Jain and Shri Virender Jain. During the course of search, cash book and bank books of the concerns managed by Shri S.K. Jain group wherein detailed of day-to-day receipts in cash and cheque from/to different persons/firms/companies have been recorded were seized. On perusal of the re-assessment order, it is noticed that while passing the said order, the A.O. has failed to consider the relevant seized material pertaining to the assessee-company

which is mentioned in the Order. It is noted in the notice under section 263 that the amounts received by assessee-company were accommodation entry in lieu of cash given by the assessee-company through Shri Satish Goel. The relevant copies of the seized material relating to the assessee-company were given along with show cause notice or during the proceedings under section 263 of the I.T. Act. Reply of the assessee was called for in which the assessee explained that the A.O. after examining the entire details and documentary evidences on record and making direct/independent enquiry from both the Investors under sections 133(6) of the I.T. Act, completed the assessment proceedings. The assessee filed all the documentary evidences before A.O. i.e., confirmation letter from Investors, copy of their bank accounts, copy of ITR, copy of PAN, copy of audited balance sheet, copy of Master Data taken from Official website of MCA. It was also stated that the seized papers are only rough papers and no details are mentioned therein. As such, the re-assessment order was set aside by the Ld. Pr. CIT and restored to the Ld. AO for passing the order afresh as per law.

5. Assessee besides taking various grounds challenging the validity of the action taken by the ld. PCIT u/s.263 and on merits, the assessee has also moved an application for admission of following additional grounds:-

*i) Because the action for initiation, continuation and conclusion of reassessment proceedings is being challenged on facts and law.”*

*ii) Because the continuation and conclusion of reassessment proceedings is being challenged on facts and law while there being erroneous disposal of preliminary objection raised pursuant to judgment of GKN Driveshafts 259 ITR 19 SC*

*iii) Because the action for initiation of re-assessment proceedings is unreasonable since while recording reasons, there is non application of mind much less independent application of mind and merely relying upon investigation report by AO, further reasons recorded are vague, lacking tangible material/reasonable cause and justification*

*iv) Because the action is being challenged on facts & law for challenging that the reassessment order passed u/s 147/143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impugned order u/s 263 to revise the non est reassessment order.*

6. The Ld. Counsel for the Assessee submitted that additional grounds are legal in nature and no fresh facts are to be investigated. He also submitted that the additional ground goes to the root of the matter and therefore, prayed that the same may be admitted for disposal of the appeal. He has relied upon the decision of Hon'ble Supreme Court in the case of NTPC Limited vs. CIT reported in 229 ITR 383 (SC) and Hon'ble High Court of Delhi in the case of CIT vs. SPL's Siddhartha Ltd. reported in 345 ITR 223 (Delhi).

7. On the other hand, Learned DR objected to the admission of additional grounds of appeal stating that such grounds were not raised before the lower authorities and as such the same could not be raised at this stage.

8. In rebuttal, the Ld. Counsel for the Assessee has submitted that the said grounds challenging the reopening u/s 148 of the Act were raised before the Ld. Pr. CIT as evident from the impugned order but on account of abundant caution, the same were raised again.

9. Considering the facts of the case, we are of the view that additional grounds raised are purely legal in nature and goes to the root of the matter, which does not require any investigation facts and is borne out from the orders and material on record. Therefore, the same are admitted for the purpose of disposal of the appeal. We, accordingly, admit the additional grounds of appeal.

10. The Ld. Counsel for the Assessee contended that the reopening of assessment is itself invalid; as such the Ld. Pr. CIT does not have any jurisdiction to upset the re-assessment order, in proceedings under section 263 of the I.T. Act. He submitted that it is well settled principle of law that validity of the original assessment order can be challenged in the collateral proceedings. Thus, in view of the same, appellant agitates the very validity of the reassessment order u/s 147 of the Act, which was sought to be revised by the impugned order u/s 263 of the Act. He placed reliance upon the following judicial decisions:

- **Supersonic Technologies (P) Ltd. vs. PCIT in ITA No. 2269/D/2017 dated 10.12.2018 (ITAT, Delhi Bench)**

**“6.1.....It is well settled Law that assessee can challenge the validity of the re-assessment proceedings in the collateral proceedings (relating to examination of validity of Order passed) under section 263 of the I.T. Act. We rely upon the Order of ITAT, Mumbai Bench in the case of Westlife Development Ltd., vs. PCIT 49 ITR (Tribu.) 406 in which it was held “allowing the appeal (i) that jurisdiction aspect of the Order passed in the primary proceedings can be examined in collateral proceedings also. Thus, the assessee could be permitted to challenge the validity of the Order passed under section 263 on the ground that the assessment order was non-est.” Since the reassessment order itself is bad in law, therefore, Learned Counsel for the Assessee, rightly contended that the same cannot be revised under section 263 of the I.T. Act. Only valid re-assessment order can be revised under section 263 of the I.T. Act. On this ground itself the proceedings under section 263 of the I.T. Act are bad in law and liable to be quashed. We, accordingly, set aside the Order of Ld. Pr. CIT passed under section 263 of the I.T. Act and quash the same.”**

**- M/s Charbhujamarmo (India) (P) Ltd. vs. PCIT in ITA No. 4749/D/2019 dated 31.12.2019 (ITAT, Delhi)**

**“6. We have considered the rival submissions. It is well settled Law that since re-assessment proceedings are invalid and bad in law, therefore, such proceedings could not be revised under section 263 of the I.T. Act. It is also well settled Law that validity of the re-assessment proceedings are to be judged on the basis of the reasons recorded for reopening of the assessment.”**

10.1 He further placed reliance upon the following judgments:

- **M/s Westlife Development Ltd. vs. PCIT in ITA No. 688/Mum/2016 dated 24.06.2016 (ITAT, Mumbai)**

- **Krishna Kumar Saraf vs. CIT in ITA No. 4562/Del/2011 dated 24.09.2015 (ITAT, Delhi)**

- **M/s Classic Flour & Food Processing (P) Ltd. vs. CIT in ITA No. 764 to 766/Kol/2014 dated 05.04.2017 (ITAT, Kolkata)**

11. In this case, the A.O. while reopening the assessment has recorded the following reasons for re-assessment under section 147/148 of the I.T. Act, copy of which is placed at Pg. 18 of the paper book:

*“Information/ documents in the form of CD, appraisal report alongwith relevant details has been received from the office of the CIT-III, New delhi vide letter F.No. CIT-III/Confidential/2012-13 dated 28.03.2013 that the above assessee, **M/s Suraj Pulses Private Limited** has received and is a beneficiary of accommodation entries provided by the group of Shri Surendra Kumar Jain, Sh. Rakesh Gupta & Sh. Vishesh Gupta and sh. Navneet Jain & Vaibhav Jain and hundreds of bogus companies of his group and many other related entry providers. These search and seizure operations unearthed the modus operandi of these entry operators. The various companies which do not have any business were being used for providing accommodation entries to various assesseees who were rerouting their unaccounted cash through these accommodation entries. The assesseees would pay cash to the entry providers. This cash would then be deposited in the accounts of various*

*bogus companies and the transactions would be routed through many bank accounts to cover the trail. Then the assessee would be given cheque from one of the many account which would be given the colour of share application money or share capital or share premium or loans or advance etc. In the process, the entry operator would earn certain commission. The searches by the Investigation Wing against the entry operators resulted in unearthing of large number of pass books, cheque books, computer hard disks, signed blank cheques, share transfer certificates and many other blank signed documents. This information has been provided by the Investigation Wing of the Income Tax Department to the Assessing Officer.”*

12. The Ld. Counsel for the assessee drew our attention towards the written submissions along with documentary evidences (placed in Paper book) filed by the assessee before the authorities below and also the written Synopsis filed before us. He submitted that there is non-application of mind by the learned assessing officer in recording reasons for reopening of the assessment and he merely relied upon the information of the investigation wing. He further submitted that the reasons recorded are vague, devoid of tangible material, reasonable cause and justification. It was submitted that there is no live nexus between the material and formation of belief. He stated that the total amount of entries taken by the Assessee has not been mentioned, the nature of transaction whether the same is share capital, share premium, loan, advances etc. has not been mentioned, the names of the parties from whom such entries are taken has

not been mentioned, date and Mode of transaction whether through bank or cash etc. has not been mentioned, reasons are general in nature, there is no reasons to belief formed by the Ld. AO that there is an income which has escaped assessment, nothing is mentioned whether there is 143(1) or 143(3) order before in the case of Assessee.

13. He placed reliance upon the following judgments, among other judgments:

**- CIT vs Insecticides (India) Ltd. reported in 357 ITR 330 (High Court of Delhi)**

*“8.....The AO has further stated that the assessee company has failed to disclose fully and truly all material facts and source of these funds routed through bank account of the assessee company. In the reasons recorded, it is nowhere mentioned as to who had given bogus entries/transactions to the assessee or to whom the assessee had given bogus entries or transactions. It is also nowhere mentioned as to on which dates and through which mode the bogus entries and transactions were made by the assessee. What was the information given by the Director of Income-tax (Inv.), New Delhi, vide letter dated 16.06.2006 has also not been mentioned. In other words, the contents of the letter dated 16.06.2006 of the Director of Income-tax (Inv.), New Delhi have not been given. The AO has vaguely referred to certain communications that he had received from the DIT (Inv.), New Delhi; the AO did not mention the facts mentioned in the said communication except that from the information gathered by the DIT (Inv.), New Delhi that the assessee was involved in giving and taking accommodation entries only and represented unsecured money of the assessee company is actually unexplained income of the assessee company or that it has*

*been informed by the Director of Income-tax (Inv.), New Delhi vide letter dated 16.06.2006 that the assessee company was involved in giving and taking bogus entries/transactions during the relevant financial year. The AO did not mention the details of transactions that represented unexplained income of the assessee company. The information on the basis of which the AO has initiated proceedings u/s 147 of the Act are undoubtedly vague and uncertain and cannot be construed to be sufficient and relevant material on the basis of which a reasonable person could have formed a belief that income had escaped assessment. In other words, the reasons recorded by the AO are totally vague, scanty and ambiguous. They are not clear and unambiguous but suffer from vagueness. The reasons recorded by the AO do not disclose the AO's mind as to what was the nature and amount of transaction or entries, which had been given or taken by the assessee in the relevant year. The reasons recorded by the AO also do not disclose his mind as to when and in what mode or way the bogus entries or transactions were given or taken by the assessee. From the reasons recorded, nobody can know what was the amount and nature of bogus entries or transactions given and taken by the assessee in the relevant year and with whom the transaction had taken place. As already noted above, it is well settled that only the reasons recorded by the AO for initiating proceedings u/s 147 of the Act are to be looked at or examined for sustaining or setting aside a notice issued u/s 148 of the Act. The reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No addition can be made to those reasons. Therefore, the details of entries or amount mentioned in the assessment order and in respect of which ultimate addition has been made by the AO, cannot be made a basis to say that the reasons recorded by the AO were with reference to those amounts mentioned in the assessment order. The*

*reasons recorded by the AO are totally silent with regard to the amount and nature of bogus entries and transactions and the persons with whom the transactions had taken place. In this respect, we may rely upon the decision of Hon'ble jurisdictional Delhi High Court in the case of CIT v. Atul Jain [2000] 299 ITR 383, in which case the information relied upon by the AO for initiating proceedings u/s 147 of the Act did indicate the source of the capital gain and nobody knew which shares were transacted and with whom the transaction has taken place and in that case there were absolutely no details available and the information supplied was extremely scanty and vague and in that light of those facts, the Hon'ble Jurisdictional Delhi High Court held that initiation of proceedings u/s 147 of the Act by the AO was not valid and justified in the eyes of law. The recent decision of Hon'ble jurisdictional High Court of Delhi in the case of Signature Hotels (P.) Ltd. (supra) also supports the view we have taken above."*

**- ShankerTradex (P) Ltd. vs. ITO in ITA No. 2200/D/2019 dated 10.11.2020 (ITAT, Delhi)**

*"11..... On perusal of the reason it is apparent that in the first paragraph the learned assessing officer has mentioned that details about the entry operators. In the second paragraph the learned assessing officer has noted that from the verification of the documents seized it is clearly appears to him that accommodation entries from various paper companies were obtained by the assessee. However in the table reproduced in paragraph number two there is no reference to the nature of the accommodation entry, the parties from whom accommodation entries have been provided/obtained by the assessee, the various dates of the accommodation entries, the amount involved with respect to each of the parties from whom accommodation entries have been obtained. Instead of that the learned*

*assessing officer in paragraph number [2] has mentioned name of the assessee itself and against the name of the assessee mentioned sum of ₹ 20 lakhs. In paragraph number [3] of the reasons it was further stated by him that he has reason to believe that assessee has concealed its particulars of income willfully and knowingly and therefore the sum of ₹ 20 lakhs chargeable to tax has escaped assessment for assessment year 2008 –09. However when we perused assessment order of the ld AO, it has complete details and that is the reason that the ld AR has not pressed the grounds on the merits of the addition. However it is also a trite law that reopening of assessment when question, should sail through based only on the reasons recorded by the ld AO. The order may be exhaustive covering several points, but the reason recorded by the ld AO, which gives him jurisdiction to reassess the assessee on his “Reason to believe”. In the present case the ld AO referred to six years of records of the entry operator but does not mention how he proposes to reopen the impugned assessment for AY 2008-09. There is no reference that how the report of investigation wing as well his own assessment gives him belief that, AY 2008- 09 is required to be reassessed. Further there is no reference as what nature of accommodation entries has been obtained by the assessee, through which companies and on which dates, through which medium. May be in assessment order complete details are mentioned, and they are in fact exhaustively mentioned, however the reasons recorded are devoid of the same. Therefore we do not have any hesitation in quashing reopening of assessment .In the result ground no [2] & [3] of the appeal are allowed.”*

**- Supersonic Technologies (P) Ltd. vs. PCIT in ITA No. 2269/D/2017 dated 10.12.2018 (ITAT, Delhi Bench `G')**

*“.....Further A.O. recorded incorrect facts in the reasons for reopening of the assessment because the amount in question is Rs.2.20 crores but A.O. has mentioned in the reasons the amount of Rs.2.90 crores which escaped assessment. Further, no names of the parties have been mentioned in reasons under section 147 from whom the amount in question have been received by the assessee as accommodation entry. All the facts brought to the notice of the A.O. by the Investigation Wing have been considered by the A.O. while framing the re-assessment and accepted the return of income. Therefore, there was no new material available on record to justify reopening of the assessment or to invoke jurisdiction under section 263 of the I.T. Act, which would also show that there is totally non-application of mind on the part of the A.O. to reopen the assessment in the matter. These facts are sufficient to hold that reopening of the assessment was bad in law, illegal and non-est, therefore, such order could not be revised in the proceedings under section 263 of the I.T. Act. We, accordingly set aside the Order of the Ld. Pr. CIT passed under section 263 of the I.T. Act and quash the same. In this view of the matter, there is no need to decide the issue on merit. However, we may note briefly that documentary evidences were filed before A.O. at original assessment stage as well as at the stage of re-assessment to prove genuine credit in the matter which have accepted by the A.O. after considering and examining the material on record and calling explanation from the Investors under section 133(6) of the I.T. Act. In this view of the matter, we allow the appeal of assessee.”*

13.1 Further reliance was placed upon the following judgments:

- **G & G Pharma 384 ITR 0147 (High Court of Delhi)**

- **Meenakshi Overseas 395 ITR 677 (High Court of Delhi)**
- **Sabh Infrastructure reported in 398 ITR 198 (High Court of Delhi)**
- **DCIT vs KLA Foods (India) Ltd. in ITA No. 2846/D/2015 dated 08.04.2019 (ITAT, Delhi)**
- **ITO vs Smt. Aarti Khattar in ITA No. 2395/D/2012 dated 22.08.2014 (ITAT, Delhi)**
- **CIT vs. Shree Rajasthan Syntex Ltd reported in 313 ITR 231 (High Court of Rajasthan)**

14. The Ld. Counsel for the Assessee submitted that the assessee has even vide its letter dated 23.06.2014 (placed at Paper Book Pg. 19 Point 4) to the Ld. AO specifically mentioning that the name of persons from whom the credit entry of Rs. 25,00,000/- is received, has not been given. Also, assessee vide its letter dated 15.12.2014 (placed at Paper Book Pg. 23-26) also raised the objections before Ld. AO which were disposed off by Ld. AO vide order dated 18.12.2014 (placed at Paper Book Pg. 27) but the same has not been disposed off by a speaking order.

15. On the other hand, the Ld. CIT DR relied upon Order of the Ld. Pr. CIT. He submitted that appraisal report was sent to the Ld. AO and the reasons recorded under section 148 of are prima facie correct based on concrete material and information. Assessing Officer has recorded the reasons after going through the appraisal report and the documents,

therefore, reopening of the assessment is justified. He further submitted that once he has perused the appraisal report and the information that he has before him then it is not necessary to write each and every detail in his reasons to believe. He has to just form a prima facie belief that there is an income which has escaped assessment, which he has duly formed in the instant case. The Ld. D.R. also submitted that the Ld. Pr. CIT on going through the record, correctly found it to be an assessment erroneous as well as prejudicial to the interests of the Revenue because Ld. AO has not examined the seized material found during the course of search. The Ld. DR has relied upon below mentioned decisions placed in his paper book:

- **Surya Jyoti Software P. Ltd. vs PCIT in ITA No. 2158/Del/2017 dated 25.10.2017 (ITAT, Delhi)**

*19. Now coming to the one of the main contention raised by the ld. counsel of the assessee that the proceedings under section*

*147 was itself bad in law and therefore, proceedings u/s 263 could not have been invoked. The reasons given for this proposition is that, here in this case, material on the basis of which proceedings for reopening the assessment has been sought to be initiated u/s 147 has been found from the search conducted at the premises of third party and if material found from the premises of the searched person is being utilized, then in such a situation the law provides that proceedings should have been initiated under section 153C, which has not been done and, therefore, the entire proceedings under section 147 gets vitiated and is bad in law. In support of this proposition Ld. Counsel, has relied*

*upon certain decisions, firstly on the point that validity of reassessment or assessment order can be challenged in the revisionary proceeding under section 263; and secondly, if any material has been found pertaining to the assessee in the case of person searched or covered u/s 153A, then only recourse was to initiate proceedings under section 153C and not under section 147. At the outset, we do not find any quarrel to the proposition that the validity of assessment or reassessment cannot be challenged in the revisionary proceedings u/s 263, however, on the facts of the present case, the ratio laid down in such judgments would not be applicable at all, because here in this case no document or material belonging to the assessee was found in the course of search proceedings in the case of S.K. Jain group, albeit assessee's name appears as one of the beneficiaries of accommodation entries in the books of account maintained by one of the concern of S.K. Jain group. The entries in the books of account of S.K. Jain group cannot be reckoned as any material or document belonging to the assessee so as to constitute document or asset seized or requisitioned in the case of person searched in terms of scope of section 153C. If certain documents or asset or books of account belonging to the assessee would have been found during the course of search proceedings of S.K. Jain and his group concerns, then perhaps it would have been held that the provisions of section 153C would have been invoked. But here in this case what has been found, is the regular entries in the books of account of the concerns of S.K. Jain group, in which name of the assessee is appearing. Such entries in the cash books depicting the details of cheques issued in favour of the assessee as well as cash deposit through intermediates on various dates cannot be reckoned as document or books of account of the assessee. This fact has been noted by the Pr. CIT in the impugned order right from pages 7 to 15, wherein one of the entries pertains to the assessee for a sum of Rs.1 crore. Thus, the contention*

*raised by the ld. counsel on this point is out rightly rejected that the proceedings under section 153C should have been initiated instead of under section 147.*

*20. As regards the contention that material or information found during the course of search in the case of S.K. Jain group cannot be held to be a tangible material pertaining to the assessee, we are unable to accept such a contention for the reason that, firstly, there was a categorical information and material coming on record post passing of the original assessment order under section 143(3) that assessee was one of the beneficiaries of accommodation entries provided by one of the group concern of S.K. Jain and not only that, a specific amount (of Rs. 1 Crore) has been mentioned which prima-facie pertained to the assessee. This definitely constitutes a tangible and definite material having live-link nexus with the income chargeable to tax escaping assessment. The judgments relied upon by the ld. CIT D.R. on this point, specifically the judgment of Hon'ble Delhi High Court in the case of PCIT Vs Paramount Communication (P.) Ltd. (supra) is squarely applicable, as in that case also the information regarding bogus purchase by the assessee was received vide DRI from CCE which was passed on to Revenue authorities and was held to be tangible material outside record to initiate valid re-assessment proceedings. Here in this case, as reiterated several times there was a definite information and material found qua the assessee which at least needed verification and examination and hence, in our opinion such a material and information does constitute a tangible and relevant material sufficient enough to form 'reason to believe' that income chargeable to tax has escaped assessment. Apart from that, it is seen from the records that the assessee had raised similar objections after the receipt of "reasons recorded" before the Assessing Officer during the course of re- assessment proceedings, which have been amply dealt with and discussed by the*

*Assessing Officer in detail vide his separate order, copy of which has been placed in the paper book. Against the said order, assessee has not sought for any remedy nor has it challenged this issue in appeal after the passing of the assessment order. In any case, we have already held Assessing Officer has rightly acquired jurisdiction under section 147 based on the information/material referred to in the "reasons recorded". Accordingly, this contention raised by the ld. Counsel is also rejected.*

**- Surya Financial Services Ltd vs PCIT in ITA No. 2915/Del/2017 dated 08.01.2018 (ITAT, Delhi)**

*"6.2 Now coming to the one of the main contention raised by the ld. counsel of the assessee that the proceedings under section 147 of the Act was itself bad in law and therefore, proceedings u/s 263 of the Act could not have been invoked. The reasons given for this proposition is that, here in this case, material on the basis of which proceedings for reopening the assessment has been sought to be initiated u/s 147 of the Act has been found from the search conducted at the premises of third party and if material found from the premises of the searched person is being utilized, then in such a situation the law provides that proceedings should have been initiated under section 153C of the Act, which has not been done and, therefore, the entire proceedings under section 147 of the Act gets vitiated and is bad in law. In support of this proposition Ld. Counsel, has relied upon certain decisions, firstly on the point that validity of reassessment or assessment order can be challenged in the revisionary proceeding under section 263; and secondly, if any material has been found pertaining to the assessee in the case of person searched or covered u/s 153A of the Act, then only recourse was to initiate proceedings under section 153C of the Act and not under section 147 of the Act. At the outset, we do not find*

*any quarrel to the proposition that the validity of assessment or reassessment cannot be challenged in the revisionary proceedings u/s 263, however, on the facts of the present case, the ratio laid down in such judgments would not be applicable at all, because here in this case no document or material belonging to the assessee was found in the course of search proceedings in the case of S.K. Jain group, albeit assessee's name appears as one of the beneficiaries of accommodation entries in the books of account maintained by one of the concern of S.K. Jain group. The entries in the books of account of S.K. Jain group cannot be reckoned as any material or document belonging to the assessee so as to constitute document or asset seized or requisitioned in the case of person searched in terms of scope of section 153C of the Act. If certain documents or asset or books of account belonging to the assessee would have been found during the course of search proceedings of S.K. Jain and his group concerns, then perhaps it would have been held that the provisions of section 153C of the Act would have been invoked. But here in this case what has been found, is the regular entries in the books of account of the concerns of S.K. Jain group, in which name of the assessee is appearing. Such entries in the cash books depicting the details of cheques issued in favour of the assessee as well as cash deposit through intermediates on various dates cannot be reckoned as document or books of account of the assessee. This fact has been noted by the Pr. CIT in the impugned order, wherein the entries pertains to the assessee for a sum of Rs.25 lacs. Thus, the contention raised by the ld. counsel on this point is out rightly rejected that the proceedings under section 153C of the Act should have been initiated instead of under section 147 of the Act.*

*6.3 As regards the contention that material or information found during the course of search in the case of S.K. Jain group cannot be held to be a tangible material pertaining to*

*the assessee, we are unable to accept such a contention for the reason that, firstly, there was a categorical information and material coming on record, that assessee was one of the beneficiaries of accommodation entries provided by one of the group concern of S.K. Jain and not only that, a specific amount (of Rs. 25 lacs ) has been mentioned which prima-facie pertained to the assessee. This definitely constitutes a tangible and definite material having live-link nexus with the income chargeable to tax escaping assessment. The judgments relied upon by the ld. CIT D.R. on this point, specifically the judgment of Hon'ble Delhi High Court in the case of PCIT Vs Paramount Communication (P.) Ltd. (supra) is squarely applicable, as in that case also the information regarding bogus purchase by the assessee was received vide DRI from CCE which was passed on to Revenue authorities and was held to be tangible material outside record to initiate valid re-assessment proceedings. Here in this case, as reiterated several times there was a definite information and material found qua the assessee which at least needed verification and examination and hence, in our opinion such a material and information does constitute a tangible and relevant material sufficient enough to form 'reason to believe' that income chargeable to tax has escaped assessment. Apart from that, it is seen from the records that the assessee had raised similar objections after the receipt of "reasons recorded" before the Assessing Officer during the course of re-assessment proceedings, which have been amply dealt with and discussed by the Assessing Officer in detail vide his separate order, copy of which has been placed in the paper book. Against the said order, assessee has not sought for any remedy nor has it challenged this issue in appeal after the passing of the assessment order. In any case, we have already held Assessing Officer has rightly acquired jurisdiction under section 147 of the Act based on the information/material referred to in the "reasons recorded". Accordingly, this*

*contention raised by the ld. Counsel of the assessee is also rejected.”*

**- ShankerTradexPvt Ltd. vs PCIT in ITA No. 2999/Del/2017 dated 16.04.2018 (ITAT, Delhi)**

*7. We have heard both the parties and perused all the records. We have taken cognizance of all the contentions of the Ld. AR. When we asked the specific query about whether the present directors of those companies were called for and given a statement, the Ld. AR submitted that most of the companies whom shares have been given the current directors were not given statements but the past directors have given statements. The case laws cited by the Ld. AR will not be applicable in the present case as the facts in the present case are different. In fact the decision of the Hon'ble Supreme Court in Malabar Industrial Company Ltd. vs. CIT (243 ITR 83)(SC) wherein it is held that the Commissioner has to satisfy himself of both the conditions, order being erroneous and prejudicial to the interest of revenue. Both these test have been seen by the Principal Commissioner of Income Tax in the present case and aptly applies in the present case. It is also held by the Hon'ble Apex Court that the provisions cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. Thus, the Pri. CIT has looked into the aspect of the Assessment Order in the present case to the extent of erroneous and thus, Section 263 of the Act is attracted in the present case. Section 263 of the Act is not invoked simply for correcting mistake or error committed by the Assessing Officer in the present case. It can be observed that the Pr. CIT has considered all the contentions of the assessee and thereafter rightly come to the conclusion that the Assessing Officer failed to consider the seized material.*

*The Pr. CIT held as under vide order dated 23.03.2017 passed under Section 263 of the Act:*

*“11. There is another point of not making proper enquiry in this case. Subsequent to issue of shares to the concerns of SK Jain Group, most of the beneficiary companies got the shares transferred at a nominal rate in the name of their directors or their relatives originally issued to such shell companies. Even though, the shares were issued at a premium, in most of the cases such shares were transferred within one or two years in the name of directors of the beneficiary company or to the concerns in which such directors were interested, at very nominal price. The AO did not make any enquiry whatsoever on this aspect. He ought to have asked the beneficiary company as to why the shares issued at premium were transferred by the investor companies (shell companies) to the directors or their relatives or concerns of the beneficiary company at a very discounted price. What was the face value of the shares at the time of the allotment and transfer. What happened suddenly that the value of such shares went down ranging from 50% to 90%. This unusual even had taken place in most of the cases before the AOs completed the assessment proceedings during financial year 2014-15 but the AO did not make any enquiry whatsoever on this aspect. In this case, the assessee did not furnish the details of shares transferred from the above mentioned companies of SK Jain Group to other persons despite my specific query in the show cause notice.”*

.....

*“16. In view of the above discussion, I am satisfied that the reassessment order passed by the AO on 31/3/2015 for Assessment year 2007-08, is not only prejudicial to the interest of the revenue but is also erroneous in so far as the*

*AO has failed to look into the seized material. Therefore, the said order is set aside with a direction to the AO to examine the seized material and confront the same to the assessee. The AO would also examine the reason for transferring such shares, if any, at a nominal rate to the directors or their relatives or the concerns in which the assessee company is interested and pass a speaking order after affording on opportunity of being heard to the assessee. If after verification of the seized material and the explanation regarding the transfer of shares in the name of the directors or their relatives or the concerns in which the directors are interested, it is found by the AO that there is nexus between the cash deposits and the cheques issued by the group companies of SK Jain or no valid explanation is given for the transfer of shares at lower price in the name of directors, relatives and the concerns in which the assessee company is interested, then the same may be considered as an accommodation entry and taxed accordingly as per the provisions of the Income Tax Act.”*

*Thus, it can be seen that the Pr. CIT has properly invoked the provisions of Section 263 and there is no procedural lapse on the part of the Pr. CIT. In fact, the Assessing Officer though reopened the assessment proceedings did not make any inquiry and there is no mention of the same in the Assessment Order itself which proves that the order is passed without making inquiries or verification which should have been made by the Assessing Officer. Thus, it is prejudicial to the interest of the Revenue and there is loss of revenue. The Pr. CIT after issuing the Show Cause Notice u/s 263 of the Act given ample opportunity to the Assessee for explanation and dealt with the reply/details filed by the assessee in proper manner. Thus, proper opportunity was given by the Pr. CIT to the assessee during the proceedings u/s 263 of the Act. The present case is covered by the decision of the Hon'ble Apex Court in case of Deniel*

*Merchants Private Limited &Anr. Vs. Income Tax Officer (Appeal No. 2396/2017 order dated 29.11.2017). The Hon'ble Supreme Court held as under:*

*“In all these cases, we find that the Commissioner of Income Tax had passed an order under Section 263 of the Income Tax Act, 1961 with the observations that the Assessing Officer did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry thorough and detailed inquiry. It is this order which is upheld by the High Court. We see no reason to interfere with the order of the High Court.*

*The Special Leave Petitions are dismissed.”*

*Thus, in the present case the Assessing Officer has though rightly re-opened the Assessment Proceedings has not properly adjudicated the issue for re-opening therefore, the Pr. CIT has rightly invoked Section 263 of the Act and passed the order. Therefore, the Order under Section 263 of the Income Tax Act, 1961 passed by the Principal Commissioner of Income Tax is just and proper. There is no need to interfere with the same. The appeal of the assessee is dismissed.”*

He has relied upon other judgments as under:

- **ACIT vs Rajesh Jhaveri Stock Broking reported in 291 ITR 500 (SC)**
- **Raymond Wollen Mills Ltd. Vs ITO reported in 236 ITR 34 (SC)**

- **Paramount Communications Ltd. Vs PCIT reported in 84 taxmann.com 300 (SC)**
- **Rajmandir Estate P Ltd vs PCIT reported in 70 taxmann.com 124 (Calcutta)**
- **Rajmandir Estate P Ltd vs PCIT reported in 77 taxmann.com 285 (SC)**
- **Deniel Merchant (P) Ltd. vs ITO in SLP (C) No. 23976/2017 dated 29.11.2017 (SC)**
- **Malabar Industrial Co. Ltd. vs CIT reported in 109 Taxman 66 (SC)**

16. In rebuttal, the Ld. Counsel for the assessee has filed another written synopsis in rebuttal to the case laws filed by the Ld. DR and submitted that the case laws relied upon by the Ld. DR are on different facts and issues. He further submitted that such case laws relates to the issue whether the Ld. Pr. CIT has rightly initiated the proceedings under section 263 of the Act on account of no inquiry by the Ld. AO, but the issues raised by the Assessee vide Additional Grounds of Appeal are that whether the reopening u/s 147 of the Act is valid in the eyes of law and if the same are invalid then whether the Ld. Pr. CIT has a right to upset such invalid assessment order. Further, he also submitted that the case of Surya Jyoti Software (P) Ltd. and Surya Financial Services (Supra) does not deal with the issue whether the Ld. AO has independently applied his mind or not in the reasons recorded to the information received. He submitted that the

issues dealt with in these cases relates to whether the proceedings should have been initiated u/s 153C of the Act instead of 147 of the Act, whether the material or information found during the course of search can be held to be a tangible material pertaining to the assessee, whether a notice was issued or served u/s 143(2) of the Act upon the Assessee during the course of re-assessment proceedings. He also submitted that in the case of Shanker Tradex (P) Ltd. (Supra), no issue qua re-opening u/s 147 of the Act was raised by the Assessee and further also this decision again came before this Tribunal against an order passed u/s 147/ 263/ 144 of the Act, wherein the reopening u/s 147 was challenged by the Assessee and this Tribunal was pleased to allow the appeal of the Assessee vide Shanker Tradex (P) Ltd. vs. ITO in 7583/D/2019 dated 10.11.2020 AY 2007-08 (ITAT, Delhi) (copy placed on record), as such the Ld. DR cannot place any reliance upon such case law.

17. We have heard the rival submissions and perused the material referred to before us at the time of hearing and the written synopsis filed by both the parties. One of the main contentions raised by the ld. CIT-DR was that once the assessee has accepted the re-assessment order and has not challenged the validity of reopening u/s.147, then assessee is precluded from agitating this issue especially in the proceedings u/s.263 on the ground that assessment order itself is bad in law. The validity of re-assessment proceedings

cannot be judged or challenged in revisionary proceedings. Thus, the main issue before is, **firstly**, whether the assessee can challenge the validity of assessment order during the revisionary proceedings and also the validity of reopening u/s.147 when it was not challenged by the assessee; and **secondly**, whether the reopening based on the reasons recorded by the Assessing Officer itself was bad in law or not.

18. This precise issue has been dealt in detail by the Co-ordinate Bench of ITAT Mumbai Bench in the case of **M/s. Westlife Development Ltd. v. Pr. CIT as reported in 49 ITR (T) 406** wherein the Tribunal has observed and held as under:

*“8. Challenging the jurisdictional defects of assessment order for assailing the jurisdictional validity of the revision order passed u/s 263:*

*The first issue that arises for our consideration is - whether the assessee can challenge the jurisdictional validity of order passed u/s 143(3) in the appellate proceedings taken up for challenging the order passed u/s 263? If we analyse the nature of both of these proceedings, which are under consideration before us, we find that the original assessment proceedings can be classified in a way as 'primary proceedings'. These are, in effect, basic/foundational proceedings and akin to a platform upon which any subsequent proceedings connected therewith can rest upon. The proceedings initiated u/s 263 seeking to revise the original assessment order is off shoot of the primary proceedings and therefore, these may be termed as 'collateral*

*proceedings' in the legal framework. The issue that arises here is whether any illegality/invalidity in the order passed in the 'primary proceedings' can be set up in the 'collateral proceedings' and if yes, then of what nature?*

*8.1. We have analysed this issue carefully. There is no doubt that after passing of the original assessment order, the primary (i.e. original proceedings) had come to an end and attained finality and, therefore, outcome of the same cannot be disturbed, and therefore, the original assessment order framed to conclude the primary proceedings had also attained finality and it also cannot be disturbed at the instance of the assessee, except as permitted under the law and by following the due process of law. Under these circumstances, it can be said that effect of the original assessment order cannot be erased or modified subsequently. In other words, whatever tax liability had been determined in the original assessment order that had already become final and that cannot be sought to be disturbed by the assessee. But, the issue that arises here is that if the original assessment order is illegal in terms of its jurisdiction or if the same is null & void in the eyes of law on any jurisdictional grounds, then, whether it can give rise to initiation of further proceedings and whether such subsequent proceedings would be valid under the law as contained in Income Tax Act? It has been vehemently argued before us that the subsequent proceedings (i.e. collateral proceedings) derive strength only from the order passed in the original proceedings (i.e. primary proceedings). Thus, if order passed in the original proceedings is itself illegal, then that cannot give rise to valid revision proceedings. Therefore, as per law, the validity of the order passed in the primary (original) proceedings should be allowed*

*to be examined even at the subsequent stages, only for the limited purpose of examining whether the collateral (subsequent) proceedings have been initiated on a valid legal platform or not and for examining the validity of assumption of jurisdiction to initiate the collateral proceedings. If it is not so allowed, then, it may so happen that though order passed in the original proceedings was illegal and thus order passed in the subsequent proceedings in turn would also be illegal, but in absence of a remedy to contest the same, it may give rise to an 'enforceable' tax liability without authority of law. Therefore, the Courts have taken this view that jurisdictional aspects of the order passed in the primary proceedings can be examined in the collateral proceedings also. This issue is not res integra. This issue has been decided in many judgments by various courts, and some of them have been discussed by us in followings paragraphs.*

*8.10 Thus, on the basis of aforesaid discussion we can safely hold that as per law, the assessee should be permitted to challenge the validity of order passed u/s.263 on the ground that the impugned assessment order was non est and we hold accordingly. [Emphasis supplied].*

19. Otherwise also, it is a well established jurisprudence laid down by the various Courts, including Hon'ble Apex Court, reiterating the fundamental principle that the decree or order passed by a Court without jurisdiction is a nullity and its validity could be challenged whenever it is sought to be enforced or relied upon, even at the stage of execution and in

collateral proceedings. This principle has been laid down by the Hon'ble Apex Court in the following judgments:-

**i) AIR 1954 SC 340 Kiran Singh and Others v. Chaman Pawan and Others.**

*The facts were that the appellant in that case had undervalued the suit at Rs.2,950 and laid it in the court of the Subordinate Judge, Monghyr for recovery of possession of the suit lands and mesne profits. The suit was dismissed and on appeal it was confirmed. In the second appeal in the High Court the Registry raised the objection as to valuation under Section 11. The value of the appeal was fixed at Rs.9,980. A contention then was raised by the plaintiff in the High Court that on account of the valuation fixed by the High Court the appeal against the decree of the court of the Subordinate Judge did not lie to the District Court, but to the High Court and on that account the decree of the District Court was a nullity. Alternatively, it was contended that it caused prejudice to the appellant. In considering that contention at page 121, a four Judge Bench of Hon'ble Supreme Court speaking through Vankatarama Ayyar, J. held that:*

*"It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial,*

*or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."*

**ii) *Balwant N. Viswamitra and Others v. Yadav Sadashiv Mul (dead) through IRS and Others reported in (2004) 8 SCC 706* has held as under:**

*"9 The main question which arises for our consideration is whether the decree passed by the trial court can be said to be 'null and 'void'. In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, and irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.*

10 *Five decades, in Kiran Singh & Ors. v. Chaman Paswan & Ors., [SCR p. 121) this Court declared;*

*"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity*

*and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties.*

11 *The said principle was reiterated by this Court in Seth Hiralal Patni v. Sri Kali Nath. The Court said: (SCR pp. 751-52)*

*"Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is case of inherent lack of jurisdiction."*

12 *In Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Ors., [1871] 1 SCR 66, a decree for possession was passed by the Court of Small Causes which was confirmed in appeal as well as in revision. In execution proceedings, it was contented that the Small Causes Court had no jurisdiction to pass the decree and, hence, it was a nullity."*

13 *Rejecting the contention, this Court stated: (SCC p. 672, para 6)*

*"a Court executing a decree cannot go behind the decree : between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal*

*or revision, a decree even if it be erroneous is still binding between the parties.*

14 Suffice it to say that recently a bench of two-Judges of this Court has considered the distinction between null and void decree and illegal decree in *Rafique Bibi v. Sayed Waliuddin*,. One of us (R.C. Lahoti, J. as his Lordship then was), quoting with approval the law laid down in *Vasudev Dhanjibhai Modi*, stated: (SCC pp. 291-92, paras 6-8)

"6 What is 'void' has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.

7 Two things must be clearly borne in mind. Firstly, 'the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be a 'a nullity' and 'void' but these terms have not absolute sense: their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra

*vires, rigidly applied, would produce unacceptable results.'* (Administrative Law, Wade and Forsyth, 8th Edn., 2000, p. 308). Secondly, there is a distinction between mere administrative orders and the decrees of courts, especially a superior court. 'The order of a superior court such as the High Court must always be obeyed no matter what flaws it may be thought to contain. Thus, a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit.' (ibid., p. 312)

8 A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings."

From the above decisions, it is amply clear that all irregular or wrong decrees or orders are not necessarily null and

*void. An erroneous or illegal decision, which is not void, cannot be objected in execution or collateral proceedings.*

15 *From the above decisions, it is amply clear that all irregular or wrong decrees or orders are not necessarily null and void. An erroneous or illegal decision, which is not void, cannot be objected in execution or collateral proceedings.*

.....

20 *In our considered opinion, such a decree, by no stretch of imagination, can be described nullity. If the decree is not null and void, as per settled law, appropriate proceedings will have to be taken by the persons aggrieved by such decree.*

20. Similar view has been expressed by the judgments of Hon'ble Madhya Pradesh High Court in the case of **CIT v. Kalyan Solvent Extraction Ltd.** reported in **276 ITR 154** and **Calcutta High Court** in the case of **Keshav Narayan Banerjee v. CIT reported in 238 ITR 694.** Hon'ble Calcutta High Court in the case of Keshav Narayan Banerjee (supra) has held as under:

*“We have, therefore, no hesitation in holding that the service by registered post of the notices allegedly sent to the appellant writ applicant, resulting in the passing of the order under section 147 of the Act was not properly effected or accomplished. Since, admittedly, the service of such notices was a necessary pre-requisite, a condition precedent for passing of the orders under section 147 of the Act, we*

*also have no hesitation in holding that such orders were bad in law, and, therefore, the proceedings under section 263 of the Act, admittedly, originating from such orders could not be initiated against the appellants.”*

Also, Hon’ble Madhya Pradesh High Court in the case of CIT v. Kalyan Solvent Extraction Ltd. (supra) has held as under:

*“Once the original order stands rectified then it loses its identity at least to the extent it stood rectified. In such circumstances, the Commissioner should have invoked his suo motu powers under section 263 of the Act against the subsequent rectified order dated March 14, 1989, if he was of the view that the same is erroneous and prejudicial to the interests of the Revenue.*

*We are, therefore, of the view that the Tribunal made no mistake in coming to the conclusion that the order of the Commissioner passed under section 263 of the Act which had the effect of setting aside the assessment order dated March 13, 1987, is without jurisdiction.*

*Accordingly, and in view of the aforesaid discussion, we answer the reference against the Revenue and in favour of the assessee.”*

21. Further, **Hon’ble Delhi High Court** in the case of **CIT v. Software Consultants reported in 341 ITR 240** has held as under:

***“14. For exercise of power under Section 263 of the Act, it is mandatory that the order passed by the Assessing Officer should be erroneous and prejudicial to the interest of the Revenue. In the present case, the Assessing Officer did not make any addition for the reasons recorded at the time of issue of notice under Section 148 of the Act. This position is not disputed and disturbed by the Commissioner of Income Tax in his order under Section 263 of the Act. Sequitur is that the Assessing Officer could not have made an addition on account of share application money in the assessment proceedings under Section 147/148. Accordingly, the assessment order is not erroneous. Thus, the Commissioner of Income Tax could not have exercised jurisdiction under Section 263 of the Act.***

22. Ergo, it is incontrovertible that proceedings u/s. 263 are collateral proceedings of the assessment, because ld. CIT/PCIT exercise revisionary jurisdiction u/s.263 seeking to revise the assessment order on the ground that it is erroneous in so far as it is prejudicial to the interest of revenue. The edifice of the proceedings u/s 263 is the assessment order which is the original proceedings which has come to an end. However, if the original assessment order itself was invalid or illegal in terms of jurisdiction or was not in accordance with the provisions of the statute or was barred

by limitation, then such an invalid order cannot be subject matter of further proceedings so as to validate the said assessment order in collateral proceedings like u/s 263. This precise principle has been reiterated by the Hon'ble Apex Court in several cases which is evident from the judgment of Kiran Singh and others vs. Chaman Pawan and others (supra) and Balwant N. Viswamitra and others vs. Yadav Sadashiv Mul (supra) which we have quoted extenso in the forgoing paragraphs. In view of the binding judicial precedents and the principle and ratio laid down by the Hon'ble Apex Court as well as by the Hon'ble Jurisdictional High Court, we hold that the present proceedings being collateral proceedings and if the assessment order is inherently invalid or bad in law, then validity of such an order can be challenged at any stage in the collateral proceedings including the proceedings u/s.263, because invalid order cannot be set aside or can be revised to make it valid. Though assessment order may be said to be erroneous but certainly it cannot be held prejudicial to the interest of the revenue in such circumstances when assessment order itself is unsustainable, in view of the provisions of law as reiterated by the Hon'ble Jurisdictional High Court as discussed herein above.

23. Now coming to issue whether the assessment order itself was valid or not. The reasons recorded by the Assessing Officer for reopening the assessment u/s.147 have already been incorporated in the foregoing paragraph. From a bare

perusal of the same, it is seen that assessee's case has been reopened on the basis of information of CIT-III, New Delhi vide letter F.No. CIT-III/Confidential/2012-13 dated 28.03.2013 that the above assessee, M/s Suraj Pulses Private Limited has received and is a beneficiary of accommodation entries provided by the group of Shri Surendra Kumar Jain, Sh. Rakesh Gupta & Sh. Vishesh Gupta and Sh. Navneet Jain & Vaibhav Jain and hundreds of bogus companies of his group and many other related entry providers. On perusal of the reason it is apparent that, firstly, the learned assessing officer has nowhere mentioned the details about the entry operators. Secondly, the learned assessing officer has noted that from the verification of the documents seized it appears to him that accommodation entries have been taken from various paper companies which were obtained by the assessee. However in the reasons recorded there is no reference to which are the paper companies and what is the nature of the accommodation entry, and the parties from whom accommodation entries have been provided/obtained by the assessee. No various dates have been mentioned of the accommodation entries and the amount involved from whom accommodation entries have been obtained. In fact there is no whisper about how much credit or entry has been received and what is the income which escaped assessment. No reasons to believe has been formed by the Ld. AO that there is an income which has escaped assessment. Assessee even vide its letter dated 23.06.2014 to the Ld. AO specifically

mentioned that the name of persons from whom the credit entry of Rs. 25,00,000/-, has been received has not been given to the assessee. Assessing Officer has just vaguely referred to information/documents that he had received from the CIT-III, New Delhi. But what is the information and what is the material has not been mentioned at all. The information which has been mentioned in the reasons on the basis of which the AO has initiated proceedings u/s 147 of the Act are undoubtedly vague and uncertain and cannot be construed to be sufficient and relevant material on the basis of which a reasonable person could have formed a belief that income had escaped assessment. In other words, the reasons recorded by the AO are totally vague, scanty and ambiguous. The reasons recorded by the AO do not disclose the AO's mind as to what was the nature and amount of transaction or entries, which had been given or taken by the assessee in the relevant year. The reasons recorded by the AO also do not disclose his mind as to when and in what mode or way the bogus entries or transactions were given or taken by the assessee. From the reasons recorded, nobody can know what was the amount and nature of bogus entries or transactions given and taken by the assessee in the relevant year and with whom the transaction had taken place. There is no live nexus with the information received and the formation of belief by the Ld. AO. At least the reason which is the foundation and edifice for acquiring jurisdiction to reopen the assessment, at least should prima facie indicate that there is live link nexus with

the material coming on record with the income escaping assessment. The material should not be specific but also should indicate what is the amount which is escaping assessment. As held above, nowhere the reasons refer what was the nature of accommodation entry, the quantum of the amount of entry which has escaped assessment. In fact the reason is purely based on general observation and the modus operandi without any live link nexus with the assessee.

24. As already noted above in various judgements cited above, it is well settled that only the reasons recorded by the AO for initiating proceedings u/s 147 of the Act are to be looked at or examined for sustaining or setting aside a notice issued u/s 148 of the Act. The reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No addition can be made to those reasons. Therefore, the details of entries or amount mentioned in the assessment order and in respect of which ultimate addition has been made by the AO, cannot be made a basis to say that the reasons recorded by the AO were with reference to those amounts mentioned in the assessment order. The principles laid down is covered by the judgment passed by Hon'ble High Court of Delhi in the case of Insecticides (India) Ltd. reported in 357 ITR 330 and this Tribunal in the case of Shanker Tradex (P) Ltd. in ITA No. 2200/D/2019 dated 10.11.2020.

24.1 In view of these facts and circumstances, since the reassessment order itself is bad in law, therefore, the same

cannot be revised under section 263 of the I.T. Act. Only valid re-assessment order can be revised under section 263 of the I.T. Act. We, accordingly, set aside the Order of Ld. Pr. CIT passed under section 263 of the I.T. Act and quash the same. In view of the above, the remaining pleas of the assessee are not required to be adjudicated. Accordingly, appeal of the assessee is allowed.

**Assessment Year 2008-09 in ITA No.3010/Del/2017**

25. Here in this case also exactly similar facts and circumstances are involved. For this year, original return of Income in this case was filed on 25.10.2007 declaring income of Rs. 3,55,310/-. The notice under section 148 of the Income Tax Act, was issued on 25.03.2014 after recording the reasons and taking prior approval from the competent authorities which was by and large on the same grounds as was taken in ASSESSMENT YEAR 2007-08. The assessee in response to the statutory notice vide letter dated 01.04.2014 submitting therein that the original return filed be treated as return filed in response to the notice under section 148 of the I.T. Act and vide letter dated 15.04.2014 requested to provide reasons recorded, which were duly provided to it. The assessee also filled its objections which were disposed off. The A.O. issued statutory notices which were complied by the assessee and filed details as called for. Ld. AO issued independent notices u/s 133(6) of the I.T. Act, 1961 to the companies who has invested and due reply has been received.

The A.O. after discussing the case with the assessee, accepted the returned income and passed the re-assessment order under section 147/143(3) of the I.T. Act, 1961, on dated 27.01.2015.

26. The Ld. Pr. CIT on examining the assessment record noticed that though the assessment was reopened under section 148 of the I.T. Act on the allegation of accommodation entry taken from Shri S.K. Jain group of concerns who were searched on 14.09.2010 by the Investigation Wing of the Income Tax Department, some of the A.O's did not examine the seized material in the form of cash book and books containing the details of cheques issued by such concerns seized from the premises of Shri S.K. Jain during the course of search. The Investigation Wing, Delhi, forwarded the hard copy of appraisal report to the then Commissioner, Delhi-III, which was received by him on 15.03.2013, the relevant seized material (containing many thousands of pages) was scanned and sent to the Commissioner of Income Tax in soft copy. However, while completing the assessment under section 147 r.w.s. 143 of the I.T. Act, though the A.O. referred the appraisal report but did not look into the relevant seized material in soft copy. This was one of the case where the A.O. did not examine the seized material. Accordingly, a show cause notice under section 263 of the I.T. Act was issued to the assessee on 13.01.2017 which is reproduced in the impugned order. In the show cause notice it is stated that the case was reopened on the allegation of accommodation entry

of Rs.70 lakhs on account of share application/capital received from M/s Hum Tum Marketing Pvt Ltd, M/s Virgin Capital Services Pvt Ltd, M/s Eagle Infratech Pvt Ltd, M/s Victory Software Pvt Ltd, M/s Mega Top Promoters Pvt Ltd, M/s Finance Leasing & Finance India Ltd, M/s Brite Industrial Resources Ltd, M/s Sunny Cast & Forge Ltd and M/s Singhal Securities Pvt Ltd, concerns of S.K. Jain group of cases. However, on perusal of records and annexures of cash book and cheque book seized in the case of SK Jain group, it has been observed that the total accommodation entry of Rs. 90 lakhs has been taken by your company from the above mentioned concerns instead of Rs. 70 Lakhs as per reasons recorded for reopening of assessment. Search and seizure operation was carried out on 14.09.2010 at the premises of Shri Surender Jain and Shri Virender Jain. During the course of search, cash book and bank books of the concerns managed by Shri S.K. Jain group wherein detailed of day-to-day receipts in cash and cheque from/to different persons/firms/companies have been recorded, were seized. On perusal of the re-assessment order, it is noticed that while passing the said order, the Ld. AO has failed to consider the relevant seized material pertaining to the assessee-company which is mentioned in the Order. It is noted in the notice under section 263 that the amounts received by assessee-company were accommodation entry in lieu of cash given by the assessee-company through Shri Satish Goel. The relevant copies of the seized material relating to the assessee-company

were given along with show cause notice or during the proceedings under section 263 of the I.T. Act. Reply of the assessee was called for in which the assessee explained that the A.O. after examining the entire details and documentary evidences on record and making direct/independent enquiry from both the Investors under sections 133(6) of the I.T. Act, completed the assessment proceedings. The assessee filed all the documentary evidences before A.O. i.e., confirmation letter from Investors, copy of their bank accounts, copy of ITR, copy of PAN, copy of audited balance sheet, copy of Master Data taken from Official website of MCA. It was also stated that the seized papers are only rough papers and no details have been mentioned therein rejected. As such, the re-assessment order was set aside and restored to the A.O. for passing the order afresh as per law.

27. The assessee in the present appeal has challenged the Order under section 263 of the IT. Act. The assessee also moved an application for admission of the following additional grounds:

*i) Because the action for initiation, continuation and conclusion of reassessment proceedings is being challenged on facts and law.”*

*ii) Because the continuation and conclusion of reassessment proceedings is being challenged on facts and law while there being erroneous disposal of preliminary objection raised pursuant to judgment of GKN Driveshafts 259 ITR 19 SC*

*iii) Because the action for initiation of re-assessment proceedings is unreasonable since while recording*

*reasons, there is non application of mind much less independent application of mind and merely relying upon investigation report by AO, further reasons recorded are vague, lacking tangible material/reasonable cause and justification*

*iv) Because the action is being challenged on facts & law for challenging that the reassessment order passed u/s 147/143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impugned order u/s 263 to revise the non-est reassessment order.*

28. Considering the facts of the case, we are of the view that additional grounds are legal in nature and goes to the root of the matter. Therefore the same are admitted for the purpose of disposal of the appeal. We, accordingly, admit the additional grounds of appeal.

29. The Ld. Counsel for the Assessee contended that the submissions with respect to the present case is same as in the case of Suraj Pulses Pvt. Ltd. in ITA No.3009/Del/2017 (supra), as the reasons recorded are identical. The reasons recorded which are placed at Pg. 3 of the paper book reads as under:

*“Information/ documents in the form of CD, appraisal report alongwith relevant details has been received from the office of the CIT-III, New delhi vide letter F.No. CIT-III/Confidential/2012-13 dated 28.03.2013 that the above assessee, **M/s Suraj Pulses Private Limited** has received and is a beneficiary of accommodation entries provided by the group of Shri Surendra Kumar Jain, Sh. Rakesh Gupta*

*& Sh. Vishesh Gupta and sh. Navneet Jain & Vaibhav Jain and hundreds of bogus companies of his group and many other related entry providers. These search and seizure operations unearthed the modus operandi of these entry operators. The various companies which do not have any business were being used for providing accommodation entries to various assesseees who were rerouting their unaccounted cash through these accommodation entries. The assesseees would pay cash to the entry providers. This cash would then be deposited in the accounts of various bogus companies and the transactions would be routed through many bank accounts to cover the trail. Then the assessee would be given cheque from one of the many account which would be given the colour of share application money or share capital or share premium or loans or advance etc. In the process, the entry operator would earn certain commission. The searches by the Investigation Wing against the entry operators resulted in unearthing of large number of pass books, cheque books, computer hard disks, signed blank cheques, share transfer certificates and many other blank signed documents. This information has been provided by the Investigation Wing of the Income Tax Department to the Assessing Officer.”*

30. Learned counsel for the assessee draw our attention towards the written submissions alongwith documentary evidences filed by the assessee before the authorities below and also written Synopsis. He submitted that the issue in the said appeal is identical as the aforesaid appeal in the case of Suraj Pulses (P) Ltd. for AY 2007-08 in ITA No. 3009/D/2017. Therefore, reliance is placed upon submissions made therein. Further, he submitted that Ld. AO has mentioned amount of Rs. 70,00,000/- which is escaped assessment in the proforma

of approval u/s 151 of the Act, which is placed Paper Book Pg. no. 2, while Pr. CIT has mentioned in his order at Pg. 2 that the amount received is Rs. 90,00,000/- by assessee instead of Rs.70,00,000/- as per reasons recorded for reopening of assessment. Therefore, he submitted that the reopening is made on wrong sets of facts. He also placed on record the order dated 06.12.2017 passed by Ld. AO u/s 263/147/143(3) of the Act wherein the addition is also made of Rs.90,00,000/-.

31. On the other hand, Ld. D.R. relied upon the Order of the Ld. Pr. CIT. He has relied upon same submission and Judgments as relied in the case of Suraj Pulses (P) Ltd. for AY 2007-08 in ITA No. 3009/D/2017. Therefore, he submitted that the Ld. Pr. CIT rightly considered re-assessment order to be erroneous and prejudicial to the interests of the Revenue.

32. We have considered the rival submissions and perused the material available on record. We have perused that the identical grounds has been dealt with by us in appeal in the case of Suraj Pulses (P) Ltd. for AY 2007-08 in ITA No. 3009/D/2017 (Supra). The above finding given therein will apply mutatis mutandis for this year also.

33. Further, in the from the perusal of the reasons recorded for initiating proceedings u/s 148 and obtaining the approval of the Addl. Commissioner of Income Tax , Range-9, New

Delhi, it is mentioned that assessee company received share capital on account of accommodation entries of Rs. 70 lakhs. However, Ld. Pr. CIT in order u/s 263 has admitted that the total accommodation entry of Rs. 90 lakhs has been taken by the assessee company from the various concerns instead of Rs. 70 Lakhs as per reasons recorded for reopening of assessment. The same is also clarified from the order dated 06.12.2017 passed by Ld. AO u/s 263/147/143(3) of the Act wherein the addition is also made of Rs.90,00,000/-. Thus, the facts mentioned in the proforma for reasons for reopening of the assessment are incorrect and non-existent. The Hon'ble High Court of Delhi in the case of **PCIT vs. RMG Polyvinyl reported in 396 ITR 5 (Delhi)** has held as under :

*“9. However, in neither of the above cases are the facts similar to those in the present case. The two glaring errors in the reasons in the present case are, in fact, unusual. What the AO might have done if he was aware, even at the stage of consideration of reopening of the assessment that a return had in fact been filed by the Assessee and that the extent of the accommodation entries was to the tune of Rs. 78 lakh and not Rs. 1.56 crore would be a matter of pure speculation at this stage. He may or may not have come to the same conclusion. But that is not the point. The question is of application of mind by the AO to the material available with him before deciding to reopen the assessment under Section 147 of the Act.*

11. *There can be no manner of doubt that in the instant there was a failure of application of mind by the AO to the facts. In fact he proceeded on two wrong premises - one regarding alleged non-filing of the return and the other regarding the extent of the so-called accommodation entries.*

13. *As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.*

14. *To compound matters further the in the assessment order the AO has, instead of adding a sum of Rs. 78 lakh, even going by the reasons for reopening of the assessment, added a sum of Rs. 1.13 crore. On what basis such an addition was made has not been explained.”*

34. Here also AO had reason to believe that Rs.70 lakhs has escaped assessment, which was ultimately was found to be incorrect and non-existent, therefore, there was complete failure of any application of mind on the part of the Ld. AO to proceed to initiate the re-assessment proceedings. There is no

other material available on record except the information received from the Investigation Wing. The Ld. AO on the basis of the information and material received from Investigation Wing has recorded reasons for reopening of the assessment which are ultimately found to be incorrect and non-existent. Further also, following the reasons for decision in the case of Suraj Pulses (P) Ltd. for AY 2007-08 in ITA No. 3009/D/2017 (supra), we set aside the order passed by the Ld. Pr. CIT under section 263 of the I.T. Act and quash the same. Accordingly, appeal of the assessee is allowed.

35. In the result, ITA. No. 3010/Del./2017 of the Assessee is allowed.

**Suraj Buildmart India Pvt Ltd. Appeal No. 3011/D/2017**  
**AY 2007-08**

36. Here again facts are exactly same. In this year also the original return of Income was filed on 25.10.2007 declaring income of Rs. 2,05,085. The notice under section 148 of the Income Tax Act, was issued on 25.03.2014 after recording the reasons and taking prior approval from the competent authorities on by and large same reasons and information as dealt in the earlier part of the order. The assessee in response to the statutory notice vide letter dated 01.04.2014 submitting therein that the original return filed may please be treated as return filed in response to the notice under section 148 of the I.T. Act and vide letter dated 15.04.2014 requested

to provide reasons recorded, which were duly provided to it. The assessee also filled its objections which were disposed off. The A.O. issued various notice which were complied by the assessee and filed details as called for. Ld. AO issued independent notices u/s 133(6) of the I.T. Act, 1961 to the companies who has invested and due reply has been received. The Ld. AO after discussing the case with the assessee, accepted the returned income and passed the re-assessment order under section 147/143(3) of the I.T. Act, 1961, on dated 27.01.2015.

37. The Ld. Pr. CIT on examining the assessment record noticed that though the assessment was reopened under section 148 of the I.T. Act on the allegation of accommodation entry taken from Shri S.K. Jain group of concerns who were searched on 14.09.2010 by the Investigation Wing of the Income Tax Department, some of the A.O's did not examine the seized material in the form of cash book and books containing the details of cheques issued by such concerns seized from the premises of Shri S.K. Jain during the course of search. The Investigation Wing, Delhi, forwarded the hard copy of appraisal report to the then Commissioner, Delhi-III, which was received by him on 15.03.2013, the relevant seized material (containing many thousands of pages) was scanned and sent to the Commissioner of Income Tax in soft copy. However, while completing the assessment under section 147 r.w.s. 143 of the I.T. Act, though the Ld. AO referred the

appraisal report but did not look into the relevant seized material in soft copy. This was one of the case where the Ld. AO did not examine the seized material. Accordingly, a show cause notice under section 263 of the I.T. Act was issued to the assessee on 13.01.2017 which is reproduced in the impugned order. In the show cause notice it is stated that the case was reopened on the allegation of accommodation entry of Rs. 2.60 Crores on account of share application/capital received from M/s Shalini Holding Ltd., M/s Nisha Holding Ltd., M/s S.R. Cable Pvt Ltd., M/s Finge Leasing & Finance Ltd. M/s Vogue Leasing & Finance Pvt Ltd., M/s Pelicon Finance & Leasing Ltd., M/s Sunny Cast & Forge Ltd, M/s Pitambra Securities Pvt Ltd. M/s Parisudh Finance Co. Pvt Ltd., M/s Hillridge Investment Ltd. , M/s Singhal Securities Pvt Ltd, M/s KDG Proper & Construction Pvt Ltd. and M/s Brite Indu. Resources Ltd, various concerns of S.K. Jain group of cases. However, on perusal of records and annexures of cash book and cheque book seized in the case of SK Jain group, it has been observed that the total accommodation entry of Rs. 2.15 Crore (as against Rs. 2.60 as per reasons recorded for reopening of assessment) has been taken by your company from the above mentioned concerns. Search and seizure operation was carried out on 14.09.2010 at the premises of Shri Surender Jain and Shri Virender Jain. During the course of search, cash book and bank books of the concerns managed by Shri S.K. Jain group wherein detailed of day-to-day receipts in cash and cheque from/to different

persons/firms/companies have been recorded, were seized. On perusal of the re-assessment order, it is noticed that while passing the said order, the Ld. AO has failed to consider the relevant seized material pertaining to the assessee-company which is mentioned in the Order. It is noted in the notice under section 263 that the amounts received by assessee-company were accommodation entry in lieu of cash given by the assessee-company through Shri Satish Goel. The relevant copies of the seized material relating to the assessee-company were given along with show cause notice or during the proceedings under section 263 of the I.T. Act. Reply of the assessee was called for in which the assessee explained that the Ld. AO after examining the entire details and documentary evidences on record and making direct/independent enquiry from both the Investors under sections 133(6) of the I.T. Act, completed the assessment proceedings. The assessee filed all the documentary evidences before Ld. AO i.e., confirmation letter from Investors, copy of their bank accounts, copy of ITR, copy of PAN, copy of audited balance sheet, copy of Master Data taken from Official website of MCA. It was submitted that the seized papers are only rough papers and no details have been mentioned therein. rejected. As such, the re-assessment order was set aside and restored to the Ld. AO for passing the order afresh as per law.

38. The assessee in the present appeal has challenged the Order under section 263 of the IT. Act. The assessee also

moved an application for admission of the following additional grounds:

- i) *Because the action for initiation, continuation and conclusion of reassessment proceedings is being challenged on facts and law.”*
- ii) *Because the continuation and conclusion of reassessment proceedings is being challenged on facts and law while there being erroneous disposal of preliminary objection raised pursuant to judgment of GKN Driveshafts 259 ITR 19 SC*
- iii) *Because the action for initiation of re-assessment proceedings is unreasonable since while recording reasons, there is non application of mind much less independent application of mind and merely relying upon investigation report by AO, further reasons recorded are vague, lacking tangible material/reasonable cause and justification*
- iv) *Because the action is being challenged on facts & law for challenging that the reassessment order passed u/s 147/143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impugned order u/s 263 to revise the non-est reassessment order.*

39. Considering the facts of the case, we are of the view that additional grounds are legal in nature and goes to the root of the matter. Therefore the same are admitted for the purpose of disposal of the appeal as done in the other two appeals. We, accordingly, admit the additional grounds of appeal.

40. The Ld. Counsel for the Assessee contended that the submissions with respect to the present case is same as in

the case of Suraj Pulses Pvt. Ltd. in ITA No.3009/Del/2017 (supra) and Suraj Pulses Pvt Ltd. in ITA No. 3010/D/2017 (Supra), as the reasons recorded are identical. The reasons recorded which are placed at Pg. 6 of the paper book reads as under:

*“Information/ documents in the form of CD, appraisal report alongwith relevant details has been received from the office of the CIT-III, New delhi vide letter F.No. CIT-III/Confidential/2012-13 dated 28.03.2013 that the above assessee, **M/s SurajBuildmart Pvt. Ltd.** has received and is a beneficiary of accommodation entries provided by the group of Shri Surendra Kumar Jain, Sh. Rakesh Gupta & Sh. Vishesh Gupta and sh. Navneet Jain & Vaibhav Jain and hundreds of bogus companies of his group and many other related entry providers. These search and seizure operations unearthed the modus operandi of these entry operators. The various companies which do not have any business were being used for providing accommodation entries to various assessees who were rerouting their unaccounted cash through these accommodation entries. The assessees would pay cash to the entry providers. This cash would then be deposited in the accounts of various bogus companies and the transactions would be routed through many bank accounts to cover the trail. Then the assessee would be given cheque from one of the many account which would be given the colour of share application money or share capital or share premium or loans or advance etc. In the process, the entry operator would earn certain commission. The searches by the Investigation Wing against the entry operators resulted in unearthing of large number of pass books, cheque books, computer hard disks, signed blank cheques, share transfer certificates and many other blank signed documents. This*

*information has been provided by the Investigation Wing of the Income Tax Department to the Assessing Officer.”*

41. Learned counsel for the assessee draw our attention towards the written submissions alongwith documentary evidences filed by the assessee before the authorities below and the written Synopsis. He submitted that the issue in the said appeal is identical as the aforesaid appeal in the case of Suraj Pulses (P) Ltd. for AY 2007-08 in ITA No. 3009/D/2017 and Suraj Pulses Pvt Ltd. in ITA No. 3010/D/2017. Therefore, reliance is placed upon the same. Further, Ld. AO has mentioned amount of Rs. 2,60,00,000/- which is escaped assessment in Proforma for reasons recorded which is placed at Page no. 5 of the paper book, while Ld. Pr. CIT has mentioned in his order at Pg. 27 that the amount received is Rs. 2,15,00,000/- by assessee as against Rs. 2,60,00,000/- as per proforma of reasons recorded for reopening of assessment. Therefore, he submitted that the reopening is made on wrong sets of facts. He also placed on record the order dated 08.12.2017 passed by Ld. AO u/s 263/147/143(3) of the Act wherein the addition is also made of Rs. 2,15,00,000/-.

42. On the other hand, Ld. DR relied upon the Order of the Ld. Pr. CIT. He has relied upon same submission and Judgments as relied in the case of Suraj Pulses (P) Ltd. for AY 2007-08 in ITA No. 3009/D/2017 & Suraj Pulses (P) Ltd. for AY 2008-09 in ITA No. 3010/D/2017. Therefore, he

submitted that the Ld. Pr. CIT has rightly considered re-assessment order to be erroneous and prejudicial to the interests of the Revenue.

43. We have considered the rival submissions and perused the material available on record. Here in this case also similar facts and issues are permeating and the identical grounds have been dealt with by us in appeal in the cases of Suraj Pulses (P) Ltd. for AY 2007-08 in ITA No. 3009/D/2017 & Suraj Pulses (P) Ltd. for AY 2008-09 in ITA No. 3010/D/2017. Further, on perusal of the form for recording the reasons for initiating proceedings u/s 148 and obtaining the approval of the Addl. Commissioner of Income Tax, Range-9, New Delhi, it is mentioned that assessee company received share capital on account of accommodation entries of Rs. 2,60,00,0000. However, Ld. Pr. CIT in order u/s 263 has observed that the total accommodation entry of while Pr. CIT has mentioned in his order at Pg. 27 that the amount received is Rs. 2,15,00,000/- by assessee as against Rs. 2,60,00,000/-. Further, the Ld. AO in the assessment order u/s 263/147/143(3) dated 08.12.2017 has confirmed the same by making an addition of Rs. 2,15,00,000/-. Thus, following the reasons for decision in the case of Suraj Pulses (P) Ltd. for AY 2007-08 in ITA No. 3009/D/2017 (supra) and Suraj Pulses (P) Ltd. for AY 2008-09 in ITA No. 3010/D/2017, we set aside the order passed by the Ld. Pr. CIT under section

263 of the I.T. Act and quash the same. Accordingly, the appeal of the assessee is allowed.

44. In the result, ITA. No. 3011/Del/2017 of the Assessee is allowed.

**Suraj Pulses Processors Pvt Ltd. Appeal No. 3012/D/2017**

**AY 2009-10**

45. The facts of the case are that original return of Income in this case was filed on 22.08.2009 declaring income of Rs.5,967/-. The notice under section 148 of the Income Tax Act, was issued on 18.10.2013 after recording the reasons and taking prior approval from the competent authorities. The assessee in response to the statutory notice vide letter dated 18.11.2013 submitted that the original return filed may please be treated as return filed in response to the notice under section 148 of the I.T. Act and vide letter dated 18.11.2013 requested to provide reasons recorded, which were duly provided to it. The assessee also filled its objections which were disposed off. The Ld. AO issued statutory notice which were complied by the assessee and filed all the necessary details as called for. AO conducted independent inquiries and sent notices u/s 133(6) of the I.T. Act, 1961 to the companies who has invested and due reply has been received. The Ld. AO after discussing the case with the assessee, accepted the returned income and passed the re-

assessment order under section 147/143(3) of the I.T. Act, 1961, on dated 27.01.2015.

46. The Ld. Pr. CIT on examining the assessment record noticed that though the assessment was reopened under section 148 of the I.T. Act on the allegation of accommodation entry taken from Shri S.K. Jain group of concerns who were searched on 14.09.2010 by the Investigation Wing of the Income Tax Department, some of the A.O's did not examine the seized material in the form of cash book and books containing the details of cheques issued by such concerns seized from the premises of Shri S.K. Jain during the course of search. The Investigation Wing, Delhi, forwarded the hard copy of appraisal report to the then Commissioner, Delhi-III, which was received by him on 15.03.2013, the relevant seized material (containing many thousands of pages) was scanned and sent to the Commissioner of Income Tax in soft copy. However, while completing the assessment under section 147 r.w.s. 143 of the I.T. Act, though the A.O. referred the appraisal report but did not look into the relevant seized material in soft copy. This was one of the case where the Ld. AO did not examine the seized material. Accordingly, a show cause notice under section 263 of the I.T. Act was issued to the assessee on 13.01.2017 which is reproduced in the impugned order. In the show cause notice it is stated that the case was reopened on the allegation of accommodation entry of Rs.20.50 lakhs on account of share application/capital

received from M/s Shalini Holdings Ltd, concern of S.K. Jain group of cases. Further, on perusal of records and annexures of cash book and cheque book seized in the case of SK Jain group, it has been observed that the total accommodation entry of Rs. 20.50 lakhs has been taken by your company from the above mentioned concerns. Search and seizure operation was carried out on 14.09.2010 at the premises of Shri Surender Jain and Shri Virender Jain. During the course of search, cash book and bank books of the concerns managed by Shri S.K. Jain group wherein detailed of day-to-day receipts in cash and cheque from/to different persons/firms/companies have been recorded, were seized. On perusal of the re-assessment order, it is noticed that while passing the said order, the Ld. AO has failed to consider the relevant seized material pertaining to the assessee-company which is mentioned in the Order. It is noted in the notice under section 263 that the amounts received by assessee-company were accommodation entry in lieu of cash given by the assessee-company through Shri Satish Goel. The relevant copies of the seized material relating to the assessee-company were given along with show cause notice or during the proceedings under section 263 of the I.T. Act. Reply of the assessee was called for in which the assessee explained that the Ld. AO after examining the entire details and documentary evidences on record and making direct/independent enquiry from both the Investors under sections 133(6) of the I.T. Act, completed the assessment

proceedings. The assessee filed all the documentary evidences before A.O. i.e., confirmation letter from Investors, copy of their bank accounts, copy of ITR, copy of PAN, copy of audited balance sheet, copy of Master Data taken from Official website of MCA. It was submitted that the seized papers are only rough papers and no details have been mentioned therein. rejected. As such, the re-assessment order was set aside and restored to the Ld. AO for passing the order afresh as per law.

47. The assessee in the present appeal also has challenged the Order under section 263 of the I.T. Act. The assessee also moved an application for admission of the following additional grounds which are as under:

- i) Because the action for initiation, continuation and conclusion of reassessment proceedings is being challenged on facts and law.”*
- ii) Because the continuation and conclusion of reassessment proceedings is being challenged on facts and law while there being erroneous disposal of preliminary objection raised pursuant to judgment of GKN Driveshafts 259 ITR 19 SC*
- iii) Because the action for initiation of re-assessment proceedings is unreasonable since while recording reasons, there is non application of mind much less independent application of mind and merely relying upon investigation report by AO, further reasons recorded are vague, lacking tangible material/reasonable cause and justification*
- iv) Because the action is being challenged on facts & law for challenging that the reassessment order passed u/s 147/143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the*

*impugned order u/s 263 to revise the non-est reassessment order.*

48. For the same reasons as given above we are admitting the additional grounds.

49. The Ld. Counsel for the Assessee contended that the submissions with respect to the present case are same as in the aforementioned three cases, as the reasons recorded are similar. The reasons recorded which are placed at Pg. 1-2 of the paper book (True Typed copy filed separately) reads as under :

*“Information has been received from the Directorate of Investigation wing of the Income Tax Department that the above named assessee is a beneficiary of accommodation entries received from an established entry operator identified by the wing during the period relevant to AY 2009-10. On the basis of search conducted in the premises of Shri Surendra Kumar Jain Group, further inquiries made, the investigation carried out and evidences collected, a report has been forwarded in which the assessee company is found to be the beneficiary of accommodation entries provided by the group of companies run by shri Surendra Kumar Jain Group as per the following specific details of transaction:-*

<b>Name of the Beneficiary</b>	<b>A.Y.</b>	<b>Amount</b>
<b>M/S SURAJ PULSES PROCESSORS PRIVATE LIMITED</b>	2009-10	Rs. 20,50.000/-

*The Investigation Wing on the basis of enquiries conducted/information collected has sent the name of the beneficiaries and the value of entries taken by them. From the report of the Investigation wing it is gathered that **M/S SURAJ***

**PULSES PROCESSORS PRIVATE LIMITED** has received entries to the tune of Rs. 20,50,000/- through the above established entry operators during the period under consideration.

I am satisfied that the assessee company had received bogus accommodation entries to the tune of Rs. 20,50,000/- relevant to A.Y. 2009-10. Therefore, the assessee has deliberately furnished wrong facts at the time of filing of return, the details of which are mentioned above.

In view of above, I have reasons to believe that an amount of Rs. 20,50,000/- has escaped from the assessment for the A.Y. 2009-10 which was chargeable to tax. I am also satisfied that on account of failure on the part of assessee to disclose truly and fully all the material facts necessary for assessment for the above assessment year, the income chargeable to tax to the tune of Rs. 20,50,000/- has escaped assessment with the meaning of Section 147 of the I.T. Act, 1961.”

50. He drew our attention towards the written submissions alongwith documentary evidences filed by the assessee before the authorities below and also the written synopsis. He submitted that the issue in the said appeal is identical as the aforesaid appeal in the case of Suraj Pulses (P) Ltd. for AY 2007-08 in ITA No. 3009/D/2017. Therefore, reliance was placed upon the same.

51. On the other hand, Ld. D.R. relied upon the Order of the Ld. Pr. CIT. He has relied upon same submission and Judgments as relied in the case of Suraj Pulses (P) Ltd. for AY 2007-08 in ITA No. 3009/D/2017. Therefore, he submitted that the Ld. Pr. CIT has rightly considered re-assessment order to be erroneous and prejudicial to the interests of the Revenue.

52. After hearing both the parties and on perusal of the material placed on record, we find that as far as the reasons recorded, though there is a specific mention about amount of Rs.20,50,000/- received by way of accommodation entry, however neither there is any mention from whom the assessee had received the amount nor what is the nature of the entry nor whether it is in cash or cheque. In fact, it is not discernible as to what is the nature of transaction. What is mentioned is that assessee was found to be beneficiary of amount of Rs.20,50,000/- which is in the nature of bogus accommodation entry. The ld. DR has submitted that the very fact that assessee was beneficiary of accommodation entry of a particular amount that is sufficient enough to entertain reason to believe. However, the reasons recorded at least mention what is the nature of accommodation entry and which is the entity from which assessee has received the amount. Whether the entry has been received towards share application money or loan or gift, etc. These reasons are purely vague and show there is a non application of mind on the information which was received and the reason recorded by the Assessing Officer. The Assessing Officer has not even mentioned as to what was the nature of entry as given in the report and simply saying that assessee received entry to the tune of Rs.20,50,000/- from entry operators during the period is not sufficient. Such a vague reasons cannot justify the reopening and as observed above, the Assessing Officer can validly acquire jurisdiction only when the reasons recorded

itself points out or speaks of live link nexus with the material available on record and income escaping assessment and it should not be vague or mere pretence. The Assessing Officer should have at least perused the report and examine what is the material pertaining to assessee and what is the nature of entry and whether it is matching with records of the assessee. He should have prima facie seen what is the nature of bogus entry and from which entity assessee has received. Such vague and general observation made by the Assessing Officer in the reasons recorded does not confer any jurisdiction to him reopen the case. As pointed out by the ld. counsel, these reasons are similar or identical in the case of Shanker Tradex (P) Ltd. vs. ITO in ITA No. 2200/D/2019 dated 10.11.2020 AY 2008-09 (ITAT, Delhi) (supra) wherein this Tribunal has held that such reasons recorded shows complete non-application of mind by the Ld. AO and as such the reopening is invalid under the law. We thus set aside the order passed by the Ld. Pr. CIT under section 263 of the I.T. Act and quash the same as the assessment order itself was void-ab-initio. Accordingly, the appeal of the assessee is allowed.

53. In the result, the appeals of the Assesseees are allowed.

**Order pronounced in the open Court on 6<sup>th</sup> July, 2021.**

Sd/-  
**[PRASHANT MAHARISHI]**  
**ACCOUNTANT MEMBER**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

DATED: 6<sup>th</sup> July, 2021  
pkk