IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'B', NEW DELHI

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. AMIT SHUKLA, JUDICIAL MEMBER

(THROUGH VIDEO CONFERENCING)

ITA No.3190/Del/2016
(Assessment Year : 2007-08)

ITO Ward – 22(1), New Delhi PAN : AAICS 0471 J	Vs.	M/s S. System Pvt. Ltd. House No. 5, Block A-31, Main Shastri Gali, Maujpur, New Delhi-110 053
(APPELLANT)		**(RESPONDENT)**

Assessee by	Shri Sanjay Mehra, C.A.
Revenue by	Shri Kumar Pranav, Sr. D.R.

Date of hearing:	22.11.2021
Date of Pronouncement:	08.12.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 22.03.2016 of the Commissioner of Income Tax (Appeals)-28, New Delhi relating to Assessment Year 2007-08.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company who is stated to have filed its original return of income for Assessment Year 2007-08 on 30th January 2009. The return of income is stated to have been accepted by the Revenue. Thereafter on the basis of information received from DIT (Investigation) about search and seizure operation in the case of Shri Surendra Kumar Jain group wherein it was noted that the Jain group was engaged in providing accommodation entries and assessee had also stated to have availed accommodation entry, notice under section 148 of the Act was issued on 27th March 2014 and consequently assessment was framed under section 144 read with section 148 of the Act by order dated 28.01.2015 and the total income was determined at Rs.8,37,37,500/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) vide order dated 22.03.2016 in Appeal No.610/14-15/72/15-16 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now before us and has raised following grounds:

"1. The Learned CIT(A) erred in holding that the AO has no jurisdiction to issue notice u/s 148 of the Act and hence the re-opening is bad in law without appreciating the facts that the reasons were duly recorded by the AO on 27.03.2014 that the assessee has received accommodation entries of Rs.8.25 crore during F.Y. 2006-07 after taking necessary approval u/s 151(2) of the I.T. Act.

2. The appellant therefore prays to set aside the order of Learned CIT(A) and restore the order of AO.

3. The appellant craves to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

4. Before us Ld. DR submitted that CIT(A) has erred in holding the re-opening to be bad in law without appreciating the facts that the reasons are duly recorded by the AO under section 151(2) of the Act that the assessee received accommodation entries. He therefore submitted that the order of CIT(A) be set aside.

5. Ld. AR on the other hand reiterated the submissions before the AO and CIT(A). He pointed to the findings of CIT(A) wherein CIT(A) has noted that AO had not applied his mind to the material/ information received from the office of the DIT(Investigation) and that the AO without even recording reasons concluded that he has reason of believe that the income has escaped assessment and sought necessary approval under section 151(2) of the Act to issue notice under section 148 of the Act. He further pointed out that CIT(A) has also noted that the AO proceeded to initiate proceedings under section 147 of the Act and to issue notice under section 148 of the Act only on the basis of information received from the Investigation Wing without applying independent mind which is necessary condition for invoking the provisions of Section 147 and 148 of the Act. He further submitted that identical issue arose in the case of M/s. S. Motors Private Limited, the sister concern of the assessee, wherein the appeal filed by the Revenue was dismissed by the Co-ordinate Bench of Tribunal in I.T.A. No. 3189/Del/2016 dated 07.01.2020. He pointed to the relevant order which is placed in the paper book. He therefore submitted that in view of the

aforesaid facts, no interference with the order of CIT(A) is called for.

6. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is about the validity of the initiation of reassessment proceedings. We find that CIT(A) in Para 3 of his order has given a finding that even without recording reasons, AO had come to the conclusion that income has escaped assessment and had sought approval under section 151(2) of the Act to issue notice under section 148 of the Act. CIT(A) has also given a finding that there was neither any application of mind nor any basis of the AO to reason to believe that income has escaped assessment. He has further noted that AO had proceeded to initiate proceedings under section 148 of the Act only on the basis of information received from the Investigation Wing of the Department and there is nothing on record to demonstrate that AO while framing the belief has complied with the mandate section 147 & 148 of the Act. We further find that identical issue arose in assessee's sister concern, M/s. S. Motors Private Limited, wherein Revenue had carried the matter before the Co-ordinate Bench of Tribunal in I.T.A. No. 3189/Del/2016 dated 07.01.2020 and the appeal of Revenue was dismissed.

7. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue nor has Revenue pointed any distinguishing facts in the case of the assessee and that of the

sister concern i.e. M/s. S. Motors Private Limited. Further Revenue has also not produced any documents to demonstrate that reason were recorded by the AO before issuance of notice under section 148 of the Act though the Bench had specifically directed the Revenue on 23rd June 2021 and 8th September 2021 to produce such evidence. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 08.12.2021

Sd/-	**Sd/-**
(AMIT SHUKLA)	**(ANIL CHATURVEDI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Date:- 08.12.2021
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Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI