

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E" : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA No.5318/Del./2016

Assessment Year 2010-11

M/s. More Credit Securities (P) Ltd., RZD-3A, Palam Dabri Road, Mahavir Enclave, Opposite Sulabh International, Palam, New Delhi – 110 045. PAN AAACM2081J	vs.,	The Income Tax Officer, Ward – 17 (1), Room No.323A, C.R. Bldg., New Delhi – 110 002.
(Appellant)		(Respondent)

ITA No.5278/Del./2016

Assessment Year 2010-11

The Income Tax Officer, Ward – 17 (1), Room No.323A, C.R. Bldg., New Delhi – 110 002.	vs.,	M/s. More Credit Securities (P) Ltd., RZD-3A, Palam Dabri Road, Mahavir Enclave, Opposite Sulabh International, Palam, New Delhi – 110 045. PAN AAACM2081J
(Appellant)		(Respondent)

For Assessee :	Sh Sudesh Garg, Advocate
For Revenue :	Ms Paramita M. Biswas, CIT-DR Mr. Gaurav Pundir, Sr. DR

ITA.No.4704/Del./2014
Assessment Year 2011-2012

The Income Tax Officer, Ward – 5 (4), New Delhi.	vs.,	M/s. More Credit Securities (P) Ltd., RZD-3A, Palam Dabri Road, Mahavir Enclave, Opposite Sulabh International, Palam, New Delhi – 110 045. PAN AAACM2081J
(Appellant)		(Respondent)

For Revenue :	Sh Gaurav Pundir, Sr. D.R.
For Assessee :	Sh. Sudesh Garg, Advocate.

Date of Hearing :	30.09.2021
Date of Pronouncement :	24.12.2021

ORDER

PER R.K. PANDA, A.M.

ITA.No.5318/Del/2016 filed by the Assessee and ITA.No.5278/Del./2016 filed by the Revenue are cross appeals and are directed against the order dated 29.07.2016 of the Ld. CIT(A)-6, New Delhi relating to A.Y. 2010-2011. ITA.No.4704/Del./2014 filed by the Revenue is directed against the order dated 19.06.2014 of the Ld. CIT(A)-8, New Delhi, relating to A.Y. 2011-2012. For the sake of convenience, all these appeals were heard together and are being disposed of by this common order.

ITA.No.5318/Del./2016 [Assessee]

And

A.Y. 2010-11

ITA.No.5278/Del//2016 [Revenue]

2. Facts of the case, in brief, are that the assessee is a Company incorporated on 19.04.1993 and is engaged in the business of Finance being NBFC Registered Company. It filed its return of income on 15.10.2010 declaring total income of Rs.1,06,610/-. Subsequently, on the basis of information received from the Investigation Wing, the A.O. reopened the assessment as per the provisions of Section 147 of the I.T. Act, 1961 on the ground that assessee has taken accommodation entry of Rs.17,32,00,000/- from companies controlled by Shri S.K. Jain and Shri Virender Kumar Jain Group of Companies. The A.O. accordingly issued notice under section 148 of the I.T. Act, 1961 on 15.04.2013. The assessee-company vide letter dated 14.10.2013 stated that the return filed under section 139 on 15.10.2010 declaring taxable income of Rs.1,06,610/- may be treated as return in response to notice under section 148 of the I.T. Act, 1961.

2.1. During the course of assessment proceedings the A.O. called for information under section 133(6) from all the parties from whom the assessee-company has received accommodation entries in shape of share application money and share premium fixing the date for hearing on 07.03.2014. However, no reply was filed. He further noted that in the case of 03 companies namely Attractive Fin Lease Pvt. Ltd., Edoptica Developers (India) Ltd., and Twinkle Mercantile and Credit Pvt. Ltd., letters were returned unserved by the Postal Authorities with the remarks “no such company” in the case of Attractive Fin Lease Pvt. Ltd., and “left” in the case of other two companies. Subsequently, the assessee vide letter dated 06.05.2014 requested for reasons for reopening of the assessment which were provided to the assessee. Thereafter, the A.O. issued notice asking the assessee-company to submit the complete details, confirmation, nature of transaction, bank statements, I.T. particulars, bank statements of the persons/parties from whom share application money including share premium/unsecured

loans were received during the year. He also asked the assessee to produce books of account for his examination.

2.2. In the meantime, the A.O. received certain replies from the Companies in response to notice under section 133(6) of the I.T. Act, 1961. From the above, he noted that these replies were not sent by the Company concerned since all the replies were in similar pattern and mostly posted on the similar dates from one post office. Thereafter, the A.O. issued summons under section 131 to the Directors of the Companies from whom the alleged accommodation entries in the form of share capital and share premium were received for their personal deposition. However, there was no compliance to the same. In view of the above and considering the fact that information received from the Investigation Wing explains at length, the *modus operandi* of the entry operators, the A.O. applying the provisions and Section 68 of the I.T. Act, 1961, made addition of Rs.17,32,00,000/- to the total income of the assessee.

2.3. Similarly, the A.O. made addition of Rs.34,64,000/- under section 69C of the I.T. Act, 1961 being Commission paid @ 2% for arranging the accommodation entry of Rs.17,32,00,000/-.

2.4. During the course of assessment proceedings, the A.O. noted that assessee-company had invested in shares amounting to Rs.3,47,17,000/- and has received dividend of Rs.71,188/-. However, the assessee has not made any disallowance under section 14A of the I.T. Act, 1961. The A.O, therefore, by invoking the provisions of Section 14A read with Rule 8D made disallowance of Rs.90,745/-.

2.5. The A.O. further noted that assessee-company has shown receipt of Rs.21,69,49,267/- from sale of securities. The assessee has claimed salary expenses of Rs.1,92,000/- which was shown as payable. He, held that there is no employer-employee relationship and the expenses were shown to reduce the tax liability. In absence of any satisfactory explanation given by the assessee, the A.O. made addition of the same to the total income of the

assessee. Thus, the A.O. determined the total income of the assessee at Rs.17,70,53,360/-.

3. Before the Ld. CIT(A), the assessee apart from challenging the addition on merit, challenged the validity of the reopening of the assessment. However, the Ld. CIT(A) upheld the action of the A.O. in reopening of the assessment. While doing so, he noted that the Hon'ble Delhi High Court in the case of *Ambica Steel Ltd., vs., DCIT 118 TTJ 116 (Del.)* has held that reopening of the assessment on the basis of information received from the Investigation Wing is valid. Further the A.O. in the instant case has noted that the assessee-company was beneficiary of receiving Rs.17,32,00,000/-. This according to the Ld. CIT(A) was a sufficient reason to form the belief that income to the tune of Rs.17.32 crores had escaped assessment. Further A.O. has followed due procedure for reopening of the assessment as laid down by the law i.e., recording of reasons, issue of notice within the prescribed time, providing copy of the reasons to the assessee and replying to the assessee's objections to the reopening of the assessment.

3.1. So far as the merit of the case is concerned, he deleted the addition of Rs.17,32,00,000/- made by the A.O. under section 68 of the I.T. Act, 1961. He noted that the assessee has filed the documents/details of the transaction, copy of return of income for the A.Y. 2010-11 of the applicants, copy of their audited accounts containing the name of the assessee in the Schedule to the audited balance-sheet, confirmation of transaction by the applicants, copy of bank statements of the applicants, copy of assessment orders for the A.Y. 2010-11 passed under section 143(3) by the jurisdictional A.O. of the applicants etc. The relevant observation of the Ld. CIT(A) while deleting the addition of Rs.17.32 crores made by the A.O. under section 68 of the I.T. Act, 1961 reads as under :

“6.6.1. I have gone through the assessment order, assessment record, the observations of the A.O, the averments and the written submissions of the appellant as well as the facts and circumstances of the case and the position of law.

6.6.2. *I have found that the appellant has furnished complete details of the transactions to the AO. The details filed by the appellant to the AO include the following documents pertaining to the transactions*

- a) *Copies of the returns of income for the AY 2010-11 of the applicants.*
- b) *Copies of the Audited Balance Sheets as at 31.3.2010 of the applicants containing the names of the appellant in the Schedule to the Audited Balance Sheets.*
- c) *Confirmations of transactions by the applicants.*
- d) *Copies of the Bank Statements of the applicants.*
- e) *Copies of the Assessment Orders for AY 2Q-10-11, passed u/s 143(3) by the jurisdictional AOs of the applicants.*

6.6.3. *The share applicants are Income Tax assesseees and their orders u/s 143 (3) or u/s 153A/153C have been passed. Thus their existence is established and there is no doubt about their existence. One important aspect of the case is that Sh. Deepak Tyagi, S/o Sh. Suresh Chand Tyagi,*

Director of 6 Companies had appeared before the AO on 30.06.2014 in response to the above said summons. The AO recorded his statement on 30.06.2014 wherein he had confirmed that the above companies had made investment in the shares of the appellant. This fact is missing in the assessment order.

6.6.4. The other documents filed by the appellant, in support of the arguments, have also been examined and it was found that:-

- All the investors are companies incorporated by law.*
- Unique identification no, named as Company Identity Number (CIN) is allotted to all the investors by the MCA.*
- CIN is allotted on the basis of certain set of documents duly certified by CA or CS.*
- PAN is allotted to all the investors by the department.*
- Being artificial persons, companies work through their directors, to whom identity (DIN) is allotted by the MCA.*

- *Again DIN is allotted on the basis of certain set of documents duly certified by CA or CS.*
- *Appellant had issued shares to all the investors. Copy of Form 2, filed with the ROC has been filed. It is pertinent to note that shares cannot be allotted to any non existing entity.*
- *Under these circumstances, non existence of a company cannot be imagined.*
- *Further ail the investors have filed their financials which shows that their net worth is much more titan the amounts invested by them.*
- *It is not the case of the appellant that the investments have been made out of the current income. Thus the observation of the AO regarding low income is of no relevance, in view of the high net worth of the investors.*
- *A chart showing amounts invested by the investors as compared with their own funds is as under :*

S.No.	Name of the Investor	Total own funds (share capital plus reserves) Rs. In Lakh)	Amount invested with the appellant (Rs. In Lakh)	%
1.	Apporva Leasing Finance and Investment Company Limited	11986.14	117	.97
2.	Shalini Holdings Limited	12487.30	115	.92
3.	Aasheesh Capital Services Pvt. Ltd	12336.50	100	.81
4.	Sunny Cast & Forge Ltd.	12550.57	100	.79
5.	Finage Leasing & Finance India Ltd	1456.29	100	6.86
6.	Victory Software Pvt. Ltd.	1914.57	50	2.61
7.	Mega Top Promoters Pvt. Ltd.	1641.42	50	3.04
8.	Nandal Finance and Leasing Pvt. Ltd	11913.62	50	.41
9.	Lunar Gold International Pvt. Ltd.	7001.00	100	1.42
10.	Yuvraj Exports Private Limited	9201.00	150	1.63
11.	Akul Securities Pvt. Ltd	6753.20	100	1.48
12.	Geo Loan Plans India	5751.04	150	2.60
13.	Twinkle Mercantile and Credits Pvt. Ltd.	16067.32	150	.93
14.	Singhal Developers India Ltd.	1049.97	100	9.52
15.	Edoptica Attractive Fin Lease Limited	7800.18	200	2.56
16.	Attractive Fin Lease Limited	10505.50	100	.009

6.6.5. The above documents, in possession of the AO, squarely satisfy the three ingredients of Section 68 of the 1. T. Act, 1961, namely identity and creditworthiness of the share applicants and genuineness of the transactions.

6.6.6. *The case law relied upon by the AO have also been examined and found that those pronouncements are quite different from the facts and circumstances of the present case and hence cannot be applied in the case of the appellant, looking into the aspect that there are contrary pronouncements, by the Hon'ble jurisdictional Delhi High Court, on this issue, subsequent to the judgments relied upon by the A.O. as cited by the AR on page A19-A20 of the PB Vol. I.*

6.6.7. *Before proceeding to make addition with regard to sec 68, the AO was required to discharge his burden as laid upon him under the law by bringing sufficient material on record to disbelieve the claim of the appellant. However, the AO has failed to bring any material on record that the amount of Rs.17,32,00,000/- is nothing but the appellant's own unaccounted money which was routed through the alleged company. Therefore; the addition made by the AO without any evidence*

deserves to be deleted.

6.6.8. *The action of the AO clearly establishes that there was no adverse material with him other than the information from the Investigation Wing (which was not sufficient in the face of the evidences furnished by the A.O. during assessment proceedings) and the addition has been made contrary to the facts and circumstances of the case and against the settled propositions of law and thus the addition of Rs.17,32,00,000/- is hereby deleted.*

6.6.9. *My above view is fortified by the following decisions:-*

“Where assesses had furnished income-tax returns, balance sheets, RoC particulars and bank account statements of shareholders, source of share application money had been satisfactorily explained. Section 68 .of the Income-tax Act, 1961 - Cash credits (Share application money) - Assessment year 2000-01 - Assesses received

share application money during relevant assessment year - Assessing Officer held that assessee had not given satisfactory explanation and included entire amount under section 68 - On appeal, assessee furnished income-tax returns, balance sheets, ROC particulars and bank account statements of shareholders - Commissioner (Appeals) considering said materials held that share application money or source of share application money had been satisfactorily explained and deleted addition - Tribunal confirmed order of Commissioner (Appeals) - Whether entire issue being purely factual, no interference was called for with Tribunal's order - Held, yes [Para 7] [In favour of assessee] Commissioner of Income-tax vs., Expo Globe India Ltd. [2014] 51 taxmann.com 208 (Delhi)*

High court of Allahabad in the case of CIT (Central) v. Vacmet Packaging (India) (P.) Ltd.

[2014] 45 taxmann.com 204 has held that Assessing Officer made addition under section 68 on account of share application money received by assessee company even though assessee had fled all documentary Evidence, like share application form, copies of bank statement, income-tax return, balance sheet, share allotment certificates of board resolution of share applicants, PAN card, register certificate of Registrar - Moreover, applicant companies also confirmed investment made by them and submitted all relevant documents - since assessee had discharged onus establishing identity and creditworthiness of applicant companies and genuineness of transaction, addition made by Assessing Officer under section 68 was to be deleted Jurisdictional Hon'ble Delhi High court in the case of CIT v.Fuir Finvest Ltd. 357 ITR 146(Delhi) has held that Where assessee had filed documents including certified copies issued by Registrar of Companies

in relation to share application and affidavits of directors, Assessing Officer could not make addition on account of share application money solely on basis of investigation report.

Similar view has been taken by Allahabad High court in the case of CIT (Central) v Vijay Kumar Jain 221 Taxman 180(All) Assessee had taken a loan from company 'B' - Assessing Officer noticed that a raid was conducted in case of 'B' wherein it was found that said company was engaged in providing accommodation entries - Assessing Officer thus added amount of loan taken from said company in assessee's taxable income under section 68 - Commissioner (Appeals) found that lenders were regular income-tax assessee and their PANs were on record - Further, amount had been advanced through account payee cheques and before issuing cheques, lenders had got balance in their accounts - Amount of loan had also been repaid through account payee cheques -

In aforesaid circumstances, Commissioner (Appeals) opined that identity and creditworthiness of lenders had duly been proved - Accordingly, addition made by Assessing Officer was deleted -Tribunal confirmed order of Commissioner (Appeals) - Whether on facts, impugned order passed by appellate authorities did not suffer from any infirmity and, thus, revenue's appeal was to be dismissed - Held, yes [Para 6] [In favour of assessee]

In an identical case before high court of Gujarat in the matter related to CIT v .Apex Therm Packaging (P.) Ltd. 121)14] 42 taxmann.com 473 (Gujarat) it has been held that when full particulars, inclusive of confirmation with name, address and PAN Number, copy of income tax returns, balance sheet, profit and loss account and computation of total income in respect of all creditors/lenders were furnished and when it had been found that loans were furnished through cheques and loan

account were duly reflected in balance sheet, Assessing Officer was not justified in making addition.

High court of Rajasthan while deciding appeal of the revenue in the case of CIT, Ajmer v. H.S. Builders (P.) Ltd 12012] 26 taxnuinn.com 86 (Raj.) has observed as under 'Tribunal deleted addition on account of cash credits noting that assessee had submitted accounts of returns, computations of income, and balance-sheets of creditors and also supplied all their particulars, that money given to assessee had been shown in respective balance-sheets of creditors, and that creditors who were by Assessing Officer did affirm fact of giving money and explained source findings of Tribunal being based on appreciation of evidence and relevant considerations and not shown to be perverse could not be interfered with.

Jurisdictional Hon'ble Delhi Nigh court in the case of CIT v. Khoobsurat Resorts (P.) Ltd. [2012] 28 taxmami.com 93 (Delhi) observed that Assessee-company purchased properties - It claimed that sale consideration on its behalf was paid by proprietary concern belonging to one of directors of assessee-company - Assessee filed all necessary documents including confirmation from said director, PAN, complete address, copies of returns of proprietary concern and director and sources of investment made by director - Assessing Officer concluded that genuineness of source of funds made available to assessee had not been proved and added back amount of sale consideration to income of assessee as unexplained cash credit under section 68 - Appellate authorities deleted impugned addition holding that assessee had discharged its onus of proving that funds were received - Whether orders of appellate authorities did not call for interference - Held, yes."

6.6.10. *Thus in my considered opinion based upon the position of law and facts as discussed above, the appellant has been able to discharge its onus and the AO's action in making addition of the above said amount was contrary to law and facts of the case. Therefore, keeping in view the entire facts of the case and the position of law discussed above, this ground of appeal is decided in favour of the appellant and the addition of Rs.17,32,00,000/- is hereby deleted. Ground no. 4 of the appeal is allowed."*

4. So far as the addition of Rs.34,64,000/- towards Commission is concerned, the Ld. CIT(A) also deleted the same on the ground that the substantive addition has been deleted.

5. As regards disallowance of Rs.90,745/- under section 14A of the I.T. Act, 1961 is concerned, the Ld. CIT(A) deleted the addition on the ground that assessee has invested a sum of Rs.3,47,17,000/- as advance against the property. None of the amounts represents investment in

shares. Therefore, the action of the A.O. is contrary to the facts, for which, the Ld. CIT(A) deleted the addition.

6. So far as the addition of Rs.1,92,000/- on account of disallowance of salary expenses is concerned, the Ld. CIT(A) deleted the same on the ground that A.O. made the addition without raising any query. Further being registered as NBFC Company with the RBI, the assessee has to comply with the legal requirements on this account. Therefore, disallowance of the entire salary is without any cogent reasons and unjustified, for which, he deleted the addition.

7. Aggrieved with such order of the Ld. CIT(A) giving relief to the assessee, the Revenue [ITA.No.5278/Del./2016 – A.Y. 2010-11] is in appeal before the Tribunal by raising the following grounds :

1. *Whether in facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting the addition of Rs.17,32,00,000/- made u/s 68 of the I.T. Act in respect of unexplained credits introduced through*

hawala entry operators in the garb of share application money without giving reasons for its conclusion as well as ignoring the facts that the assessee did not discharge its onus to prove genuineness of the transactions as well as identity as creditworthiness of investors ?

2. *Whether in facts and circumstances of the case and in law, the Ld. CIT(A) is legally justified in deleting the addition of Rs.17,32,00,000/- made u/s 68 of the IT Act on the basis of self serving evidence produced by the assessee in form of documents of paper companies used to provide accommodation entries to several hundred beneficiaries including the assessee and by ignoring finding of enquiry made by the Assessing Officer ?*
3. *Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) is justified in holding that filing details of PAN and ITR are sufficient evidence to discharge the onus of the assessee u/s 68 of the Act with regard to identity, genuineness of transactions and creditworthiness of the investors even when none*

of the investor was produced before the Assessing Officer for verification ?

4. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the additions made u/s 68 on account of unexplained credits in respect of Share application money by completely ignoring the ratio decidendi laid down by Hon'ble Delhi High Court on the issue in the cases of CIT Vs. N.R. Portfolio Pvt. Ltd (2014) 2 ITR-OL-68, CIT Vs. Nipun Builders and Developers P. Ltd (2013) 350 ITR 407, CIT Vs. Navodaya Castles Pvt. Ltd (2014) 367 ITR 306 ?*
5. *Whether in facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 34,64,000/- u/s 69C of the Act made by the Assessing Officer ignoring finding of the Assessing Officer as recorded in the assessment order ?*
6. *Whether in facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the disallowance amounting to Rs. 90,745/- u/s 14A r.w. Rule 8D of the Income Tax Act 1961 by ignoring*

findings recorded by the AO and by admitting additional evidence under Rule 46A of the Income Tax Rule 1961 without giving an opportunity of being heard to the A.O. ?

7. *Whether in facts and circumstances of the case and in law, the Ld. CIT(A) is legally justified in deleting the disallowance of 'salary expenses' amounting to Rs.1,92,000/- even when the assessee has failed to discharge its onus u/s 37 of the Act during assessment proceedings and also at appellate stage that it had actually received any services in lieu of payment of Rs.1,92,000 ?*

8. *That the appellant craves leave to add, alter, amend or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."*

8. The assessee has filed Appeal [ITA.No.5318/Del./2016 – A.Y. 2010-2011] challenging the order of the Ld. CIT(A) in upholding the validity of re-assessment proceedings and has raised the following grounds :

1. *“The Ld. CIT (Appeals) has erred on facts and in law in upholding the action of the AO in reopening the assessment in gross violation of substantive and procedural requirements of law for reopening of assessments.*
2. *The Ld. CIT (Appeals) has erred on facts and in law in upholding the action of the AO of reopening of assessment by summarily rejecting the contention of the appellant on facts and on law without even considering numerous case laws brought to her notice by the appellant.*
3. *The Ld. CIT (Appeals) has erred on facts and in law in upholding the mechanical action of the AO of reopening of the assessment solely on the basis of direction from the investigation wing without making any verification of his own with respect to the allegations in the report.*
4. *The assessee craves leave for addition, alteration modification deletion any ground of appeal either before the hearing of appeal for at the time of appeal.”*

8.1. The assessee has also filed the following additional grounds in it's appeal:

1. *“Without prejudice to the other grounds of appeal the notice u/s 148 was riot valid as the same was apparently issued based on material found and seized during the course of search at a place of third party in view of non-obstante clause in section I53C.*
2. *Without prejudice to the other grounds of appeal the notice u/s 148 was not valid as the proceedings, if any, based upon material seized from third party, could have been carried out only in accordance with section 153C and for that reason the re-assessment order passed on the basis of material seized from a third party is illegal and void-ab- initio.”*

8.2. The Learned Counsel for the Assessee referring to the decision of Hon'ble Supreme Court in the case of NTPC Ltd., vs., CIT reported in 299 ITR 383 (SC) submitted that the additional grounds are purely legal in nature and all material facts are already available on record and, therefore, the additional grounds should be admitted for adjudication.

8.3. After hearing both the sides and considering the fact that the additional grounds raised by the assessee are purely legal in nature and all material facts are already available on record, the additional grounds raised by the assessee are admitted for adjudication.

9. Learned Counsel for the Assessee at the outset drew the attention of the Bench to the reasons recorded, copies of which are placed at Page-286 to 290 of the PB and submitted that a perusal of the reasons recorded would show that the A.O. has acted solely on the communication received from the Director of Income Tax (Inv.)-2, dated 12.03.2013 recording alleged entry operator racket run by Shri S.K. Jain group and has not applied his independent mind.

9.1. Learned Counsel for the Assessee referring to following decisions, submitted that assessment cannot be reopened without application of mind by the A.O.

1. Basesar Properties Pvt. Ltd., [2017] 88 taxmann.com 634 (Del.) (HC).
2. Kelvinator of India Ltd., [2010] 187 Taxman 312 (SC).
3. Chugmal Rajput vs., S.P. Chellaiah 79 ITR 603 (SC).
4. Sheonath Singh [1971] 82 ITR 147 (SC).
5. Lakhmali Mewaldas [1976] 103 ITR 437 (SC).
6. Kishanchand Chellaram vs., CIT [1980] 4 Taxman 29 (SC).

7. CIT vs., PV Kalyana Sundaram 164 Taxman 78 (SC).
8. CIT vs., Viniyas Finance & Inv. Pvt. Ltd., 33 Taxman 86 (Del.) (HC)..
9. CIT vs., Living Media India Ltd., [2013] 35 taxmann.com 105 (Del.) (HC).
10. PCIT vs., NC Cables Ltd., 88 taxmann.com 649 (Del.) (HC).
11. United Electric Co. Pvt. Ltd., vs., CIT 125 Taxman 775 (Del.) (HC).
12. Sarthak Securities Co. (P) Ltd., [2010] 195 Taxman 262 (Del.) (HC).
13. Signature Hotels P. Ltd., [2012] 20 taxmann.com 797 (Del.) (HC).
14. SFIL Stock Broking Ltd., 325 ITR 285 (Del.) (HC).
15. Suren International Pvt. Ltd., vs., Commissioner of Income Tax [2013] 35 taxmann.com 398 (Del.) (HC)..
16. Pr. CIT vs., G And G Pharma India Ltd., [2017] 81 taxmann.com 109 (Del.)
17. Pr. CIT vs., Meenakshi Overseas (P) Ltd., 82 taxmann.com 300 (Del.), (HC).
18. Pr. CIT vs., RMG Polyvinyl (I) Ltd., [2017] 83 taxmann.com 348 (Del.) (HC).
19. Titanor Components Ltd., vs., ACIT [2012] 20 taxmann.com 805 (Bom.) (HC).

9.2. Referring to the following decisions he submitted that assessment cannot be reopened on the basis of mechanical acceptance of information/opinion/advice received from some other authority.

1. CIT vs., Atul Jain [2007] 164 Taxman 33 (Del.) (HC).
2. SPL's Siddarth Ltd., [2012] 17 taxmann.com 138 (Del.) (HC).
3. Bently Nevada LLC vs., ITO [2019] 107 taxmann.com 440 (Del.) HC).

9.3. Referring to the decision of the Coordinate Bench of the Tribunal in the case of M/s. Jai Gajanan Enterprises Pvt. Ltd., ITA.No.4861/Del./2015 order dated 15.03.2017 for the A.Y. 2007-08, copy of which is placed at pages 20 to 42 of the PB, Volume-2, he submitted that under identical facts and circumstances the Tribunal has upheld the order of the Ld. CIT(A) in quashing the re-assessment proceedings.

9.4. Referring to the decision of the Coordinate Bench of the Tribunal in the case of Sourashtra Colour Tones P.

Ltd., vs., ITO ITA.No.6276/Del./2018, copy of which is placed at pages 43 to 54 of the paper book, he submitted that the Tribunal in the said decision has held that provisions of Section 153C being non-obstante provisions, would override Section 147 and, therefore, the A.O. has no jurisdiction over the other persons under section 147 if material backing the reasons is seized during the course of search. He accordingly submitted that re-assessment proceedings initiated by the A.O. and upheld by the Ld. CIT(A) is not in accordance with law and, therefore, the same should be quashed.

10. So far as the merits of the case is concerned, Learned Counsel for the Assessee while heavily supporting the order of the Ld. CIT(A) submitted that assessee has filed complete details of the transactions before the A.O. which include copies of return of income for the A.Y. 2010-11 of all the applicants, copies of audited balance-sheets as on 31.03.2010 containing the names of the assesseees in the Schedule to the audited balance-sheets, confirmation of transactions by the share applicants, copies of the bank

statements of all the applicants and copies of the assessment order for A.Y. 2010-11 passed under section 143(3) by the jurisdictional Assessing Officers of the respective applicants. He submitted that all the share applicants are income tax assesseees and their orders were passed under sections 143(3)/153A/153C of the I.T. Act, 1961. Therefore, their existence is established. Further the Director of 06 Companies namely Shri Deepak Tyagi had appeared before the A.O. on 30.03.2014 in response to the summons issued by the A.O. and his statement was recorded on oath wherein he had confirmed that the above companies have made investment in the shares of the assessee-company. However, the A.O. had conveniently ignored this fact. He submitted that the Ld. CIT(A) after considering the various submissions made before the A.O. and the assessment orders of the investor companies passed under sections 143(3)/ 153A/153C of the I.T. Act, 1961, has deleted the addition. He accordingly submitted that the order of the Ld. CIT(A) being in accordance with law so far as the quantum of deletion is concerned, should be

upheld and the grounds raised by the Revenue on this issue should be dismissed.

11. The Ld. D.R. on the other hand heavily relied on the order of the Ld. CIT(A) so far as the validity of re-assessment proceedings are concerned. So far as the order of the Ld. CIT(A) in deleting the addition is concerned, he submitted that assessee has introduced share application money and share premium through Hawala entry operators and certain self-serving documents/evidences were produced by the assessee of these paper companies who had provided accommodation entries. The Ld. CIT(A) without considering the facts of the case properly has deleted the addition which is not justified. He also relied on various decisions.

12. We have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We

find the A.O. in the instant case has reopened the assessment by recording the following reasons :

286

REASONS RECORDED IN WRITING FOR REOPENING THE CASE OF
M/s MORE CREDIT SECURITIES PRIVATE LIMITED (PAN-AAACM2081J)
Assessment Year 2010-11 U/s 147/148 OF THE INCOME TAX ACT

The Commissioner of Income Tax has forwarded letter of the Director of Income Tax Investigation-II, (Delhi) F. No. DIT (Inv.)-II/ U/s 148/2012-13/197 dated 12.03.2013 giving information about an extensive accommodation entry racket being operated by Shri Surendra Kumar Jain groups of entry operators

The name of the assessee, M/s More Credit Securities Pvt. Ltd. New Delhi appears in the list of beneficiaries who have taken accommodation entries in the garb of share application money, loan, gifts, bogus sales/purchases or some other ostensible business transaction through the bank accounts existing in the names of the paper/dummy concerns/entities operated by the entry-operators. The accommodation entries have been taken / provided in lieu of certain percentage of commission paid, mostly in cash, by the beneficiaries of such entries.

I have perused the information received from the Wing. The report explains at length the modus operandi of the entry operators along with the relevant evidence unearthed during the search and post-search investigations. The report brings out the fact that the flow of funds from/between these dummy entities/concerns and the beneficiaries do not represent any genuine or actual business transaction. These dummy entities are not carrying out any actual business, other than the activity of providing accommodation entries in the garb of some ostensible business transactions. The entries in the bank accounts through which the amounts are routed do not have any underlying or actual business transaction. The report of the Investigation Wing contains comprehensive details comprising, inter alia the Beneficiary's Name, amount Of Entry Taken, Name of Account Holder of Entry giving Account, Bank details of the accounts from which entries are given, the dates of the entries etc. As per the details received, during the year the following entries have been taken by the assessee from the entry operators:-

287

S. No	BANK NAME	VALUE OF ENTRY TAKEN	INSTRUMENT NO. BY WHICH ENTRY TAKEN	CHEQUE DATE	ENTRY FROM TAKEN
1.	AXIS Bank	Rs. 50,00,000/-	370050	27.02.2010	Aasheesh Capital Services Pvt. Ltd.
2.	AXIS Bank	Rs. 50,00,000/-	369026	27.02.2010	Attractive Finlease Pvt. Ltd.
3.	AXIS Bank	Rs. 50,00,000/-	367070	27.02.2010	Sunny Cast & Forge Ltd.
4.	AXIS Bank	Rs. 50,00,000/-	353490	27.02.2010	Apoorva Leasing Finance & Investment Pvt. Ltd.
5.	AXIS Bank	Rs. 50,00,000/-	378616	27.02.2010	Shalini holdings Ltd.
6.	AXIS Bank	Rs. 50,00,000/-	370044	03.03.2010	Aashish Capital Services P. Ltd.
7.	AXIS Bank	Rs. 50,00,000/-	369031	03.03.2010	Attractive Finlease P.Ltd.
8.	AXIS Bank	Rs. 50,00,000/-	353489	03.03.2010	Apoorva leasing Finance & Investment P. Ltd.
9.	AXIS Bank	Rs. 50,00,000/-	367088	03.03.2010	Sunny cast & Forge Ltd.
10.	AXIS Bank	Rs. 50,00,000/-	128202	08.03.2010	Finage Lease & Finance India Ltd.
11.	AXIS	Rs. 50,00,000/-	084837	08.03.2010	Nandal Finance &

288

	Bank				Leasing Pvt Ltd.
12.	AXIS Bank	Rs. 50,00,000/-	321840	08.03.2010	Mega top)Promoters P. Ltd
13.	AXIS Bank	Rs. 50,00,000/-	369931	08.03.2010	Victory Software P. Ltd
14.	AXIS Bank	Rs. 65,00,000/-	378617	09.03.2010	Shalini Holdings Ltd.
15.	AXIS Bank	Rs. 50,00,000/-	022152	10.03.2010	Twinkle Mercantile & Credits Pvt. Ltd.
16.	AXIS Bank	Rs. 50,00,000/-	022153	10.03.2010	Twinkle Mercantile & Credits Pvt. Ltd.
17.	AXIS Bank	Rs. 50,00,000/-	010730	10.03.2010	Yuvraj Export Pvt. Ltd.
18.	AXIS Bank	Rs. 50,00,000/-	010731	10.03.2010	Yuvraj Export Pvt. Ltd.
19.	AXIS Bank	Rs. 50,00,000/-	022053	10.03.2010	Geo Loan Plans India Pvt. Ltd.
20.	AXIS Bank	Rs. 50,00,000/-	022054	10.03.2010	Geo Loan Plans India Pvt. Ltd.
21.	AXIS Bank	Rs. 50,00,000/-	021977	10.03.2010	Akul Securities Pvt. Ltd.
22.	AXIS Bank	Rs. 50,00,000/-	021978	10.03.2010	Akul Securities Pvt. Ltd.
23.	AXIS Bank	Rs. 17,00,000/-	353455	10.03.2010	Apoorva Leasing Finance & Investment Pvt. Ltd.
24.	AXIS Bank	Rs. 50,00,000/-	378513	11.03.2010	Finage Lease & Finance India Ltd.

289

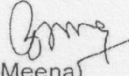
25.	AXIS Bank	Rs. 50,00,000/-	021928	10.03.2010	Lunar International Ltd.	Gold Pvt.
26.	AXIS Bank	Rs. 50,00,000/-	021929	10.03.2010	Lunar International Ltd.	Gold Pvt.
27.	AXIS Bank	Rs. 50,00,000/-	022204	15.03.2010	Singhal Pvt. Ltd.	Securities
28.	AXIS Bank	Rs. 50,00,000/-	022205	15.03.2010	Singhal Pvt. Ltd.	Securities
29.	AXIS Bank	Rs. 50,00,000/-	022427	15.03.2010	Edoptica Developers Pvt. Ltd.	
30.	AXIS Bank	Rs. 50,00,000/-	022428	15.03.2010	Edoptica Developers Pvt. Ltd.	
31.	AXIS Bank	Rs. 50,00,000/-	022429	15.03.2010	Edoptica Developers Pvt. Ltd.	
32.	AXIS Bank	Rs. 50,00,000/-	022430	15.03.2010	Edoptica Developers Pvt. Ltd.	
33.	AXIS Bank	Rs. 50,00,000/-	022160	15.03.2010	Twinkle And Credits Pvt. Ltd.	Mercantile
34.	AXIS Bank	Rs. 50,00,000/-	010742	15.03.2010	Yuvraj Exports Ltd.	Pvt.
35.	AXIS Bank	Rs. 50,00,000/-	022066	15.03.2010	Geo Loan Plans India Pvt. Ltd.	

The total of the above accommodation entries taken by the assessee company comes to Rs. 17,32,00,000/- Taking, on a conservative basis, the rate of commission paid to entry operators (AT RATE OF 2%), the assessee has also paid the said amount of commission to the entry operators out of undisclosed sources. Having perused and considered the

290

information received from the Investigation Wing, as discussed above and in the circumstances of the case, I have reason to believe that income of the assessee to the extent of 17,32,00,000/- has escaped assessment for A Y 2010-11 and the case is fit for initiating proceedings U/s 147 and issuing notice u/s 148 of the Income Tax Act, 1961.

Dated: 15.04.2013


(B. P. Meena)
Income-tax Officer,
Ward 5(4), New Delhi.

12.1. It is pertinent to mention here that the A.O. before recording the reasons has received the following communication from the Director of Income Tax (Inv.)-2, New Delhi, the typed copy of which, is placed at Page-300 of the PB and which reads as under :

“OFFICE OF THE DIRECTOR OF INCOME TAX (INV.)-II

A.R.A. Centre, 2nd Floor, E-2 Jhandewalan Extension, New Delhi-

110055

*The Commissioner of Income Tax-II Dated: 12.03.2012
New Delhi.*

Madam,

*Sub: Issue of notice u/s 148- AY 2006-07 to AY 2011-12-
accommodation entries provided to Shri Surendra Kumar Jain*

group to various beneficiary companies- regarding

Kindly find enclosed letter of DDIT (Inv) Unit-VI(2), New Delhi F.No.DDIT/U-VI(2)/information sharing/ 2012-13 dated 12.03.2013 on the above subject.

On the basis of search in the case of Shri Surender Kumar Jain Group of cases (entry operator) and further inquiries the DDIT (Inv.) has suggested that notice u/s 148 following cases for the assessment year 2006-07 to 2011-12 is required to be issued to tax the undisclosed income regarding the accommodation entries obtained from these persons;

(Table containing several names including the name of the assessee)

As you are aware that notice u/s 148 for AY 2006-07 can be issued only till 31.03.2013. It is therefore, requested that all the Assessing Officer concerned may be directed to immediately consider the matter and issue notice u/s 148, if required.

Jurisdiction over the above assesses lies in your charge as per the information gathered by name query from ITD. However, in case any of these of cases are assessed to tax in some other charge, it is required that the cases may be transferred to the CIT concerned for immediate action.

*Yours Sincerely
Sd/-M.V. Bhanumathi
Director of Income Tax (Inv.)-II
New Delhi*

12.2. Thus, a perusal of the communication received from the Investigation Wing and reasons recorded for reopening of the assessment shows that the A.O. has acted solely on the communication received from the Director of Income Tax (Inv.)-2, New Delhi regarding the alleged entry operator racket run by Shri S.K. Jain group. The satisfaction note nowhere indicates that the A.O. verified the facts on record with regard to the return of income filed by assessee on 15.10.2010, since there is no mention of the return filed by the assessee in the satisfaction note. Further, the A.O. has not even tried to ascertain how the alleged accommodation entries from the Investor Companies were reflected in the return. We find the A.O. has made no enquiries about the companies alleged to have provided accommodation entries to the assessee-company and ignored the very fact that those companies were assessed under sections 153A/153C in March, 2013 after the search in the case of alleged accommodation entry operators Shri Surendra Kumar Jain and Mr. Virendra Kumar Jain and in the assessments of these companies, return of income was

accepted. No effort was made by the A.O. to find-out the nexus of the assessee-company with the alleged seized material on the basis of which the reasons for escapement of income were arrived at.

12.3. A perusal of the paper book at Pages 238-239 shows that the share applicant companies were assessed under sections 153C/153A of the I.T. Act, 1961. We find one of the share applicant company M/s. Shalini Holdings Ltd., was assessed under sections 153C/153A of the I.T. Act, 1961 on 28.03.2013 by the ACIT, CC, New Delhi. The A.O. in the said order has mentioned that the assessment was completed under sections 153C/153A of the I.T. Act, 1961 on the basis of the search and seizure operation carried-out at various premises of Shri S.K. Jain Group and it's Group concerns and associated persons. For the sake of convenience, the assessment order in the case of M/s. Shalini Holdings Ltd., is reproduced as under :

238

241

I.T.N.S. 65



INCOME TAX DEPARTMENT

1.	Name of the assessee	:	M/s Shalini Holdings Ltd
2.	Address of the assessee	:	209, 2 nd Floor, 6/41, Sunder Kiran Building, WEA, Karol Bagh, New Delhi-110005
3.	PAN	:	AAACS 1912K
4.	Ward/Circle	:	Central Circle-23, New Delhi
5.	Status	:	Company
6.	Assessment Year	:	2010-11
7.	Resident/NOR/Non-resident	:	Resident
8.	Method of Accounting	:	Mercantile
9.	Previous year	:	2009-10
10.	Nature of Business	:	Dealing in Shares & Securities
11.	Dates of hearing	:	As per order sheet entries
12.	Date of order	:	28.03.2013
13.	Section & Sub-section under which the assessment is done	:	153C/153A of the Income Tax Act, 1961

ASSESSMENT ORDER

1. A search and seizure operation was carried out at various premises of S. K. Jain Group and its group concerns and associated persons on 14/09/2010. During the course of search and seizure operation at various premises of S. K. Jain group of cases many books of account and documents belonging to the assessee company were found and seized and hence prerequisite condition to initiate proceedings u/s 153C of the Income Tax Act, 1961 (hereinafter called 'the Act'), was fulfilled. Therefore, after recording the necessary satisfaction for initiation of proceedings u/s 153C of the Act, notice u/s 153C/153A of the Act was issued on 26/02/2013 directing it to file its return of income within 15 days of the service of the notice. This notice was duly served on the assessee vide speed post. In response to this notice u/s 153C/153A of the Act the assessee filed letter dated 04/03/2013 requested to treat the return filed on 09/10/2010 as return in response to notice u/s 153C/153A of the Act declaring income of Rs. NIL. Notice u/s 143(3) & 142(1) alongwith detailed questionnaire dated 05/03/2013 was issued and was duly served upon the assessee by speed post. In response to the said notices from time to time, Shri S. K. Jain, Advocate, attended the office on behalf of the assessee &



239

(242)

submitted the details & clarifications which are placed on record. The case is discussed with him.

2. After discussion income of the assessee is assessed at income of Rs. NIL u/s 153C/153A of the Act. Charge interest u/s-234 A/B/C/D as per law. Computation of income tax & interest is as per ITNS 150 enclosed. Issue requisite documents.
3. This assessment order is being passed after obtaining the approval of the Additional Commissioner of Income Tax, Central Range-6, New Delhi, communicated vide his office letter Addl.CIT/CR-6/2012-13/421, dated 28.03.2013.



(K. K. George)
Asstt. Commissioner of Income Tax
Central Circle-23, New Delhi

Copy to the assessee

391/52

Asstt. Commissioner of Income Tax
Central Circle-23, New Delhi

12.4. We find similar is the case with the other investor companies. M/s. Apoorva Leasing Finance and Investment Ltd., was assessed under sections 153C/153A of the I.T. Act, 1961 on 28.03.2013 for the A.Y. 2010-11 by the ACIT, CC-23, New Delhi, copy of which is placed at Pages 236-237 of the paper book. M/s. Aasheesh Capital Services Pvt. Ltd., has been assessed under sections 153C/153A of the I.T. Act, 1961 on 28.03.2013 for the A.Y. 2010-11 by the ACIT,

CC-23, New Delhi, copy of which is placed at Pages 240-241 of the paper book. M/s. Sunny Cast and Forge Ltd., M/s. Finage Leasing & Finance India Ltd., M/s. Victory Software Pvt. Ltd., M/s. Nandal Finance and Leasing Pvt. Ltd., M/s. Singhal Securities Pvt. Ltd., M/s. Edoptica Developers India Ltd., M/s. Attractive Fin Lease Limited are all assessed to tax under sections 153C/153A of the I.T. Act, 1961 on 28.03.2013 for the A.Y. 2010-11 by the ACIT, CC-23, New Delhi, copies of which are placed at Pages 242-254 of the paper book. However, the A.O. before recording satisfaction and issue of notice under section 148 of the I.T. Act, 1961 on 15.04.2013 has not at all considered, the assessments completed under sections 153C/153A of the I.T. Act, 1961 on 28.03.2013 of the share applicants/investor companies. All these investor companies were assessed to tax under sections 153C/153A of the I.T. Act, 1961 due to the very same search and seizure operation at the premises of Shri S.K. Jain group of companies. We, therefore, find merit in the arguments of the Learned Counsel for the Assessee that had the A.O. applied his mind to the facts on record, he

would have come to a different conclusion especially when all the investor companies are assessed to tax under sections 153C/153A of the I.T. Act, 1961 before recording reasons and their assessment is the out-come of the search at the premises of Shri S.K. Jain Group of companies.

12.5. It has been held in various decisions that assessment cannot be reopened without application of mind by the A.O. Hon'ble Delhi High Court in the case of Signature Hotels Pvt. Ltd., (supra) has held that information given by the Director of Income Tax (Inv.) that amount received by the assessee from other company was nothing, but, accommodation entry and assessee was a beneficiary was not sufficient to reopen the assessment when A.O. did not apply his own mind to that information. The relevant Head Notes of the order of the Hon'ble High Court reads as under :

“Section 147 of the Income-tax Act, 1961 - Income escaping assessment - General - Assessment year 2003-04 - Information given by Director of Income-tax

(Investigation), that amount received by assessee from other company was nothing but accommodation entry and assessee was beneficiary, was not sufficient to reopen assessment when Assessing Officer did not apply his, own mind to that information [In favour of assessee.

Section 147 is wide enough but it is not plenary. One has to consider and examine the crucial expression 'reason to believe' used in the said section. The Assessing Officer must have 'reason to believe' that an income chargeable to tax has escaped assessment. This is mandatory and the 'reasons to believe' are required to be recorded in writing by the Assessing Officer. Sufficiency of reasons is not a matter, which is to be decided by the writ Court, but existence of belief is the subject-matter of the scrutiny. A notice under section 148 can be quashed if the 'belief is not bona fide, or one based on vague, irrelevant and non-specific information. The basis of the belief should be discernible from the material on record, which in the instant case was

available with the Assessing Officer, when he recorded the reason. There should be a link between the reasons and the evidence/material available with the Assessing Officer. However, for initiation of proceedings, it is not necessary that the material should conclusively prove the escapement. The 'reasons to believe' would mean cause or justification of the Assessing Officer to believe that the income has escaped assessment and does not mean that the Assessing Officer should have finally ascertained the said fact by legal evidence or reached a conclusion, as this is determined and decided in the assessment order, which is the final stage before the Assessing Officer.

The Assessing Officer reopened assessment of the assessee on the basis of information received from the DIT (Investigation) that amount received by the assessee from company 'S' was nothing but accommodation entry and the assessee was the beneficiary.

Held that the reason given by the assessee did not satisfy the requirements of section 147. The reasons and the information referred to were extremely scanty and vague. There was no reference to any document or statement except an annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not indicate escapement of income. Further, it was apparent that the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. The Assessing Officer accepted the plea on the basis of vague information in a mechanical manner. The Commissioner also acted on the same basis by mechanically giving his approval. Therefore, the proceedings under section 148 were to be quashed.

.....

4. *The aforesaid section is wide but it is not plenary. We have to consider and examine the crucial expression "reason to believe" used in the said section. The Assessing Officer must have "reason to believe" that an income chargeable to tax has escaped assessment. This is mandatory and the "reasons to believe" are required to be recorded in writing by the Assessing Officer. Sufficiency of reasons is not a matter, which is to be decided by the writ court, but existence of belief is the subject-matter of the scrutiny. A notice under section 148 can be quashed if the "belief" is not bona fide, or one based on vague, irrelevant and non-specific information. The basis of the belief should be discernible from the material on record, which was available with the Assessing Officer, when he recorded the reason. There should be a link between the reasons and the evidence/material available with the Assessing Officer. However, as we are dealing with initiation of proceedings, it is not necessary that the material should conclusively prove the escapement. The "reasons to*

believe" would mean cause or justification of the Assessing Officer to believe that the income has escaped assessment and do not mean that the Assessing Officer should have finally ascertained the said fact by legal evidence or reached a conclusion, as this is determined and decided in the assessment order, which is the final stage before the Assessing Officer."

12.6. We find the Hon'ble Delhi High court in the case of PCIT vs., Meenakshi Overseas Pvt. Ltd., (supra) has quashed the re-assessment proceedings on the ground that there was no independent application of mind by the A.O. to the tangible material and conclusions of the A.O. were reproduction of conclusion in investigation report and the reasons failed to demonstrate the link between the tangible material and formation of reason to belief that income had escaped assessment.

12.7. We find the Hon'ble Delhi High Court in the case of Pr. CIT vs., RMG Polyvinyl (I) Ltd., (supra) has also quashed the re-assessment proceedings on the ground that

information received from Investigation Wing could not be said to be tangible material *per se* without a further enquiry being undertaken by the A.O. to establish the link between the tangible material and formation of reason to believe that income had escaped assessment. The various other decisions relied on by Ld. A.R. to the proposition that in absence of independent application of mind by the A.O, assessment cannot be reopened on the basis of report of Investigation Wing also support his case.

12.8. Further, a perusal of the letter issued by the Director of Income Tax (Inv.)-2, New Delhi to the Commissioner of Income Tax, New Delhi, contents of which has already been reproduced at para 12.1 of this order shows that reopening of the assessment was made basically at the direction/suggestion of the Investigation Wing of the Department. It has been held in various decisions that assessment cannot be reopened on the basis of mechanical acceptance of information/opinion/advise received from some other authorities. The A.O. has to apply his independent mind for exercising the jurisdiction under

section 147 of the I.T. Act, 1961. The Hon'ble Delhi High Court in the case of SPL Siddharth Ltd., reported in [2012] 17 taxmann.com 138 (Del.) has held that "if an authority is given expressly by affirmative words upon a defined condition, the expression of that condition excludes the doing of the Act authorised under other circumstances than those as defined. It is also established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be "independent" and not "borrowed" or "dictated" satisfaction".

12.9. The Hon'ble Patna High court in the case of Shiv Naryan Jaiswal vs., ITO 176 ITR 352 (Patna) has held that where the A.O. does not himself exercise his jurisdiction under section 147, but, merely acts at the behest of any superior authority, it must be held that assumption of jurisdiction was bad for non-satisfaction of the condition precedent.

12.10. The Apex Court in the case of Anirudh Sinhji Karan Sinhji Jadeja v. State of Gujarat [1995] 5 SCC 302 (SC) has held that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether.

13. In view of the above discussion and since the A.O. in the instant case has reopened the assessment mechanically without independent application of mind and has not considered the assessments completed under sections 153A/153C of the I.T. Act, 1961, prior to the date of recording reasons under section 147 of the I.T. Act, 1961 and since the assessments of the applicant companies were the out-come of the search and seizure operation carried-out in the premises of Shri S.K. Jain and Shri Virender Kumar Jain group of cases which is also the basis for reopening of the assessment in the instant case, therefore, we are of the considered opinion that such reopening of the

assessment is not in accordance with law. We, therefore, quash the re-assessment proceedings.

13.1. Even otherwise on merit also, we find the Ld. CIT(A) while deleting the addition made by the A.O. under section 68 of the I.T. Act, 1961 has noted that assessee has filed the copies of the returns of income for A.Y. 2010-11 of all the applicants, copies of their audited balance-sheets as on 31.03.2010 containing the names of the assesseees in the Schedule to the audited balance-sheets, confirmation of transactions by the share applicants, copies of their bank statements, copies of their assessment order for the impugned assessment year passed under sections 143(3) / 153A/153C of the I.T. Act, 1961 by their jurisdictional Assessing Officers etc. Further Shri Deepak Tyagi, Director of 06 Companies had appeared before the A.O. on 30.03.2014 in response to the summons issued by the A.O. under section 131 of the I.T. Act, 1961 and had confirmed to have made investments by his companies in the shares of the assessee-company in the statement recorded on oath. In view of the above and in view of the detailed reasoning given

by the Ld. CIT(A) on this issue, we do not find any infirmity in his order in deleting the addition of Rs.17,32,00,000/- made by the A.O. under section 68 of the I.T. Act, 1961. We, therefore, uphold the same and the grounds of appeal numbers 1 to 4 by the Revenue are dismissed.

14. So far as grounds of appeal number.5 is concerned, the same relates to the order of the Ld. CIT(A) in deleting the addition of Rs.34,64,000/- under section 69C of the I.T. Act, 1961 made by the A.O. being expenditure incurred for arranging the bogus accommodation entry.

14.1. Since in the preceding paragraph we have already deleted the addition of Rs.17,32,00,000/- by quashing the re-assessment proceedings as well as the addition on merit, the order of the A.O. on this issue cannot be sustained. Therefore, we uphold the order of the Ld. CIT(A) on this issue and the ground of appeal number.5 raised by the Revenue on this issue is dismissed.

15. So far as grounds of appeal number.6 of the Revenue is concerned, the same relates to the order of the

Ld. CIT(A) in deleting the disallowance of Rs.90,745/- made by the A.O. under section 14A read with Rule 8D of the I.T. Act, 1961.

15.1. After hearing both the sides, we find the Ld. CIT(A) had given a finding that the amount of Rs.3,47,17,000/- invested by the assessee is towards advance against property and not towards shares. The Ld. D.R. also could not controvert the above factual finding given by the Ld. CIT(A). Therefore, although we have quashed the re-assessment proceedings, even on merit also the addition is not sustainable. Accordingly, grounds of appeal number.6 of the Revenue is dismissed.

16. Grounds of appeal number.7 by the Revenue relates to the order of the Ld. CIT(A) in deleting the disallowance of salary expenses of Rs.1,92,000/-.

16.1. After hearing both the sides we find the Ld. CIT(A) while deleting the addition has given a finding that the assessee being a registered NBFC Company registered with Reserve Bank of India has to comply with the legal

requirements and under these circumstances, the disallowance of entire salary expenses without any cogent reasons is un-called for. Although we have quashed the re-assessment proceedings, even otherwise on merit also this addition is un-called for in view of the findings of the Ld. CIT(A) and in absence of any contrary material brought to our notice by the Ld. D.R. Accordingly, grounds of appeal Number.7 of the Revenue is dismissed.

16.2. Grounds of appeal number.8 by the Revenue being general in nature is dismissed.

17. In the result, ITA.No.5278/Del./2016 of the Revenue is dismissed and ITA.No.5318/Del./2016 of the Assessee is allowed.

ITA.No.4704/Del./2014 – A.Y. 2011-2012 [Revenue] :

18. Facts of the case, in brief, are that assessee-company filed its return of income on 31.03.2012 declaring total income of Rs.11,74,680/-. During the course of assessment proceedings, the A.O. noted that the CIT, Delhi-2, New Delhi has forwarded letter of the Director of Income

Tax (Inv.) Dated 12.03.2013 giving information about extensive accommodation entry racket being operated by Shri S.K. Jain Group of entry operators. The name of the assessee M/s. More Credit Securities (P) Ltd., New Delhi appears in the list of beneficiaries who have taken accommodation entries in the garb of share capital. During the course of assessment proceedings, the A.O. noted that assessee has received accommodation entry to the tune of Rs.9,37,50,244/- from M/s. Transnational Growth Fund Ltd. He, therefore, asked the assessee to explain the above transaction with M/s. Transnational Growth Fund Ltd. by asking the assessee to furnish the following details :

1. *“M/s. Transnational Growth Fund Ltd. Copy of TDS return filed for the year.*
2. *Month wise and Person wise details of Salaries. Also file details of Salaries paid during the year and explanation that why out of total salary of Rs.25,40,000/-, Rs.20,17,000/- was outstanding as on 31.03.2011, which reflects that there was no employer-employee relationship and the expenses*

were shown to reduce the tax liability. Also Produce the Original Salary Register, Attendance Register and details of ESIC and PF deducted and deposited in government account.

- 3. Person wise details of Audit Fees and Legal & Professional Charges and evidence of TDS deducted thereon*
- 4. Details of Other Expenses amounting to Rs.11,05,000/- along with copy of bills.*
- 5. Month wise and Party wise details of Sales and Justification how Sales were made without any purchases or opening stock.*
- 6. Party wise details of Interest and Other Income along with details of TDS deducted by them and Also file Reconciliation of Income as per 26AS and Profit & Loss Account.*
- 7. Name & Address (complete & present) of the person / parties to whom Advances given for purchase of properties and Loan to others.*

8. *Please file copy of ITR of M/s Transactional Growth Fund Limited along with copy of Balance Sheet for Asst. Year 2010-2011 and Asst. Year 2011-12. Also file Justification that why the amount received should not be taken as accommodation entry as determined and accepted by the said party before the Investigation Wing.*
9. *Produce books of accounts and bills and vouchers for verification.”*

18.1. The assessee filed copy of I.T. return of M/s. Transnational Growth Fund Ltd., along with copy of balance-sheet, their bank statement and assessment order passed under section 143(3) of the I.T. Act, 1961. It was submitted that assessee being engaged in the business of providing loans to corporates and others had given loan to M/s. Transnational Growth Fund Ltd. in A.Y. 2010-11 which was repaid by them during the A.Y. 2011-12 along with interest and due TDS was deducted from the interest so received and, therefore, no addition is called for.

18.2. However, the A.O. was not satisfied with the arguments advanced by the assessee. He issued summons under section 131 to the Director of M/s. Transnational Growth Fund Ltd., for his personal deposition along with proof of identity, copy of ITR for the A.Ys. 2010-11 and 2011-12 along with audited accounts and all books of account, bank statements, bills and vouchers etc.

18.3. In response to the same, Mr. S.K. Jain, Director of M/s. Transnational Growth Fund Ltd., appeared before the A.O. and his statement was recorded on oath. However, the books of account and bank statements were not produced for his examination. During the course of assessment proceedings, the assessee-company again reiterated that the amount received during the year pertains to repayment of loan given to M/s. Transnational Growth Fund Ltd., during the year 2010-11. However, the A.O. was not satisfied with the arguments advanced by the assessee. Relying

on various decisions and applying the provisions of Section 68 of the I.T. Act, 1961, the A.O. made addition of Rs.9,37,50,244/- on the ground that assessee failed to produce the supportive evidence like books of account and bank statements of M/s. Transnational Growth Fund Ltd.,

18.4. The A.O. also made addition of Rs.18,75,005/- under section 69C of the I.T. Act, 1961 being Commission @ 2% incurred for obtaining the accommodation entry.

18.5. The A.O. during the course of assessment proceedings further noted that assessee-company has shown income of Rs.14,17,438.44 from sale of securities. The A.O. asked the assessee to file month wise and party wise details of sales and justification as to how sales were made without any purchase or opening stock. Rejecting the various explanations given by the assessee and observing that no actual transaction were conducted by the assessee-company, but, to show certain income, entry was taken and shown as sale on securities, the A.O.

made addition of Rs.25,40,000/- being expenditure incurred towards salary expenses. Similarly, the A.O. made addition of Rs.11,05,000/- being other expenses claimed by the assessee in absence of proper bills and vouchers. Thus, the A.O. determined the total income of the assessee at Rs.10,04,44,930/-.

19. In appeal, the Ld. CIT(A) deleted all the additions made by the A.O.

19.1. So far as the amount of Rs.9,37,50,244/- added by the A.O. under section 68 of the I.T. Act, 1961 is concerned, the Ld. CIT(A) deleted the same by observing as under :

“I have gone through the assessment order and the written submission of the appellant compiled in the shape of paper book.

I have found that assessee has furnished complete details of the transaction to the AO. The details filed by the assessee to the AO include the following documents pertaining to Transnational Growth Fund Ltd. :-

- Return of income for the AY 2011-12
- Assessment Order for A.Y. 2011-12, dated 05.06.2013 passed u/s 143(3) by ITO, Ward 16(3).

- Copy of the Audited Balance Sheet as at 31.3.2011
- Confirmation duly signed with PAN and rubber stamp
- Copy of the Bank Statement
- Copy of the Audited Balance Sheet as at 31.3.2010 containing name of the assessee (page 85 of PB) in the Schedule -3- Unsecured Loan

I have also noted that the following documents, pertaining to assessee, were also filed before the AO:-

- Copy of the Bank Statement of the assessee from where the loan was given during previous FY i.e. FY 2009-10.
- Copy of the Audited Balance Sheet as at 31.3.2011

The above documents, in possession of the AO, squarely establish the three ingredients of Section 68 of the I. T. Act, 1961, namely identity and credit worthiness of the person and genuineness of the transaction.

The AO has mentioned that *enquiry conducted after search in the case of Mr. Surendra Kumar Jain, Group. Accordingly it is treated that the amount received of Rs. 9,37,50,244/- by the assessee company is nothing but assessee's own unaccounted money which was routed through the alleged company.*

However the AO has failed to bring an iota of the enquiry conducted, the report of the enquiry conducted, if any, whether any statement is recorded of some relevant person, if yes, copy of the statement or contents of such statement or any other adverse material against the assessee.

Further at page 5-6 of the assessment order, the AO has admitted the fact that Notice u/s 133(6) was issued on 27.1.14 and in reply to notice, Transnational Growth Fund Ltd has submitted the details asked for and in pursuance to the summons issued, Mr. Surendra Kumar Jain, Director of Transnational Growth Fund Ltd has attended and his statement was recorded on oath on 03.03.2014.

Before proceeding to make addition with regard to sec 68, the AO was required to discharge his burden as laid upon him under the law by bringing some material on record to disbelieve the claim of the assessee. Mere reference to 'ADIT's report' was of no use unless these

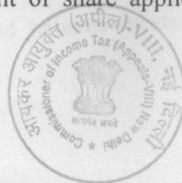
were brought on the top of the table with an opportunity of rebuttal and/or cross examination to the opposite party. It is noticed that such material was never made available by the AO Therefore; the addition made by AO without any evidence deserves to be deleted.

The AO has not mentioned or reproduced any part of the statement of Mr. Surendra Kumar Jain, Director of Transnational Growth Fund Ltd which was recorded, by him self, on oath on 03.03.2014. This action of the AO clearly establishes that there is no adverse material with him and the addition has been made contrary to his own findings and facts and circumstances of the case and against the settled preposition of law and thus the addition of Rs. 9,37,50,244/- is deleted.

My above view is fortified by the following decisions:-

High court of Allahabad in the case of CIT (Central) v. Vacmet Packaging (India) (P.) Ltd. [2014] 45 taxmann.com 204 has held that Assessing Officer made addition under section 68 on account of share application money received by assessee company even though assessee had filed all documentary evidence, like share application form, copies of bank statement, income-tax return, balance sheet, share allotment certificates of board resolution of share applicants, PAN card, register certificate of Registrar - Moreover, applicant companies also confirmed investment made by them and submitted all relevant documents - since assessee had discharged onus establishing identity and creditworthiness of applicant companies and genuineness of transaction, addition made by Assessing Officer under section 68 was to be deleted.

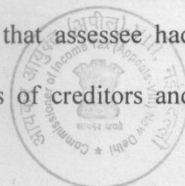
Jurisdictional Hon'ble Delhi High Court in the case of **CIT v. Fair Finvest Ltd. 357 ITR 146(Delhi)** has held that Where assessee had filed documents including certified copies issued by Registrar of Companies in relation to share application and affidavits of directors, Assessing Officer could not make addition on account of share application money solely on basis of investigation report



Similar view has been taken by Allahabad High court in the case of CIT (Central) v **Vijay Kumar Jain** 221 Taxman 180(All) Assessee had taken a loan from company 'B' - Assessing Officer noticed that a raid was conducted in case of 'B' wherein it was found that said company was engaged in providing accommodation entries - Assessing Officer thus added amount of loan taken from said company in assessee's taxable income under section 68 - Commissioner (Appeals) found that lenders were regular income-tax assessee and their PANs were on record - Further, amount had been advanced through account payee cheques and before issuing cheques, lenders had got balance in their accounts - Amount of loan had also been repaid through account payee cheques - In aforesaid circumstances, Commissioner (Appeals) opined that identity and creditworthiness of lenders had duly been proved - Accordingly, addition made by Assessing Officer was deleted -Tribunal confirmed order of Commissioner (Appeals) - Whether on facts, impugned order passed by appellate authorities did not suffer from any infirmity and, thus, revenue's appeal was to be dismissed - Held, yes [Para 6] [In favour of assessee]

In an identical case before high court of Gujarat in the matter related to CIT v **Apex Therm Packaging (P.) Ltd.** [2014] 42 taxmann.com 473 (Gujarat) it has been held that when full particulars, inclusive of confirmation with name, address and PAN Number, copy of income tax returns, balance sheet, profit and loss account and computation of total income in respect of all creditors/lenders were furnished and when it had been found that loans were furnished through cheques and loan account were duly reflected in balance sheet, Assessing Officer was not justified in making addition.

High court of Rajasthan while deciding appeal of the revenue in the case of CIT, **Ajmer v.H.S. Builders (P.) Ltd** [2012] 26 taxmann.com 86 (Raj.) has observed as under 'Tribunal deleted addition on account of cash credits noting that assessee had submitted accounts of returns, computations of income, and balance-sheets of creditors and also supplied all their



particulars, that money given to assessee had been shown in respective balance-sheets of creditors, and that creditors who were called by Assessing Officer did affirm fact of giving money and explained source - findings of Tribunal being based on appreciation of evidence and relevant considerations and not shown to be perverse could not be interfered with - Jurisdictional Hon'ble Delhi High court in the case of **CIT v.Khoobsurat Resorts (P.) Ltd. [2012] 28 taxmann.com 93 (Delhi)** observed that Assessee-company purchased properties - It claimed that sale consideration on its behalf was paid by proprietary concern belonging to one of directors of assessee-company - Assessee filed all necessary documents including confirmation from said director, PAN, complete address, copies of returns of proprietary concern and director and sources of investment made by director - Assessing Officer concluded that genuineness of source of funds made available to assessee had not been proved and added back amount of sale consideration to income of assessee as unexplained cash credit under section 68 - Appellate authorities deleted impugned addition holding that assessee had discharged its onus of proving that funds were received - Whether orders of appellate authorities did not call for interference - Held, yes

Thus in my considered opinion based upon the position of law and facts as discussed above the assessee has been able to discharge its onus and AO's action in making addition of the above said amount was contrary to law and facts of the case. Therefore, keeping in view the entire facts of the case and the position of laws discussed above, this ground of appeal is decided in favour of the assessee.

19.2. So far as commission of Rs.18,75,005/- added by the A.O. under section 69C is concerned, the Ld. CIT(A) deleted the same on the ground that the substantive addition has already been deleted by him.

19.3. So far as the addition of Rs.25,40,000/- on account of disallowance of salary is concerned, the Ld. CIT(A) deleted the same by observing as under :

“Ground No.3

This ground relates to the addition of Rs. 25,40,000/- on account of disallowance of salaries. The Ld. Assessing Officer has mentioned in the assessment order that the employer-employee relationship has not been established as sum of Rs. 20,17,000/- was payable. During the appellate proceedings, the assessee filed details of the salaries paid to the employees. The employee wise details of salaries have duly been provided at (pg 7A and 8A of paper book).

It has been argued that the Ld. Assessing Officer has mentioned that the employer- employee relationship has not been established solely on the assumptions that out of the total salaries of Rs, 25,40,000/-, a sum of Rs. 20,17,000/- was payable. However he has never made any attempt to verify that the payments of the outstanding amounts.

I have gone through the assessment order and the written submission of the appellant and found that assessee has furnished complete details of the salaries to the AO, who has disallowed the total expense claimed by the assessee, without any cogent reasons as well as without making any enquiry about its payment in next year.

To verify the payments of unpaid salaries, the AR was asked to furnish the date wise payments. The AR provided copy of ledger a/c of salaries payable showing date wise payment of salaries along with copy of cash book containing the corresponding transactions. Copy of bank statement evidencing the withdrawal of money for making the above payments is also enclosed.

Keeping in mind the nature of duties assigned to various employees, it cannot be said that there is no employer-employee relationship which is further supported by the fact that the assessee is a registered NBFC Company with the RBI and has to comply the legal requirements on this account over and above of the other non-NBFC companies. Despite the fact that all the outstanding salaries were paid by the assessee during the month of April-May of subsequent financial year, the amount remained unpaid for long time and thus cannot be allowed in totality.

Therefore, to curtailed down the probability of excess claim, the addition is sustained at Rs.4,03,400/- being 10% of the unpaid amount.”

19.4. So far as addition of Rs.11,05,000/- on account of other expenses is concerned, the Ld. CIT(A) deleted the same by observing as under :

“Ground No.4

✓ This ground relates to the addition of Rs. Addition of Rs. 11,05,000/- on account of disallowance of expenses.

The Ld. Assessing Officer has mentioned in the assessment order that the most of the expenses were payable which reflects that the expenses are booked only to reduce the tax liability and accordingly held that the assessee has failed to justify the expenses claimed.

During the appellate proceedings, the assessee has furnished details of the expenses incurred (pg 9A of paper book).

It has been argued that the Ld. Assessing Officer has completely erred in disallowing the above expense on adhoc basis and without pointing out any single defect in the details submitted by the assessee during the assessment proceedings. Ld. Assessing Officer has never made any attempt to verify that the payments of the outstanding amounts. The expenses incurred were wholly and exclusively for business purposes. There is no dispute to the well settled proposition that an expenditure made by a businessman by way of commercial expediency must be an expenditure which has been incurred in the expectation that such payments should directly or indirectly benefit the business of the assessee or facilitate the carrying on the assessee's business. For eligibility u/s 37(1), there should be a nexus between the expenditure and the purpose of the business, and the expenditure should have been wholly and exclusively laid out for that purpose.

I have gone through the assessment order and the written submission of the appellant and found that assessee has furnished complete details of the expenses to the AO, who has disallowed the total expense claimed by the assessee, without any cogent reasons as well as without making any enquiry about its payment in next year.

To verify the payments of unpaid expenses, the AR was asked to furnish the date wise payments. The AR provided copy of ledger a/c of expenses payable showing date wise payment of expense along with copy of cash book containing the corresponding transactions. Copy of bank statement evidencing the withdrawal of money for making the above payments is also enclosed.

Keeping in mind the nature and magnitude of the expenses, it cannot be said that the expenses are personal in nature, capital in nature or has not been incurred wholly and exclusively for the business purposes. Despite the fact that all the outstanding expenses were paid by the assessee during the month of April-May of subsequent financial year, the amount remain unpaid for long time and thus cannot be allowed in totality. Therefore, to curtailed down the probability of excess claim, the addition is sustained at Rs. 1,52,000/- being 20% of the unpaid amount. ✓

In the result, the appeal is partly allowed. ✓

20. Aggrieved with such order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds :

1. *Whether in the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the additions of Rs.9,37,50,244/- made by the A.O. on account of bogus accommodation entries ?*
2. *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) has ignored the findings of the Investigation Wing of the*

department that the Assessee-company has received the accommodation entries from the entry operator Surendra Jain & Group ?

3. *Whether on the facts and circumstances of the case & law, the Ld. CIT(A) has erred in deleting the addition amounting to Rs.8,75,005/- made on account of expenditure made by the assessee-company to receive the entries ?*
4. *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the addition amounting to Rs.25,40,000/- made by the AO on account of salary expenses although the major amount was shown as payable ?*
5. *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the addition amounting to Rs.11,05,000/- made by the AO on account of other expenses although the major amount was shown as payable ?*

6. *That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*
7. *That the grounds of appeal are without prejudice to each other.*
8. *That the appellant craves leave to add, alter, amend or forgo any ground(s) of the appeal raised above at the time of the hearing.”*

21. Grounds of appeal numbers 1 and 2 by the Revenue relates to the order of the Ld. CIT(A) in deleting the addition of Rs.9,37,50,244/- made by the A.O.

21.1. The Ld. D.R. heavily relied on the order of the A.O.

22. Learned Counsel for the Assessee on the other hand heavily relied on the order of the Ld. CIT(A). He submitted that the A.O. has made the addition of Rs.9,37,50,244/- which is the amount received from M/s Transnational Growth Fund Ltd. [in short “M/s Transnational”] which belonged to the alleged entry operator

Shri Surender Kumar Jain. He submitted that the aforesaid sum was not a cash credit or capital received by the assessee from the aforesaid entity but in effect was the return of loans made by the assessee in the preceding year. The Learned Counsel for the Assessee drew the attention of the Bench to Page-6 of the assessment order where the A.O. has mentioned that the above amount was given in A.Y. 2010-11.

22.1. The Learned Counsel for the Assessee accordingly submitted that the A.O. has totally misdirected himself in making the addition of Rs.9,37,50,244/- which is indisputably not the cash credit or the capital received by the assessee, but, is the return of the loans and advances given by the assessee itself in the preceding year.

22.2. The Learned Counsel for the Assessee without prejudice to the aforesaid facts drew the attention of the Bench to the following facts :

- a. All the relevant documents with respect to the transactions with M/s Transnational like ITR,

Audited Balance Sheet, Assessment order, Confirmations, Bank Statements were submitted before the Ld. AO.

- b. The main director of the M/s Transnational had appeared before the AO and had confirmed the transactions between M/s Transnational and the assessee.
- c. M/s. Transnational itself was assessed u/s 143(3) of the Act for the corresponding relevant assessment year 2011-12 on 05.06.2013 (much after the alleged search in the case of Sh. S.K. Jain which took place in the year 2010 because of which he was alleged to be running an accommodation entry business). From the assessment order in the case of M/s Transnational it can be seen that no allegation or inference regarding M/s Transnational being involved in accommodation entry business has been made by the A.O.
- d. The assessee booked interest income of Rs.2,58,493/- in preceding assessment year and

Rs.11,31,529/- in the assessment year under consideration. These interest receipts were also subjected to the TDS by M/s Transnational amounting to Rs.26,625/- and Rs.1,13,153/-. The AO has not found anything wrong with the aforesaid transactions and has also allowed the credit of TDS.

22.3. He accordingly submitted that the grounds raised by the Revenue on this issue be dismissed.

23. We have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the A.O. in the instant case made addition of Rs.9,37,50,244/- on the ground that the aforesaid sum belongs to the alleged entry operator Shri S.K. Jain. We find the Ld. CIT(A) deleted the addition, the reasons of which have already reproduced in the preceding paragraph. We do not find any infirmity in the order of the Ld. CIT(A). We find the

A.O. at page-6 of the last paragraph of the assessment order has observed as under :

“It is important to mention here that amount of Rs.9,27,31,868/- was given by the assessee company to M/s Transnational Growth Fund Ltd for the Asst. Year 2010-11 during the period of 04.03.2010 to 31.03.2010 and the amount was returned back from 10.04.2010 and the major amount were received back till July, 2010 which is nothing but the own unaccounted money of the assessee company which was routed through M/s Transnational Growth Fund Ltd during the Asst. Year under consideration to give up the colourful shape of natural business transaction. If, the assessee company has so much requirement of money why the same was given to M/s Transnational Growth Fund Ltd for few days without any security taken from them.”

23.1. A perusal of the above shows that the A.O. has totally misdirected himself in making the addition of

Rs.9,37,50,244/- which is not the cash credit or capital received by the assessee, but, is the return of the loans and advances given by the assessee in the preceding year. Further all relevant documents such as copy of income tax return, audited balance-sheet, assessment order, confirmations, bank statements etc., of M/s. Transnational Growth Fund Ltd., were filed before the A.O. The assessment of M/s Transnational Growth Fund Ltd., was completed under section 143(3) of the I.T. Act, 1961 for the A.Y. 2011-12 on 05.06.2013 which is much after the search in the case of Shri S.K. Jain which took place in the year 2010. The assessee has received interest income of Rs.2,58,493/- in the preceding assessment year and Rs.11,31,529/- in the impugned assessment year and such interest receipts were also subjected to TDS by M/s Transnational Growth Fund Ltd. The A.O. has not found anything wrong with the aforesaid transactions and has also allowed the TDS credit. Under these circumstances, we do not find any infirmity in the order of the Ld. CIT(A) in deleting the addition of

Rs.9,37,50,244/- made by the A.O. Accordingly, grounds of appeal numbers. 1 and 2 by the Revenue are dismissed.

24. So far as grounds of appeal number.3 is concerned, the issue relates to the order of the Ld. CIT(A) in deleting the addition of Rs.8,75,005/- on account of expenditure made by the assessee company to receive the entries.

24.1. After hearing both the sides, we find the A.O. made addition of Rs.8,75,005/- on the ground that assessee has incurred the expenditure for obtaining the accommodation entry of Rs.9,37,50,244/-. We find the Ld. CIT(A) deleted the addition, the reasons of which, have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the Ld. CIT(A) on this issue. The grounds raised by the Revenue challenging the order of the Ld. CIT(A) in deleting the addition of Rs.9,37,50,244/- has already been dismissed in the preceding paragraph. Therefore, the addition made by the A.O. is not sustainable and, therefore, the order of the Ld.

CIT(A) on this issue is upheld and grounds of appeal number.3 raised by the Revenue is dismissed.

25. Grounds of appeal number.4 by the Revenue relates to order of the Ld. CIT(A) in deleting the salary expenses of Rs.25,40,000/- made by the A.O.

25.1. After hearing both the sides, we find the A.O. made addition of Rs.25,40,000/- on the ground that there is no employer-employee relationship since salary was shown as payable. We find the Ld. CIT(A) deleted the addition, the reasons of which, already been reproduced in the preceding paragraph wherein the Ld. CIT(A) has sustained an amount of Rs.4,03,400/- being 10% of such unpaid amount and deleted the balance amount. Before deleting the addition the Ld. CIT(A) had directed the assessee to furnish the date wise payments which was filed before him. Further, he has given a finding that assessee is a registered NBFC Company with RBI and has to comply with all the legal requirements on this account over and above all the other non-NBFC companies. Further all the outstanding salaries were paid by

the assessee during the month of April-May of subsequent financial year and the Ld. D.R. also could not controvert the factual findings given by the Ld. CIT(A) on this issue. In view of the detailed reasoning given by the Ld. CIT(A) on this issue while sustaining the addition of Rs.4,03,400/- and deleting the balance amount out of the addition of Rs.25,40,000/- made by the A.O, we do not find any infirmity in the order of the Ld. CIT(A). Accordingly the same is upheld and the grounds of appeal number.4 of the Revenue is dismissed.

26. Grounds of appeal number.5 relates to the order of the Ld. CIT(A) in deleting the addition of Rs.11,05,000/- made by the A.O. on account of other expenses.

27. After hearing both the sides, we find the A.O. made addition of Rs.11,05,000/- being other expenses on the ground that assessee could not furnish the bills and vouchers to the satisfaction of the A.O. and amount of Rs.7,60,000/- was payable as on 31.03.2011, out of Rs.11,05,000/-. We find the Ld. CIT(A) deleted 80% of the

addition and sustained Rs.1,52,000/- being 20% of such expenses, which, in our opinion, is just and proper under the facts and circumstances of the case. We, therefore, uphold the order of the Ld. CIT(A) on this issue and the ground of appeal no.5 by the Revenue is dismissed.

28. Grounds of appeal numbers.6, 7 and 8 being general in nature are dismissed.

29. In the result, ITA.No.4704/Del./2014 of the Revenue is dismissed.

30. To sum-up, ITA.No.5278/Del./2016 and ITA.No.4704/Del./2014 filed by the Revenue are dismissed and ITA.No.5318/Del./2016 filed by the Assessee is allowed.

Order pronounced in the open court on 24.12.2021.

Sd/-
[SANJAY GARG]
JUDICIAL MEMBER

Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated 24th December, 2021.

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'E' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.