

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “G” DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.9388/DEL/2019
Assessment Year 2010-11

SS Pulses Manufacturing Pvt. Ltd., 57, 4 th Floor, North Ex Model Town, Delhi.	Vs.	Asst. Commissioner of Income Tax, Circle-22(2), New Delhi.
TAN/PAN: AAJCS0783J		
(Appellant)		(Respondent)

Appellant by:	Shri Ashwini Kumar, Adv.		
Respondent by:	Shri Jeetender Chand, Sr.DR		
Date of hearing:	29	09	2022
Date of pronouncement:	23	11	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-XXV, New Delhi [‘CIT(A)’ in short] dated 17.10.2019 arising from the assessment order dated 18.03.2016 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 147 of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. The grounds of appeal raised by the assessee read as under:

“1. That the order passed by the Ld. CIT (A) u/s 250(6) was incorrect, bad in law and have been passed without considering the submissions of the appellant.

2. That the order passed by the AO u/s 147/143(3) of the Act is incorrect, bad in law and have been passed without properly and judicially considering the submission of the appellant. The additions/disallowances made are illegal, unjust and unlawful since the submission made before the Ld. AO has not been

considered and kept aside arbitrarily and also the Ld. CIT (Appeal) erred in upholding the same.

3. That the Ld. CIT (A) has erred both in law and on facts in upholding the finding of AO for reopening assessment where AO has not made any enquiry from the relevant parties or independent source and he merely relied upon the report of investigation wing.

4. That the Ld. CIT(A) has erred both in law and on facts in his order u/s.250(6) in upholding the addition made by the Assessing Officer of Rs.40,72,000/- towards amount received as share capital including other charges from two parties despite submitting all the relevant information and documents before Assessing Officer.”

3. The assessee has also raised additional ground in terms of Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 which reads as under:

“1. Without prejudice to the other grounds of appeal, the Ld. AO has failed to apply his mind w.r.t information received from Investigation Wing and hence the information received could not be said to be tangible material per se without a further enquiry being undertaken by the ld. Assessing Officer to establish the link between the tangible material and information of reason to believe that income had escaped assessment.

2. Without prejudice to the other grounds of appeal, 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.

3. Without prejudice to the other grounds of appeal, 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. Without prejudice to the other grounds of appeal, the notice u/s. 148 was not 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 153C of the Income Tax Act, 1961.

5. 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.””

4. When the matter was called for hearing, the Id. counsel for the assessee pointed out that the additional grounds concern jurisdictional aspects for which material placed on record. In the wake of the submissions so made and in the light of the fact that issue involves jurisdiction without any need for additional factual support, the additional grounds stands admitted for hearing.

5. Briefly stated, the Assessee filed return of income for the Assessment Year 2010-11 in question declaring income at Rs.20,47,624/-. The return was processed under Section 143(1) of the Act. Thereafter, a notice under Section 148 dated 20th March, 2015 was issued and served upon the assessee to re-assess the returned income on the basis of information received from DIT (Investigation) alleging escapement of income. The Assessing Officer noted in the assessment order that as per the reasons recorded, after processing the return of income under Section 143(1), certain information were received from the office of Director of Income Tax (Investigation)-II, Jhandewalan Ext, New Delhi vide letter No. F.No. DIT (Inv)-II/U/s.148/2012-13/197, dated 12.03.2013 mentioning therein that a search operation was carried out in the case of Shri Surinder Kumar Jain group of cases (hereinafter known as entry operator) wherein after intensive and extensive inquiry and examination of documents seized during the course of search, it has been noticed that the said group is involved in providing accommodation entries to the person who are named in the report. The name of the assessee-company also figures in the list as one of the beneficiaries of the accommodation entries. The assessment was thus reopened to

assess the escaped income arising to the assessee as a beneficiary.

5.1 The Assessing Officer in the course of the assessment noted that the assessee has obtained accommodation entries by way of share application money/share capital including share premium amounting to Rs.40 lakh from S.K. Jain Group as tabulated below:

<i>Bank Book Date</i>	<i>From</i>	<i>To</i>	<i>BAN K</i>	<i>Cheque/RTGS</i>	<i>Cheque Date</i>	<i>Amount</i>	<i>Through</i>	<i>Annexure No.</i>	<i>Page No.</i>
05.03.10	AASHESH CAPITAL SERVICES P. LTD.	SS PULSES MANUFACTURING P. LTD.	AXIS	RTGS	05.03.10	20,00,000	SATISH GOEL	A-13	BACK PAGE 29
05.03.10	APOORVA LEASING FINANCE & INVESTMENT PVT. LTD.	SS PULSES MANUFACTURING P. LTD.	AXIS	RTGS	05.03.10	20,00,000	SATISH GOEL	A-13	BACK PAGE 29
<i>TOTAL</i>						40,00,000			

5.2 The modus operandi was noted in the assessment order and an addition of Rs.40 lakh was made on account of unexplained cash credit in the hands of the Assessee herein towards receipt against subscription of shares of the assessee co. by 2 applicants noted above. A consequential amount of Rs.72,000/- was also estimated as commission paid for obtaining accommodation entries of Rs.40 lakh.

6. In the first appeal, the CIT(A) refused to interfere with the action of the Assessing Officer and sustained the additions so made.

7. Further aggrieved, the assessee preferred appeal before the Tribunal.

8. When the matter was called for hearing, the ld. counsel for the assessee pointed out at the outset that share capital has been admittedly received from 'Aasheesh Capital Services Pvt. Ltd.' & 'Apoorva Leasing Finance & Investment Pvt. Ltd.' of Rs.20 lakh

each aggregating to Rs. 40 Lakh. The assessment of both the subscribers has been made by the respective Assessing Officer under S. 153C of the Act impliedly after examination of seized material and the source of investment made these subscribers in the assessee-company was not questioned despite a directed scrutiny in this regard.

8.1 The assessment order of the subscriber companies passed under Section 153C/153A of the Act to Assessment Year 2010-11 was placed on record to vindicate the *bona fides* of the subscriber companies. The ld. counsel next referred to the decision of the Co-ordinate Bench of Tribunal in *M/s. More Credit Securities Pvt. Ltd. vs. ITO, ITA No.5318/Del/2016 and others, order dated 24.12.2021* for the same Assessment Year 2010-11 in question.

8.2 With reference to the aforesaid Tribunal decision, the ld. counsel submitted that in the identical facts arising from the same material seized in the search, it was noticed by the Co-ordinate bench that these two subscriber companies, namely, Apoorva Leasing Finance & Investment Pvt. Ltd. and Aashish Capital Services Pvt. Ltd. have also invested with M/s. More Credit Securities (P) Ltd. In similar fact situation, the Co-ordinate Bench in the case of M/s. More Credit Securities (P) Ltd. has found both; lack of jurisdiction as well as merits on facts.

8.3 The relevant part of the order of the co-ordinate bench in More Credits is extracted hereunder :

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 :

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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:-

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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 &

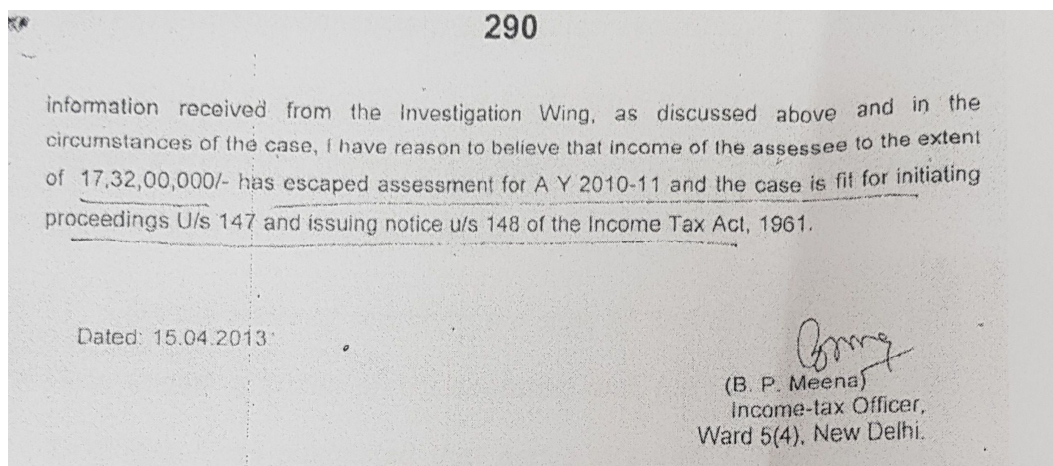
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	Bank				Leasing Pvt Ltd.
12.	AXIS Bank	Rs. 50,00,000/-	321840	08.03.2010	Mega top)Promoters P. Ltd
13.	AXIS Bank	Rs. 50,00,000/-	369931	08.03.2010	Victory Software P. Ltd
14.	AXIS Bank	Rs. 65,00,000/-	378617	09.03.2010	Shalini Holdings Ltd.
15.	AXIS 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.

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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



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
Delhi110055**

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

Madam,

Sub: Issue of notice u/s 148- A.Y. 2006-07 to A.Y. 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 A.Y. 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 :

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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 &



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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

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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.”

9. The co-ordinate bench thus found merits in the plea of the Assessee therein both on lack of jurisdiction under S. 147 of the Act as well as lack of substance in additions under S. 68 on facts. The additions under S. 68 on subscription from these parties were thus reversed together with reversal of consequential commission. Having regard to the inherent similarity in factual matrix and common seized material, We are inclined to adopt the findings in More Credits case Hence, the order of the CIT(A) is set aside and the additions made in the hands of Assessee stand deleted both on account of lack of jurisdiction under 147 at the threshold and also on account of void in additions on touchstone of merits. The consequential addition on account of purported commission expenses incurred by Assessee against receipt of subscription also stands deleted. In the wake of the conclusion where the assessee gets relief in tune with the decision of co-ordinate bench, we do not consider it necessary to go into other legal issues viz applicability of S. 153C etc. qua jurisdiction issue.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 23/11/2022.

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /11/2022

prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**