

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "S.M.C." NEW DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER,
S.M.C.

आ.अ.सं./I.T.A No.4908/Del/2018
निर्धारणवर्ष/Assessment Year : 2007-08

Shyam Products Pvt. Ltd., 206 - Hans Bhawan, 1, Bahadur Shah Zafar Marg, New Delhi - 110 001.	<u>बनाम</u> Vs.	Income Tax Officer, Ward : 23 (3) New Delhi.
PAN : AADCS0943E		

A N D

आ.अ.सं./I.T.A No.4907/Del/2018
निर्धारणवर्ष/Assessment Year : 2008-09

Optimist Electronics Pvt. Ltd., 206 - Hans Bhawan, 1, Bahadur Shah Zafar Marg, New Delhi - 110 001.	<u>बनाम</u> Vs.	Income Tax Officer, Ward : 19 (2) New Delhi.
PAN : AAACO7281J		
अपीलार्थी /Appellants		प्रत्यर्थी/Respondents

निर्धारितकीओरसे /Assessee by :	Shri Suresh Kumar Gupta, C. A.;
राजस्वकीओरसे /Revenue by :	Shri Om Parkash, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	02/11/2022
उद्घोषणाकीतारीख/Pronouncement on :	31/01/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

I.T.A No.4908/Del/2018 - Assessment Year : 2007-08 :

1. This appeal is filed by the assessee against the order of the ld. Commissioner of Income Tax (Appeals)-22 [hereafter referred to CIT (Appeals)] New Delhi, dated 09.05.2018 for assessment year 2007-08.

2. The assessee has raised the following substantive grounds of appeal:-

“1. The learned CIT(A) has erred on facts and in law in upholding the impugned order of the learned assessing officer which is contrary to law, passed without application of mind and without complying with the procedure and rules, is against equity and justice and facts of the assessee and material on record.

2. The appellant denies his liability to tax as upheld by the learned CIT (A) and determined and computed by the learned assessing officer and the manner in which it has been so determined or computed.

3. The learned CIT(A) has erred on facts and in law in upholding the validity of reassessment proceedings ignoring the fact that initiation of the proceedings u/s 148 and the consequent order u/s 147 are bad in law as:

a. The initiation of proceedings u/s 148 are contrary to provisions of law.

b. The mandatory procedure laid down in the Act has not been followed.

c. The information has been collected behind the back of the assessee and the assessee was never confronted with the

same nor an opportunity provided for cross-examination of Jain brothers, copies of the orders of Jain Brothers and the relevant seized material relied upon has not been provided to the assessee, which is against Law of Natural Justice.

d. The assessment has been made on the basis of conjecture & surmises without any cogent evidence.

4. The learned CIT(A) has erred on facts and in law in upholding the addition of Rs.15,00,000/- u/s.68 on account of share capital, treating the same as an accommodation entry.

5. The learned CIT(A) has erred on facts and in law in upholding the addition of Rs.30,000/- u/s 69C as alleged commission paid for obtaining accommodation entries.

6. The learned CIT(A) has erred on facts and in law by not adjudicating ground of initiation of penalty proceedings u/s 271(l)(c) without any material on record.”

3. The Id. Counsel for the assessee at the outset submits that ground No. 1 of the grounds of appeal is raised challenging the very assumption of jurisdiction by the Assessing Officer in re-opening the assessment. The Id. Counsel submits that an identical ground has been decided in assessee’s favour by the co-ordinate bench of the Tribunal in assessee’s own case in ITA. No. 1932/Del/2019 dated 11.10.2022 wherein the Tribunal quashed the re-assessment order. Copy of the order is placed on record.

4. The Id. DR fairly submits that an identical issue has been decided by the Tribunal in assessee’s own case for assessment year 2010-11 in its favour. However, the Id. DR filed written submissions and requested to take the same on record.

5. Heard rival submissions perused the orders of the authorities below and the decision of the Tribunal in assessee's own case. The ld. Counsel for the assessee also filed written submissions in so far as assumption of jurisdiction without complying with the process under section 148/151/143(2) of the Income Tax Act, 1961 (the Act) the same are as under:-

“ The appellant in the above ground challenges the action of Ld CIT{A) upholding the reassessment proceedings which has been assumed invalidly without complying with sec 148/151/143(2) and following rules and procedures of law:

1. Invocation of reassessment proceedings based on Non-existing provision of law and also errors contained in the performa:

Non application of mind is discernible from the performa (PB 14) filed by the Ld AO to take approval from the appropriate authority v/s 151. **Kindly refer question in item No.7 which says "Whether the provisions of sec. 147(a) or 147(b) applicable or both the sections are applicable".**

The AO in the reply mentions **section 147(b) applicable**. Here it may be appreciated that the sections 147{a)/147{b) have ceased to be in the statute book from 01.04.1989. The mentioning of these incorrect and non-existing sections is a clear case of non- application of mind by the AO and also by the authorities providing satisfaction u/s 151. Reliance is placed in the decisions of **Smt Kalpana Shantilal Haria Vs ACIT** W.P.{L) No.3063/2017 dated 22.12.2017 (Bom), **Best Cybercity India P Ltd vs ITO** (2019) 414 ITR 0385 (Del), **Omkam Developers Ltd vs ITO** ITA No.6862/0el/2018 dt;11.05.2021, **M/s VRC Township P Lfd vs ITO** ITA No.1503/0el/2017 dt: 14.10.2020, **M/s Maheshwari Roller Flour Mills P Lfd vs ITO** ITA No.4257 /Oe1/2019 dt: 17.12.2020 (SMC) and

Madhu Apartments P Ltd vs ITO ITA Nos.3869-3870/0el/2018 dt: 01.02.2021 (SMC).

2. Assuming jurisdiction to complete assessment u/s 143(3)/147 by issue of notice u/s 143(2) of IT Act before supply of reasons thereby debarring appellant to appellant to file objection to assumption to jurisdiction;

From the perusal of assessment order at pages 1 - 2 in para's 1 and 3 therein, it can be seen that the Ld AO issued notice dt: 10.02.2014 (PB 10) u/s 148 of IT Act against which the appellant company submitted a return of income vide letter dt: 20.02.2014 (PB 11) and requested the copy of reason recorded. In para 3 of AO order at page 2, it is mentioned that notices dt: 19.05.2014 were issued u/s 142(1) (PB 32) and also u/s 143(2) (PB 31). In the above notice u/s 142(1) of IT Act (PB 12) and also mentioned in para 3 of AO order that the Assessing Officer required assessee to file return in response to notice u/s 148 of IT Act and for which a blank return form was also enclosed. Further, copy of audited financial statement and bank statement with narration of credit entries were required from appellant in above notice u/s 142(1) of IT Act.

The appellant again vide letter dt: 25.05.2014 (PB 13) submitted on 27.05.2014 (Para 3 of AO order) intimated the Assessing Officer that the appellant vide letter dt: 20.02.2014 (PB 11) has already submitted return of income u/s 148 and also requested the AO for supply of reason recorded which were supplied by the AO on same very date on 27.05.2014. The above facts are also evident from copy of note sheet proceedings placed in paper book at pages 71-76, relevant page 71.

From above facts, it is evident that the AO assumed jurisdiction by issuing notice u/s 143(2) of the Act on 19.05.2014 before supplying reason which means that the AO assumed jurisdiction to make reassessment

before allowing appellant to file objection to assumption to jurisdiction. Hence, assuming jurisdiction by issuing notice 143(2) before allowing appellant to file objection and subsequent disposal off the same is nothing but non-application of mind by the AO to the legal requirements of the law. It may be noted that the Hon' ble Gujarat High Court has provided guidance to tax authorities in case of *Sahkari Khand udyog Mandai Lid vs ACIT 370 ITR 107 (Guj)* held that AO must provide suo moto reason to the assessee within 30 days of filling of return of income and the assessee must file objections within 60 days and thereafter the AO can take 4 months time in disposing off objection. This guidance of the Hon' ble Gujarat High Court has been approved by the Hon' ble Supreme Court wherein the SLP of the department has been dismissed. Therefore, issue of notice u/s 143(2) at the time of supply of reasons amounts to denial of opportunity to the appellant to take legal remedy available under the Act of filling of objection on assumption of jurisdiction. To support the above proposition of law, reliance is placed in the decision of *Mastech Technologies Pvt Lid vs Dy CIT WP© 2858/2016 dt: 13.07.2017 (Oel)* where in para 30 of the judgment held that issuance of notice u/s 142(1) /143(2) before supplying the reasons and considering petitioner objection and passing reasoned order thereon does not meet requirement of law. Such legal infirmity leads to inevitable invalidation of all the proceedings that took place pursuant to notice u/s 148. Recently, the co-ordinate of Hon'ble Delhi ITAT in case of *Mis R N Khemka Enterprises P Lid vs ITO in ITA No.72441De1/2019 dt: 12.08.2021* has quashed the reassessment proceedings on similar grounds. Kindly refer para's 33 to 35 at internal page 51-53 therein.

3. No valid notice u/s 143(2) was ever issued:

In the present case, the power to make assessment under section 143(3) was assumed by the AO by issue of notice u/s 143(2) (PB 32) on 19.05.2014 as mentioned in para 3 of Assessing Officer order at page 2 therein along with notice u/s 142(1) of IT Act OT: 19.05.2014 (PB

33). The above notice was issued by the AO without having return of income in its possession which fact is proved from the above notice dt: 19.05.2014 (PB 33) issued *uls.* 142(1) where the AO required assessee to file return in response to notice 148 of IT Act and for which a blank return form was also enclosed. Further, copy of audited financial statement and bank statement with narration of credit entries were required from appellant in above notice *uls* 142(1) of IT Act. The appellant again vide letter dt: 25.05.2014 (PB 13) submitted on 27.05.2014 (Para 3 of AO order) intimated the AO that the appellant vide letter dt: 20.02.2014 (PB 11) has already submitted return of income *uls* 148. The above facts are also evident from copy of note sheet proceedings placed in **paper book** at pages 71-76, relevant page 71.

From the above discussions, it is evident that at the time of issue of notice *uls* 143(2) of IT Act on 19.05.2014, the AO does not possess neither the copy of return of income nor the audited financial statements. The return of income was came to in his possession only through above letter dt: 27.05.2014. Therefore, such notice dt: 19.05.2014 issued *uls* 143(2) of IT Act is without application of mind and without going through the return of income which was not accessible to him till that date as required *uls* 143(2) (ii) of IT Act. The AO has to employ discretion for issuing such notice which is evident from language of sec 143(2) (ii) which reads as under:

"notwithstanding anything contained in clause (i), if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:

Provided that no notice under clause (ii) shall be served on the assessee after the expiry of six months from the

end of the financial year in which the return is furnished." (Emphasis supplied)

The expression "***Notwithstanding anything contained in clause 0). if he considers it necessary or expedient***" and on expression "considers it necessary" presupposes application of mind on part of Ld AO before notice u/s 143(2) of the Act is issued which words have been explained by Hon'ble Apex court in case of ***Bhikubhai Patel vs State of Gujarat*** (4 SCC 144) wherein the expression: considered necessary is dealt implying that there should be active application of the mind. In other words the term consider postulates consideration of all the relevant aspects of the matter. The word necessary must be construed in the connection in which it is used. It is further submitted that the above illegality cannot be cured u/s sec 292BB of IT Act as held by the jurisdictional Delhi High Court in the case ***PCITv. Silver Line*** (2016) 383 ITR 455 (Del). In para 17 and 18 of said decision. the Hon'ble court held that the ***Ld AO has discretion to issue of notice u/s 143(2) of IT Act after examining the return of income filed that prima facie the Assessee has "understated the income or has "computed excessive loss" or has "underpaid the tax in any manner" ..***

Identical view has been held in decisions of ***DIT v. Society for Worldwide Interbank Financial Telecommunications*** 323 ITR 249 (Del) (Para 8) and ***CIT v. Rajeev Sharma*** (2011) 336 ITR 678 (All.)

Therefore, it is evident from perusal of assessment order and above facts, no notice under section 143(2) of IT Act was ever issued after examination of return of income and audited financial statements as discussed above.

3. Recording of reason after taking approval under section 151 of IT Act:

In para 14 of reason recorded (PB 19). there is mention of approval u/s 151 of the Act already taken from Addl, CIT, Range-8, New Delhi before issuance of

notice u/s 148 of IT Act which implies that only performa (PB14) for taking such approval was sent to above Addl CIT which has granted approval on 30.01.2014. But the said performa was not accompanied with any reason recorded despite mention in para 11 of said performa that the reasons are as per annexure.

From above facts, it is presumed the Ld Assessing Officer has recorded the reasons just before issuing notice under section 148 on 10.02.2014 although the reason recorded shown to be recorded on 23.01.2014 (PB 15). The mentioning of approval taken by Addl CIT before issuance of notice u/s 148 in para 14 (PB 19) of reason recorded clears the position that reasons were recorded only after approval was taken from Addl CIT and before issuance of notice u/s 148. Even if it is argued that it is a clerical mistake, such mistake shows besides lack of application of mind on the part of the AO but also on part of approving authority. On identical facts, mentioned in the reason recorded, the Hon' ble IT AT in *Shri Balkishan Agrawal Glass Industries Ltd* in ITA NO.1523/Del/2014 in para 29 at page 29 has quashed the reassessment proceeding.

5. Lack of application of mind by the Ld AO at the time of initiation of proceedings u/s 147:

- 1. Non-identification of nature of alleged accommodation entries, modes of payments, the parties acted as entry provider entities, and identification of seized annexure:**

In the reason recorded (PB 15-19), the AO has although identified various possible modes of accommodation entries such as share application money or Share Capital or Share Premium or Loans or advance etc which could have been availed by the appellant and same has escaped taxation in hands of the appellant company. *It is therefore clear that reasons provided nowhere communicates the description of how income escapement of Rs.45,00,000/ is deduced*

and what are the components of the alleged entries to the extent of Rs.40,00,000/- like name of share subscriber entity, amount of share subscribed, date of share subscription, mode of payment and instrument no. bank particulars, date of transaction etc. for want of which reasons have become non-communicative.”

6. The Id. DR also submitted written submissions in so far as the re-opening of assessment and the mechanical of approval as under:-

“ On the issue of validity of reopening u/s 148, Mechanical Approval, Cross examining.....

It is seen that the facts of the present case are different from the case laws relied upon by the appellant.

Since, at the stage of recording of reason, no final finding is required to be given and only prima facie belief is required to be reached by the assessing authority, the Assessing Officer was correct in initiating reassessment proceedings u/s 147 on the basis of credible and specific information made available to him.

On the validity of reassessment proceedings, I am relying on the decision of Raymond Woollen Mills Ltd. Vs ITO 236 ITR 236 ITR4 (sc; wherein it was held that the AO is not to conclusively prove the escapement of income to assume jurisdiction u/s 147 of the Act.

In the case of ITO Vs Purshottam Das Bangur 224 ITR 362 the Hon'ble Apex Court, on the issue of application of mind by the Assessing Officer to information received while recording reasons, held that on the basis of facts and information contained in letter of Directorate of Investigation, the Income Tax Officer could have formed opinion that there was reason to believe that income chargeable to tax had escaped assessment and he was justified in his action and merely because notice was issued on very next day of receipt of letter it did not mean that ITO did not apply his mind to the information.

Further, the Hon'ble Jurisdictional Delhi High Court in the case of Paramount Communications Ltd. Vs Pro CIT 392 ITR 444 (Del) has held that the information by the investigation or the other authority is valid material for initiating reassessment proceedings. This judgement of Delhi High Court has been approved in by Hon'ble Supreme Court in 250 Taxmann 100 (SC).

Hon'ble Calcutta High Court in a recent decision delivered on 13.09.2022 in the case of PCIT 1 Kolkata Vs Arshia Global Tradecom P Ltd in ITAT/175/2021 [IA No:GA/02/2021] has categorically held that when sufficient material evidence has been passed on to the AO by Inv. Wing and reassessment having been done on new facts does not amount to change of opinion. The main proposition made by the Hon'ble Court was that crucial factual aspects which are relevant to the reopening of the assessment cannot be ignored in deciding the validity of reopening merely going on the basis as to what are the conditions to be fulfilled in order to reopen an assessment.

The Hon'ble Supreme Court in its decision delivered on 28.03.2022 [SLP [C] No.22921 of 2019] in the case of DCIT Vs. M R Shah Logistics- P. Ltd laid down the proposition that reopening of a case u/s 147 with an objective to verify some information regarding accommodation entry or share premium and share capital is valid and sufficiency of that material cannot dictate the validity of Notice under section 148.

Therefore, the AO had a prima-facie case on the basis of specific and credible information about the assessee to record reasons for reopening of the assessment [to *quote the case specific information*]

The important question is

Whether there was relevant material on which a reasonable person could have formed a belief which definitely was there in this case?

Whether or not, the material would conclusively establish the escapement is not important. This aspect has to be examined subsequently in the reassessment proceedings.

It is noted that the AD has applied his mind to the information available independently to arrive at the belief on the basis of material which was available with him.

Hence, the AD had validly assumed jurisdiction u/s 148 of the Act by recording the reasons to believe in accordance with the provisions of the Act u/s 147 of the Act and, therefore, the ground of appeal on this is deserve to be dismissed.

ON GRANTING SANCTION U/S 151

So far as the contention of the 'apllellant assessee, raised as addltional ground that the approval of the competent authority granted u/s 151[1] was in a mechanical manner without application of mind is concerned, the following submission may kindly be considered:

1. That there is no infirmity in the approval/sanction granted by the competent authority u/s 151[1] of the I. T. Act, 1961.
2. That the statute does not lay down any manner or format in which the approval is to be granted.
3. That the remarks of the competent authority may kindly be read with the first part of the column No. 12 which reads "*Whether the pr. CIT, Hisar is satisfied on the reason recorded by the ITO that it is a fit case for the issue of Notice u/s 148*" along with the remarks "*Yes I am satisfied*" before the signatures are there in the approval form/column.
4. That once an authority puts his/her signature [in original] he or she actually is recording his

concurrence to the whole proposal of the AO along with the reasons recorded and the approving comment or remarks should not be read in solitary. Then it is not material as to whether the approving remark is typed/stamped or hand written.

5. That the incident of typed/stamped approving remarks of the competent authority might have been occurred due to paucity of time when a large number of cases are to be approved by a single officer near the limitation date and writing of approving remarks by hand is practically and humanly difficult.

6. That the Hon'ble Calcutta High Court in Prem Chand Shaw [Jaiswal] Vs. ACIT [2016] 67 taxmann.com 339 has categorically held that *'mere fact that the sanctioning authority did not record his satisfaction in so many words would not render invalid the sanction granted under section 151[2] when the reasons on the basis of which sanction was sought could not be assailed.'*

7. That the Hon'ble Delhi Court in the case of Experion Developers (P.) Ltd. Vs. ACIT [2020] 115 taxmann.com 338 (Delhi) in WP (C) NOS. 11302, 11303 of 2019 CM APPL. NOS. 46536 TO 46539 & 46542 of 2019 February 13, 2020.

While discussing Section 151 of the Income Tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Recording of reasons) - held that where necessary sanction to issue reopening notice under section 148 was obtained from Pr. Commissioner as per provision of section 151, Pr. Commissioner was not required to provide elaborate reasoning to arrive at a finding of approval when he was satisfied with reasons of reopening. [Ref. Para 42 and 43 of the said order].

Hence, the AO had validly assumed jurisdiction under section 148 of the Act by recording the reasons to believe in accordance with the provisions of the Act under section 147 of the Act.”

7. On perusal of the order of the Tribunal in assessee's own case for the assessment year 2010-11 the Tribunal after considering various judgements held that there is non-application of mind by the Assessing Officer while filling up the proforma for obtaining the approval from Commissioner under section 151 of the Act and the Id. CIT also has granted approval in a mechanical manner. The Tribunal observed that in the Form for recording the reasons for initiating proceedings under section 148 for obtaining approval of the Pr. CIT, column 7 i.e. the provisions under which the re-opening was sought for are applicable has been mentioned as section 147(b) and the provisions of section 147(b) are non-existent in the statute book for the assessment year 2010-11. Therefore, the co-ordinate bench of the Tribunal came to the conclusion that there is complete non-application of mind by in obtaining the approval from Pr. CIT and in similar manner the approval was granted by Pr. CIT. While coming to such conclusion the Tribunal referred to various decisions and held as under:-

2. First of all, I have heard the arguments of both the representatives on legal ground No.3 of the assessee which reads as under:-

"3. The Id. CIT(A) has erred on facts and in law in upholding the impugned order of the learned assessing officer which is contrary to law, passed without application of mind and without complying with the procedure and rules, is against equity and justice and facts of the assessee and material on record."

3. The written submissions of the assessee on this ground reads as follows:-

“Ground No.3

In this ground, the appellant is challenging the validity of reassessment proceedings on the following specific issues:

I. Invocation of reassessment proceedings based on Non-existing provision of law and also errors contained in the performa:

Non application of mind is discernable from the performa (PB 18) filed by the AO to take approval from the appropriate authority u/s 151. In question in item No.7 which says “Whether the provisions of section 147(a) or 147(b) are applicable or both the sections are applicable. The Assessing Officer in the reply mentions section 147(b) applicable. Here it may be appreciated that the sections 147(a)/147(b) have ceased to be in the statute book from 01.04.1989. The mentioning of these incorrect and non-existing sections is a clear case of non-application of mind by the Assessing Officer and also by the authorities providing satisfaction under section 151. Reliance is placed in the decisions of Smt Kalpana Shantilal Haria Vs ACIT W.P.(L) No.3063/2017 dated 22.12.2017 (Bom), Best Cybercity India P Ltd vs ITO (2019) 414 ITR 0385 (Del), Omkam Developers Ltd vs ITO ITA No.6862/Del/2018 dt. 11.05.2021, M/s VRC Township P Ltd vs ITO ITA No.1503/Del/2017 dt: 14.10.2020, M/s Maheshwari Roller Flour Mills P. Ltd vs ITO ITA No.4257/Del/2019 dt: 17.12.2020 and Madhu Apartments P. Ltd vs Income Tax Officer ITA Nos. 3869-3870/Del/2018 dated : 01.02.2021.

II. On applicability of invocation of sec 153C of IT Act

The jurisdiction u/s 147 was assumed on the basis of various incriminating documents found and seized in the course of search on Sh S.K. Jain and his brothers (PB 19-33) as per observations in the reason recorded. It is also mentioned in reason that from verification of documents seized in above search it clearly appears that assessee has taken accommodation entries from the entities of Sh S.K. Jain group in lieu of cash. This fact is evident from the following observations in the reason recorded:

1. In para 4 to 7 (PB 20-21), there is discussion of seizure of incriminating material from Sh S.K. Jain group from which it is found that the said searched group was involved in providing accommodation entries.

2. Further, there is specific reference in para 10 (PB 21-22) and para 14-15 (PB 25-26) various seized material has been discussed which includes Annexure A-150 pages 1-13 (PB 26) and other details showing amount of commission and payments to various middlemen in consideration of accommodation entries by them.

3. In para 10 sub para vi (PB 22), there is mention of daily cash book, cheque books seized from Sh S.K. Jain whereby details of cash received from various beneficiaries companies/person through various middleman/agents in lieu of accommodation entries provided to them on various dates have been recorded.

4. There is reference to the seized records elsewhere in the reason particularly in para 18 and 18.1 page 27 and para 21 at page 31 also which led the AO to

form a prima facie view of escapement of income chargeable to tax.

5. From these discussions, it is evident that the AO had no material to initiate action u/s 147 except for the material relating to the appellant found in the course of search on above named individuals. Under section 153C(1) (b) of IT Act, the power to take cognizance of the material seized from third party, need be exercised under this section only ruling out action under other provisions of the Act. With effect from scope of sec 153C was enlarged to bring in its ambit the cases where the material seized pertains to or any information contained therein relates to the person other than the person searched. Due to non-obstante clause in sec 153C(1), the authorities are bereft of the powers under other sections of the Act including sec 147/148 of the Act. Recently, on the exactly identical facts where reassessment proceedings, based on the seized material from Sh S.K. Jain Group initiated u/s 147/148 of IT Act, were quashed in view of Section 153C being independent code in the decisions of M/s City Life Projects P Ltd ITA No.2668/Del/2019, M/s. Saurashtra Color Tones Pvt. Ltd. v. ITO ITA No 6276/Del/2018 dt 22.01.2020 (SMC) relying on Shri Adarsh Agrawal v. ITO 2020 ITA NO.777/DEL/2019 dt: 14.01.2020 (DB) and also the decision in Nawal Oils & Containers P Ltd v ITO ITA No852/Del/2019 dated 04.03.2020 (SMC). In view of these, the action taken by the u/s 147/148 is in clear violation of sec 153C of the Act.

6. The appellant has raised the above objection before Ld AO in objection to assumption to jurisdiction u/s 147 on 29.08.2017 (PB 65-70) in para 4 (PB 67-69) and same is rejected by the Ld AO vide order dt: 26.09.2017 (PB 48-54) with the observation on page

49 wherein action u/s 148 is justified on the ground that it is not a case of search on the assessee.

III. Initiation of proceedings at the behest of other authority:

From the copy of the information provided by the AO at page 37-46, it can be seen that DDIT Investigation has given a dictate to the CIT, Delhi-III, New Delhi to issue notice u/s 148 in the cases reported by the Investigation wing where jurisdiction lies in the charge of CIT. From the subject given in the above information, there is a clear direction to the AO which is also emphatically repeated till para 2 also. In addition to the above dictate, the CIT vide its binding direction dt: 15.03.2013 directed the AO's working in his charge to take immediate action in respect of AY 2006-07 getting time barred on 31.03.2013 as noted in the table as TB cases. Consequent to above direction of the DDIT dt: 12.03.2013 and the consequent binding instruction of CIT dt: 15.03.2013, the AO initiated action by recording undated reasons for which approval was granted on 21.03.2017.

From the above discussion, it is evident that the above direction is the trigger point for initiating action u/s 148 and therefore it can be inferred that there is a satisfaction of authority other than the AO resulting into reopening of the case. This is against the provisions of sec 147 which lay down that it is the AO whose satisfaction is sine qua none for valid initiation of reassessment proceedings. In Green World Corporation (supra) (SC) held that Notices issued pursuant to the direction by the Pr. CIT thereto would be bad in law. Further In CIT v. SPL's Siddhartha Ltd. [2012] 345 ITR 223 (Del), relying on Sheo Narain Jaiswal & Ors. Vs. ITO, 176 ITR 35 (Pat.), held:

'Where the Assessing Officer 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.'

In the case of Munjal Showa Ltd vs Dy CIT & Anr WP.(C) 1707/2014 DT: 22.02.2016, the Hon'ble Delhi High Court has quashed the reassessment proceeding relying the decision on Lahmeyer Holding GMBH v. Deputy Director of Income Tax 375 UR 70 [Del] where the AO was acting on the direction of the CIT in terms of the instructions of the CBDT.

IV. Assuming jurisdiction to complete assessment u/s 143(3) by issue of notice u/s 143(2) of IT Act on the date of supply of reasons thereby debarring appellant to file objection to assumption to jurisdiction:

The appellant vide letter dt: 05.04.2017 (PB 15) requested the AO to provide certified copy of the reason and the AO provided the reasons along with notice dt: 23.06.2017 issued u/s 142(1)/143(2) of IT Act (PB 34). The fact of issue of notice u/s 143(2) on 23.06.2017 is mentioned in assessment order in para 2 at page 2 therein.

From above facts, it is evident that the AO assumed jurisdiction by issuing notice u/s 143(2) of the Act on 23.06.2017 at the time of supplying reason which means that the AO assumed jurisdiction to make reassessment before allowing appellant to file objection to assumption to jurisdiction. Hence, assuming jurisdiction by issuing notice 143(2) before allowing appellant to file objection and subsequent

disposal off the same is nothing but non-application of mind by the AO to the legal requirements of the law. It may be noted that the Hon'ble Gujarat High Court has provided guidance to tax authorities in case of Sahkari Khand Udyog Mandal Ltd vs ACIT 370 ITR 107 (Guj) held that AO must provide suo moto reason to the assessee within 30 days of filling of return of income and the assessee must file objections within 60 days and thereafter the AO can take 4 months time in disposing off objection. This guidance of the Hon'ble Gujarat High Court has been approved by the Hon'ble Supreme Court wherein the SLP of the department has been dismissed. Therefore, issue of notice u/s 143(2) at the time of supply of reasons amounts to denial of opportunity to the appellant to take legal remedy available under the Act of filling of objection on assumption of jurisdiction. To support the above proposition of law, reliance is placed in the decision of Mastech Technologies Pvt Ltd vs Dy CIT WP@ 2858/2016 dt: 13.07.2017 (Del) where in para 30 of the judgment held that issuance of notice u/s 142(1) 1143(2} before supplying the reasons and considering petitioner objection and passing reasoned order thereon does not meet requirement of law. Such legal infirmity leads to inevitable invalidation of all the proceedings that took place pursuant to notice u/s. 148. Recently, the co-ordinate of Hon'ble Delhi ITAT in case of M/s R N Khemka Enterprises P Ltd vs ITO in ITA No. 7244/Del/2019 dt: 12.08.2021 has quashed the reassessment proceedings on similar grounds. Kindly refer para's 33 to 35 at internal page 51-53 therein.

V. Mechanical Approval Granted by Pr CIT

The exercise of approval u/s 151(1) of IT Act by the Ld Pr CIT, Delhi-8, New Delhi appears to have been ritualistic and formal rather than meaningful, which

goes against the rationale of the safeguard of approval by a higher- ranking officer provided in the Act. Inconsistencies and omissions pointed in preceding para's in support of ground on non-application of mind are the glaring mistakes committed by the AO and non-pointing out such omissions by the approving authority and resulting non-correction of the same, before the approval was accorded, shows that the said authority have acted mechanically in granting sanction u/s 151 of the Act. Such mechanical approval was found to be fatal for validity of the reassessment proceedings as decided by the co-ordinate Hon'ble Delhi Bench in the RMP Holdings P Ltd ITA No.7243/Del/2019 dt: 31.07.2020 wherein it was held that both AO and approving authorities have acted mechanically ignoring the glaring mistakes in the reason recorded showing non application of mind by the reason recording authority where the decision of Delhi High Court in the case of Sonia Gandhi 407 ITR 594 (Del) has been distinguished. Reliance is also placed on the decision of M/s Synfonia Trade/inks P Ltd vs ITO W.P.(C) No. 12544/2018 dt: 26.03.2021 (Del) has quashed the reassessment proceeding based on mechanical approval granted by approving authority

Further, reliance is placed on the following authorities:

- a. Chhugamal Rajpal vs. S.P. Chaliha & Ors. - 79 ITR 603 (SC);*
- b. Arjun Singh vs Asstt. Director of Income Tax (M.P.) reported in (2000) 246 ITR 363 (MP);*
- c. CIT vs M/s S.Goyanka Lime and Chemicals Ltd 231 Taxman 0073 Dated 15.10.2014 (MP) approved by Hon'ble Supreme Court in 64 taxmann.com 313 (SC).*
- d. Pr. CITvs. N. C. Cables Ltd 391 ITR 11 (Del)*

e. Maruti Clean Coal & Power Ltd Vs ACIT WP(T) No.346 of 2017 Dated 03.01.2018 (Chattisgarh High Court);

f. German Remedies Ltd. vs. Dy. CIT (2006) 287 ITR 494 (Bom);

g. United Electrical Company PLtd. vs. CIT & Ors(2002) 258 ITR 317(Del)";

h. Central India electric Supply Co. Ltd. Vs .ITO, 333 ITR 237 (Del);

VI. Assumption of jurisdiction based on invalid issue of notice u/s 148:

From perusal of notice u/s 148 (PB 14), it can be seen that notice u/s 148 has been issued in the name of the artificial juridical entity without addressing the name of incumbent compliant. Therefore, issuance of notice in the name of the company instead of the name of the principal officer of a company makes the notice bad in law as per the ratio of the decision of the Calcutta High Court in the case of Rama Devi Agrawal Vs. CIT reported at 117 ITR 256 [Calcutta] and the decision of the Hon'ble Allahabad High Court in the case of Madan Lai Agrawal Vs. CIT reported at 144 ITR 745 [All]. On similar facts, mentioned in the reason recorded, the Hon'ble ITAT in Shree Balkishan Aggarwal Glass Industries P Ltd in ITA No.1523/Del/2014 in para 22 at page 18 has quashed the reassessment proceeding"

4. Briefly reiterating the written submissions of the assessee, the Id. AR submitted that the invocation of reassessment proceedings based on non-existing provisions of the law clearly shows that it is a clear case of non-application

of mind by the AO and also by the authorities provided the approval u/s 151 of the Act. Reliance in this regard has been placed on the decisions of *Smt. Kalpana Shantilal Haria vs. ACIT W.P (L) No.3063/2017, order dated 22.12.2017 (Bom); Best Cybercity India P. Ltd. vs. ITO (2019) 414 ITR 385 (Del); Omkam Developers Ltd. vs. ITO, ITA No.6862/Del/2018, order dated 11.05.2021; M/s VRC Township P. Ltd. vs. ITO, ITA No.1503/Del/2017 dated 14.10.2020; M/s Maheshwari Roller Flour Mills P. Ltd. vs. ITO, ITA No.4257/Del/2019 dated 17.12.2020; and Madhu Apartments P. Ltd. vs. ITO, ITA Nos.3869-3870/Del/2018, order dated 01.02.2021.* Therefore, the Id. AR submitted that impugned reassessment proceedings and reassessment order may kindly be quashed as proposition rendered by above noted orders including order of coordinate Bench of ITAT Delhi in the case of Omkam Developers Ltd. (supra).

5. The Id counsel also pointed out that the AO has not assumed valid jurisdiction to pass reassessment order u/s 143(3) r.w. section 147 as the notice u/s 143(2) of the Act was issued on the very same date when the copy of the reason was supplied to the assessee, thereby debarring the assessee to file objections to assumption of jurisdiction. The Id. Counsel submitted that recently, the coordinate Bench of the ITAT in the case of *M/s R.N. Khemka Enterprises P. Ltd. vs. ITO in ITA No.7244/Del/2019, order dated 12.08.2021* has

quashed the reassessment proceedings on similar grounds. Therefore, the reassessment proceedings and impugned reassessment order may kindly be quashed. The Id. Counsel also submitted that the Hon'ble High Court of Gujarat in the case of *Sahkari Khand Udyog Mandal Ltd. vs. ACIT, 370 ITR 107 (Guj)* held that the AO must provide suo moto reason to the assessee within 30 days of filing of return of income and the assessee must file objections within 60 days and, thereafter, the AO can take four months time in disposing of objections. He further informed that the SLP filed by the Department has been dismissed by the Hon'ble Supreme Court against the said order of the Hon'ble Gujarat High Court.

6. The Id. AR submitted that in view of the above, the issue of notice u/s 143(2) of the Act at the time of supply of reasons amounts to denial of opportunity to the appellant to take legal remedy available under the Act of filing of objection on assumption of jurisdiction for initiation of proceedings and passing reassessment order. The Id. AR has also placed reliance on the decision of the Hon'ble Delhi High Court in the case of *Mastech Technologies Pvt. Ltd. vs. DCIT in WP(C) 2858/2016, dated 13.07.2017* and submitted that the issuance of notice u/s 142(1)/143(2) before supplying the reasons and not considering petitioner's objection and passing reasoned order thereon does not meet requirement of law.

7. The Id. Sr. DR supported the impugned reassessment order as well as first appellate order and submitted that the mention of non-existent provision of section 147(b) of the Act is a clerical mistake which is curable under section 292B of the Act.

8. On careful consideration of the rival submissions, from the order of the coordinate Bench of ITAT in the case of *Omkam Developers Ltd. (supra)*, I observe that in the similar set of facts and circumstances, similar legal contention was placed before the 'E' Bench which was adjudicated as follows:-

“10. We have heard rival submission of the parties on the issue in dispute raised in the cross appeals. As far as ground No. 1 of the appeal of the assessee is concerned, the assessee has challenged the validity of the reassessment proceeding on the ground that approval for issue of the notice under [section 148](#) of the Act was granted by the Learned Pr.CIT in a mechanical manner and without application of mind and, therefore, reassessment proceeding must be quashed. For adjudicating this issue, the reasons recorded by the Assessing Officer and relevant proforma of approval granted by the Pr. CIT are reproduced as under:

"Reason for the belief that income has escaped assessment in the case of M/s, Omkam Developers Pvt. Ltd. A.Y. 2009-10 (Pan:AAACQ5036B)

*1. Name & Address of the Assessee :
M/s Omkam Developers Ltd, 702, Arunachal*

Building, 19, Barakhamba, Road, Connaught Place, New Delhi

2. Assessment Year 2009-10

3. Financial Year 2008-09

4. PAN AAACO05036B

PUC is a proposal for reopening the case under section 147 of the Act for the A.Y 2009-10 in the prescribed Performa.

The information received from ADIT (Inv), Unit-3(4), Kolkata vide his letter dated ADIT/U-3(4)/FIU-IND/MJS/15-16/411 dated 22.06.2015. wherein it is mentioned that; in the suspicion transaction report of 1000010583 in the name of Manohar Jaykishan Shah was received and it was reported in the I said FIU-IND-STR No. 1000010583 that there were 311 linked entities amongst whom fund transfers were made and in few accounts there were deposits also.

In pursuance to the said report. Bank Statements of various entities have been obtained and on investigation, it has been noticed that Omkam Developers Pvt. Ltd (Pan AAACO5036B) was one of the beneficiaries during the F.Y 2008-09 relevant Assessment Year 2009-10 and the amount brought through I accommodation entries by the above mentioned company is Rs.193.00 Lakhs.

Copy of the Status Report in the case of Manohar Jay kishan Shah in connection with FIU-IND-STR No.1000010583 is reproduced below:-

A. Background :

- One Suspicious Transaction Report was received in the month November, 2009 from FIU-IND. In the said report, 31 related accounts were reported out of which 12 accounts were found to*

be associated, with business of Metal Trading Wherein Mr. ManoharJaykishan Shah is a Proprietor/Signatory. There are other 19 outstation Branch Accounts which are linked/connected to main 12 accounts and having non-related business/not in the same line of business accounts. During the financial year 2008-09, high, value cheques totaling around Rs. 2030 crore are deposit at outstation branches in these accounts. Subsequent to which on realisation of high value credit amount, debit internal transfer transaction of large value and in round figures has been, transacted within connected group/linked accounts. The cumulative turnover In 31 accounts discussed was reported to be 673 crores.

B. VERIFICATION OF FACTS AND INVESTIGATIONS DONE:

To verify in the STR, the Bank Accounts of all 31 accounts mentioned in the STR were requisitioned from the Bank and scrutinized. The 31 Bank accounts- were opened at different, branches of the Development Credit Bank. The following, facts emerged from the scrutiny of Bank Accounts:

I. There were 7 Bank Accounts belonging to 6 entities in which cash of Rs. 15.26 crore was deposited in the F.Y.-2008-09: The cash deposited were swiftly Transferred to other entities through Cheques/RTGS. These-6 entities are proprietorships. The detail is given as per Annexure-C. The funds from other entities through Cheques/RTGS were also received in these accounts. The details of another 21 proprietorships given are STR is as per Annexure-C1.

II. The find from the entities mentioned in Annexure-C and C1 were transferred to a number

of entities which are mostly entities already identified as the companies controlled by the entry operators, few of them have been listed in Annexure-1.

III. The fund was rotated among the entities detailed in Annexure-C, C1 and Annexure-1

IV. There were 6 Bank Accounts Belonging to 6 Companies in which funds were received from mostly entities discussed in Annexure-C, C1 and Annexure-1 and the same was swiftly transferred to the other entities (Mostly Companies). The details of 6 such companies are given in Annexure -5

V. The fund was transferred to the entities which are the real beneficiary of the funds from the companies mentioned in Annexure-S. The details of such, companies are given in Annexure -B.

Modus operandi of providing accommodaton entry

The summons u/s 131 were issued to the individuals and entities mentioned in the STR. The field verification from the inspector was also done. In most of the cases either the summons could not he served or there was no compliance, The facts of immediate source of the beneficiaries being shell companies have already been established and recorded u/s 131 of the [Income Tax Act-1961](#) during the investigation in other cases. The fact as also corroborated by the non-compliance to the summons as well as non-existence of real business of most of the entities mentioned in Annexure-C, C1 and l and S.

Flow Chart of Cash Flow

Cash deposit in proprietorship concerns

*Layering of funds through dummy Proprietorships
and Shell companies*

*Fund transfer to Shell/Paper Company
Fund to the Beneficiaries*

Conclusion

(i) In retrospect it can be rightly conceded that, the beneficiary companies have introduced n cash in primary accounts discussed in Annexure-C and s symbolized by various companies (created for the purpose re-1, Annexure-S) operated by entry operators by entry operators, the unaccounted funds have been entered In the regular books of accounts of the beneficiary companies.

(ii) in view of the above, the total amount which has been transferred to the beneficiaries or the recipient companies from the bank accounts of paper companies during F.Y. 2008-09 is details in Annexure-8.

The A.O. of the all beneficiary (Annexure-B) companies is being appraised of] regarding accommodation entry accepted by the companies in F.Y. 2008-09. Further, A.O. of V concerns listed in Annexure-C, C-1 and S is also being intimated regarding, cash deposit and credit made in different bank controlled by them for taking necessary action.

It appears that assessee M/s Omkam Developers Ltd. has received 'I bogus share capital/premium to the tune of Rs.1.93 Crores. The Income Tax | Returns of the assessee were also examined and noticed that the share premium; of assesses was increased to Rs.81,28,52,000/- in the relevant year from Rs. 17,69,50,000/-in the preceding year.

As discussed in earlier paras, the assessee has obtained such entries through above mentioned modus-operandi, it is actually assessee's own money (cash) which was rotated through such

channel. This cash was out of his unaccounted income.

I have reasons to believe that an amount of Rs.1.93 crores has escaped from the Assessment for the A.Y. 2009-10 which was chargeable to tax. I am also satisfied that on account of failure on the part of the assessee to disclose truly and fully all the material facts necessary for assessment for the j above assessment year, the income chargeable to tax to the tune of Rs.193.00 Lakh as escaped assessment with the meaning of [Section 147](#) of the IT Act 1961

I have perused the information received from the Investigation Wing, Kolkata The Investigation Wing of the Department has sent comprehensive detail comprising inter alia the beneficiary's name, value of entry taken etc.

In the aforesaid case as per record from ITD, return of income was filed on declaring Rs.2,389/- income, it is noticed that the assessee company M/s Omkam Developers Ltd, received accommodation entries to the tune of Rs.1.93,crores during the F.Y. 2008-09 relevant to assessment year 2009-10 from the entry operators as mentioned in the chart above and same was not offered for taxation.

Having perused and considered the information, I have reason to believe that income of the assessment company to the extent of Rs.193 Lakh has escaped assessment for the Assessment Year 2009-10. Therefore, proceedings under section 147 i.e. clause (b) of Explanation 2 of the provisions of [section 147](#) of the I.T. Act, 1961 is proposed to be initiated for the Assessment Year 2009-10.

**I.T.A. No. 4908/Del/2018
AND I.T.A. No. 4907/Del/2018**

As per ITD record, Return of Income has filed on 30.03.2010 at an income of Rs.2,389/- for the A.Y. 2009-10.

Since four years has been expired from the end of the relevant assessment year in this case for the said assessment year, it is therefore I/requested that the reasons recorded above for the purpose of reopening of assessment is put up for kind satisfaction of Pr.CIT, Delhi-7, New Delhi in terms of proviso, to Section 151 of the Income Tax and approval for issue of notice u/s 147 may kindly be accorded."

M/s Omkam Developers Ltd.
A.Y. 2009-10

**FORM OF RECORDING THE REASONS FOR INITIATING PROCEEDINGS U/S 147 OF THE I.T. ACT
AND FOR OBTAINING THE APPROVAL OF ADDL.CIT./CIT**

1	Name & address of the assessee	M/s OMKAM DEVELOPERS LTD., 702, ARUNACHAL BUILDING, 19, BARAKHAMBA ROAD, CONNAUGHT PLACE, NEW DELHI-110001
2	Permanent Account No.	AAACOS0368
3	Status	LTD. COMPANY
4	Circle/Ward	WARD 19(1), NEW DELHI.
5	Assessment year in respect of which is it proposal to issue notice u/s 148.	2009-10
6	Quantum of income which has escaped assessment	Rs. 193.00 LAKH
7	Whether the provision of Section 147(a) or 147(b) applicable or both the sections are applicable	147(b) of the Act.
8	Whether the assessment is proposed to be made for the first time. If the reply is in affirmative, Please state: (a) Whether any voluntary has already been filed, and (b) If so, The date of filing the said return.	Yes Yes 30.03.2010
9	If the answer to item No.8 in the negative, Please state: (a) The income originally assessed (b) Whether it is case of under assessment, assessment at too low a rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation.	NA NA Under Assessment
10	Whether the provisions of sec. 150(1) are applicable. If the reply is in affirmative, the relevant facts may also be brought out so that provisions of section 150(2) would not stand in the way of initiating proceedings u/s 147.	No
11	Reasons for the belief that income has escaped assessment.	As per order sheet dated Income Tax Officer Ward-19(1), New Delhi
12	Whether the Addl. CIT is satisfied on the reasons recorded by the ITO that it is a fit case issue of notice under section 148.	Add. CIT, Range-19, New Delhi
13	Whether the Pr. CIT is satisfied on the reasons recorded by the ITO that it is a fit case issue of notice under section 148.	Pr. CIT, Delhi-7, New Delhi

10.1 On perusal of the proforma for the approval granted by the PCIT, it is evident that in the relevant column No.13 for satisfaction of the Pr.CIT, he has only mentioned "yes". No other information is available on record or provided by the ld. DR, which could establish application of mind by the CIT, while granting sanction/approval for issue of notice u/s 148 of the Act. No other evidence was produced as to substantiate that matter was ever discussed between the Assessing Officer or Addl. CIT and the Learned Pr.CIT for arriving at satisfaction of Learned Pr.CIT on the reasons recorded by the Assessing Officer. Even no evidences whether Ld PCIT examined the material relied upon by the Ld AO for reopening, was produced before us. In similar circumstances, Hon'ble Delhi High Court in the case of NC Cable Ltd (supra) held that [section 151](#) of the Act clearly stipulates that Learned CIT, who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The Hon'ble High Court further observed that the mere appending of the expression 'approved' says nothing. It is not as if the CIT has to record elaborate reasons for agreeing with the noting put up but at the same time, satisfaction has to be recorded of the given case, which can be reflected in the briefest possible manner. The Hon'ble High Court further observed that in that case the exercise appeared to have been the ritualistic and formal rather than meaningful, which is the rationale for safeguard of an approval by a high-ranking officer. Thus, in the instant case, mere mentioning of "yes" for approval, without any other evidence of application of the mind, amounts to mechanical approval by the Learned Pr.CIT.

10.2 Further in Column No. 7 of the proforma, the section for invoking reassessment has been recorded as 147(b) of the Act. During the relevant period, [section 147\(b\)](#) was no longer in existence. This shows that the Ld. AO has filed the Proforma in mechanically manner and Ld. CIT has also approved the same mechanically. In the case of Madhu Apartment Private Limited vs. ITO, ITA.Nos.3869 & 3870/Del./2018 wherein the Tribunal, Delhi Bench, vide order dated 01/02/2021 held as under:

"7. After considering the rival submissions, we are of the view that the issue is covered by the Order of ITAT, Delhi G-Bench, Delhi in the case of VRC Township Pvt. Ltd.,

Delhi (supra) in which reopening of the assessment in identical circumstances was held to be bad in law and sanction accorded by the Sanctioning Authority was also found invalid, therefore, reopening of the assessment was quashed. In the present case, the Learned Counsel for the Assessee has pointed-out that assessee has raised this issue before the Ld. CIT(A), but, he has rejected the submissions of the assessee holding that [Section 147\(b\)](#) as mentioned in the reason and Format is a typographical human error which is curable under [section 292B](#) of the I.T. Act, 1961. This issue is also considered in the Order of VRC Township Pvt. Ltd., (supra) following the decision of Hon'ble Bombay High Court in the case of Kalpana Shantilal Haria vs. ACIT [2017] 100 CCH 165 (Bom.). Following the same reasons for decision, we set aside the Orders of the authorities below and quash the reopening of the assessment in both the assessment years under appeals. All additions stand deleted. Accordingly, appeals of the Assessee are allowed."

10.3 In the instant case before us, also the Learned DR has argued that the mistake of noting section under [section 147\(b\)](#) of the Act for reassessment proceeding is a clerical mistake, however, the Tribunal in the above decision has rejected the said contention and quashed reassessment proceeding on the ground of non-application of mind while granting approval for reopening of the assessment under [section 151](#) of the Act.

10.4 Respectfully, following the decision of the Hon'ble Delhi High Court in the case of NC Cable Ltd (supra) and decision of the Tribunal in the case of Madhu Apartment Pvt. Ltd (supra), we quash the reassessment proceeding in the case of the assessee.

10.5 Since we have quashed the reassessment proceeding while adjudicating ground No.1 of the appeal of the assessee, no additions made by the Assessing Officer could be sustained. As far as other grounds of appeal of the assessee challenging

*validity of reassessment proceeding are concerned, same are rendered merely academic in nature and, therefore, we are not adjudicating upon those grounds. As ITA No.6862/Del./2018 & 7507/Del./2018 far as grounds of the parties challenging merit of the addition are concerned, same are rendered infructuous in view of the reassessment proceeding already quashed by us.
11. In the result, the appeal of the assessee is allowed, whereas appeal of the Revenue is dismissed.”*

9. In the present case, the copy of the form for recording the reason for initiation of proceedings u/s 147 of the Act and for obtaining the approval u/s 151 of the Act is available at page 18 of assessee’s paper book, the Id. Sr. DR did not dispute that in the column No.7, the AO mentioned that the provision of section 147(b) of the Act is applicable. For the sake of completeness, the said format is being reproduced below:-

Form for recording the reasons for initiating proceedings u/s 148 and for obtaining Approval of the Pr. Commissioner of Income Tax, Delhi-8, New Delhi.

1.	Name & Address of the Assessee	: M/s Shyam Products Pvt.Ltd, 206, 1, Bahadurshah Zafar Marg New Delhi
2.	PAN	: AADCS0943E
3.	Status	: Company
4.	Ward	: ITO, Ward-23(3), N. Delhi
5.	Assessment Year in respect of which it is proposed to issue notice u/s 148	: 2010-11
6.	The quantum of income which has escaped assessment.	: Rs. 45,00,000/-
7.	Whether the provisions of section 147 (a) or 147 (b) applicable or both the sections are applicable.	: Section – 147 (b)
8.	Whether the assessment is proposed to be made for the first time. If the reply is in the affirmative please state (a) Whether any voluntary return had already been filed and (b) If so, the date of filing the said return.	YES, YES 23.7.2010
9.	If the answer to item no. 8 is in the negative, please state. (a) The income originally assessed (b) Whether it is a case of under assessment, assessment at too low a rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation.	: NA
10.	Whether the provisions of Section 150 (1) are applicable. If the reply is in affirmative, the relevant facts may be stated against item no. 11 and it may also be brought out that the provisions of section 150 (2) would not stand in the way of initiating proceedings u/s 147	: No
11.	Reasons for the belief that income has escaped assessment.	: As per Annexure

ITO, Ward-23(3),
New Delhi

12.	Whether the Addl.CIT, Range-23, New Delhi is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s 148.	: I am satisfied that there are reasons to believe that there is material facts regarding the assessment. Recommended grant approved to issue u/s 148.
13.	Whether the Pr. Commissioner of Income Tax, Delhi-8 is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s 148.	: I am satisfied that material facts are not to be taken into account. To failure of material facts of preceding chapters against notice u/s 148 in approval.

Pr. CIT, DELHI-8, NEW DELHI
 21/8/17

10. Therefore, it is clear that the AO, in the first page of reasons (supra) mentioned in column 7 that provisions of section 147(b) is applicable which is non-existent in the statute book for AY 2010-11. This apparently shows non-application of mind by the AO while filling proforma in a mechanical manner and the Id. ACIT and Ld. PCIT also approved the same in a mechanical manner. So far as the contention of the Id. Sr. DR that this defect is curable u/s 292B of the Act is concerned, this contention was decided by the ITAT Delhi Bench in the case of *Madhu Apartments India Pvt. Ltd., ITA No.3869 & 3870/Del/2018, order dated 01.02.2021*, the relevant part of which has already been reproduced in the earlier part of this order since the same was referred to and included in the relevant part of the order of the ITAT in the case of *Omkam Developers Ltd. (supra)*. Therefore, respectfully following the order of ITAT Delhi Bench in the case of *Omkam Developers Ltd. vs. ITO (supra)* and *Madhu Apartments P. Ltd. vs. ITO (supra)*, I hold that the impugned reassessment proceedings and the impugned reassessment order deserves to be quashed and I hold so.”

8. On perusal of the order of the Tribunal for recording the reasons in initiating proceedings under section 148 and for obtaining the approval of the Addl. Commissioner of Income Tax which is placed at page 14 of the paper book in column 7 the provisions of section 147(b) has been mentioned as the provisions applicable for

re-opening the assessment for the assessment year under consideration i.e. 2007-08. This is the identical situation even for the assessment year 2010-11. Therefore, the decision rendered by the Tribunal for assessment year 2010-11 squarely applies to the facts of the assessee's case for the assessment year 2007-08. Thus, respectfully following the said decision the re-assessment order passed under section 143(3) read with section 147 of the Act dated 20.03.2015 is quashed and ground No. 1 of grounds of appeal of the assessee is allowed.

9. Since the appeal of the assessee is allowed on technical ground No. 1 i.e. assumption of jurisdiction by the Assessing Officer in re-opening, all other grounds which are taken by the assessee technically on merits are not dealt with at this stage as the adjudication of these grounds renders academic.

10. In the result, appeal of the assessee is partly allowed as indicated above.

I.T.A No.4907/Del/2018 - Assessment Year : 2008-09 :

11. In this appeal the assessee has raised the following grounds :-

“1. The learned CIT(A) has erred on facts and in law in upholding the impugned order of the learned assessing officer which is contrary to law, passed without application of mind and without complying with the procedure and rules, is against equity and justice and facts of the assessee and material on record.

2. The appellant denies his liability to tax as upheld by the learned CIT (A) and determined and computed by the learned

assessing officer and the manner in which it has been so determined or computed.

3. The learned CIT(A) has erred on facts and in law in upholding the validity of reassessment proceedings ignoring the fact that initiation of the proceedings u/s 148 and the consequent order u/s 147 are bad in law as:

a. The initiation of proceedings u/s 148 are contrary to provisions of law.

b. The mandatory procedure laid down in the Act has not been followed.

c. The information has been collected behind the back of the assessee and the assessee was never confronted with the same nor an opportunity provided for cross-examination of Jain brothers, copies of the orders of Jain Brothers and the relevant seized material relied upon has not been provided to the assessee, which is against Law of Natural Justice.

d. The assessment has been made on the basis of conjecture & surmises without any cogent evidence.

4. The learned CIT(A) has erred on facts and in law in upholding the addition of Rs.35,00,000/- u/s.68 on account of share capital, treating the same as an accommodation entry.

5. The learned CIT(A) has erred on facts and in law in upholding the addition of Rs.70,000/- u/s 69C as alleged commission paid for obtaining accommodation entries.

6. The learned CIT(A) has erred on facts and in law by not adjudicating ground of initiation of penalty proceedings u/s 271(l)(c) without any material on record.”

12. Facts in this case are identical to the facts in the case of Shyam Products Private Limited. Therefore, the decision taken in Shyam Products Private Limited applies mutatis mutandis of the appeal of the assessee. Thus, the re-assessment order under

section 143(3) read with section 147 of the Act dated 28.03.2016 is quashed and Ground No. 1 of grounds of appeal of the assessee is allowed.

13. Since the appeal of the assessee is allowed on technical ground No. 1 i.e. assumption of jurisdiction by the Assessing Officer in re-opening, all other grounds which are taken by the assessee technically on merits are not dealt with at this stage as the adjudication of these grounds renders academic.

14. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on : 31/01/2023.

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 31/01/2023.

MEHTA

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1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

I.T.A. No. 4908/Del/2018
AND I.T.A. No. 4907/Del/2018

Date of dictation	30.01.2023
Date on which the typed draft is placed before the dictating member	30.01.2023
Date on which the typed draft is placed before the other member	31.01.2023
Date on which the approved draft comes to the Sr. PS/ PS	31.01.2023
Date on which the fair order is placed before the dictating member for pronouncement	31.01.2023
Date on which the fair order comes back to the Sr. PS/ PS	31.01.2023
Date on which the final order is uploaded on the website	31.01.2023
Date on which the file goes to the Bench Clerk	31.01.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	