

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Shri Challa Nagendra Prasad, Judicial Member

&

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2455/Del/2019 : Asstt. Year: 2010-11

Sanyukta Developers P. Ltd., Flat No. 1406 A, 14 th Floor, Building No. 89, Hemkunt Chamber, Nehru Place, New Delhi 110019 (APPELLANT)	Vs	ITO, Ward 22(3), New Delhi (RESPONDENT)
PAN No. ACZFS 9327 B		

Assessee by : Ms. Gunjan Jain, CA

Revenue by : Sh. Vivek Vardhan, Sr.DR

Date of Hearing: 30.01.2024

Date of Pronouncement: 06.02.2024

ORDER

Per Dr. B. R. R. Kumar:-

The present appeal has been filed by the assessee against the order of Id. CIT(A)-8, New Delhi dated 16.01.2019.

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

"1. Under the facts and circumstances of the case, the reassessment proceedings initiated by the Id. A.O. are barred by limitation of 4 years as contained in first proviso to section 147 of the act as the assessee was assessed u/s 143/ 147 vide orders dated 29.01.2014 wherein the assessee had disclosed fully and truly all material facts during the course of the said assessment.

2. Under the facts and circumstances of the case, the re-opening of already concluded assessment by the Id. Assessing Authority is grossly injudicious, unwarranted, against the facts of the case and bad at law as the said re-opening was merely

based on change of opinion which is not permissible as per law.

3. Under the facts and circumstances of the case, the re-assessment proceedings u/s 147 of the Act by the Id. Assessing Authority is bad at law as the said proceedings has been initiated without any independent application of mind.

4. Under the facts and circumstances of the case, the re-assessment order passed u/s 147 of the Act by the Id. Assessing Authority is bad at law as the order is passed without providing an opportunity to cross examine the statements on which Id. A.O. has relied upon.

5. Under the facts and circumstances of the case, the orders passed under section 147 by the Id. Assessing Authority is arbitrary, injudicious and bad at law as the orders has been passed by the Id. Assessing Authority without appreciating the facts of the case.

6. Under the facts and circumstances of the case, the Id. Assessing Authority has erred in making additions to the returned income amounting to Rs. 2,34,60,000/-u/s 68 of the act as unexplained cash credits which is arbitrary, injudicious and against the facts of the case.

7. Under the facts and circumstances of the case, the Id. Assessing Authority has erred in making additions to the returned income amounting to Rs. 2,34,60,000/-u/s 68 of the act on the basis of surmise and conjecture as there is no specific evidence against the assessee.

8. Under the facts and circumstances of the case, the Id. Assessing Authority has erred in making additions to the returned income amounting to Rs. 2,34,60,000/-as the evidence is not conclusive and general in nature and no opportunity to cross examine was provided to assessee.

9. Under the facts and circumstances of the case, the addition u/s 68 is not warranted as assessee has proved all the three aspects i.e. identity, genuineness and creditworthiness.

10. Under the facts and circumstances of the case, Id. Assessing Authority has grossly erred in making addition of 4,60,000/- of the Act without mentioning under which section such addition is made.

11. Without prejudice to the above, the addition of 4,60,000/- on account of commission cannot be made u/s 69C as unexplained expenditure."

3. The case of the assessee was assessed u/s. 143(3)/ 147 of the Income Tax Act, 1961 by the ITO, Ward-7(3) New Delhi completing the assessment making additions on account of expenses and after duly examining the receipt of Rs.230,00,000/- from five companies mentioned below based on the reasons recorded which as under:

"Opening of first Reassessment Proceedings Date 28.03.2013

REASONS FOR ISSUE OF NOTICE U/S 148 OF THE I.T.ACT

The DIT(INV.), Delhi his letter No. F.No. DIT(INV)-I/u/s/148/2012-12/196 dated 12/03/2013 informed that a search and seizure action was taken in the business and residential premises of Shri Surender Kumar Jain (Entry Operator) group of cases and particulars of accommodation entries provides to large number of companies through bogus & fictitious companies controlled by Sh Jain was detected. It has been reported that M/s Sanyukta Developers Pvt. Ltd. has obtained Rs. 2,30,00,000/- during the F.Y. 2009-10 from five companies namely as under controlled by said Sh S.K.Jain. It was discovered that one Sh Y. Sharma acted as a broker/middleman these transactions are on paper marked A-15-16 at page-71 & 35 mentioned in the list enclosed as annexure-"A" of the said report. These paper companies did not have genuine business activities as disclosed in the search.

S.No	Name of the Company	Name of Bank	Amount	DD/Cheque No./Dt.
1	M/s Attractive Finlease Pvt. Ltd	Axis Bank	40,00,000/-	P.O. No. 031278 dated 22/12/2009
2.	M/s Shalini Holdings Ltd	Axis Bank	40,00,000/-	P.O. No. 031279 dated 22/12/2009
3.	M/s Victory Software Pvt Ltd.	Axis Bank	50,00,000/-	P.O.No. 031741 dated 19/01/2010
4.	M/s Aasheesh Capital Services Pvt. Ltd	Axis Bank	50,00,000/-	P.O.No. 031739 dated 19/01/2010
5.	M/s Zenith Automotive Pvt Ltd.	Axis Bank	50,00,000/-	<u>P.O.No.</u> 031742 dated 19/01/2010

I have therefore, reason to believe that the taxable income of Rs. 2,30,00,000/- represented by Share Application Money/ Loans/ Advance/ Share Capital from the companies as aforesaid escaped assessment due to failure of the assessee company to disclose facts truly & fully necessary to make assessment for A.Y. 2010-11.

In view of the findings of the investigation report, the case of the assessee company needs scrutiny, in view of the fact the above entries have been obtained

through the entry operator, investigated and reported by the investigation wing. I therefore have reasons to believe that this amount of Rs. 2,30,00,000/- represents income of the assessee chargeable to tax and which has escaped assessment for A.Y. 2010-11. In order to verify the genuineness of these transaction hereby reopen the case u/s 147 of the I.T.Act, 1961."

4. Again on 03.03.2017 notice u/s. 148 was issued with the prior approval of the Id. PCIT-8, New Delhi taking into consideration of the information received from the SFIO, New Delhi. The reasons are as under:

"Reasons recorded in the case of M/s Sanyukta Developers Pvt. Ltd. AY 2010-11 in respect of initiation of re-assessment proceedings u/s 147/148 of the Income- tax Act, 1961:-

In this case, very vital and credible information relating to evasion of income taxes has been received from the following three sources:-

- (i) Detailed Report of the Director of Income Tax (investigation), Investigation Wing of Income tax Department, Delhi after the search and seizure action was carried out u/s. 132 of the Income Tax Act, on 14.09.2010, at the premises of Shri S. K. Jain, his family members and associated persons/entities. This report meticulously establishes a case of money laundering and tax evasion against these person to the tune of Rs. 3,800 crores duly supported by relevant primary and secondary documents.*
- (ii) Copies of the important documents including hand written cash books, names of intermediaries, amounts of cash received from intermediaries and the amounts of accommodation entries given to the beneficiaries including cheque nos. name of entry the residence and offices of Shri Surender Kuma Jain brothers, etc., seized from the resident and offices of Shri Surendra Kumar Jain and his family members and office premises of related persons /entities.*
- (iii) Detailed investigation report of the Serious Fraud Investigation Office (SFIO) of the Ministry of Corporate Affairs, Govt. of India dated 31.3.2016 (Report of 418 pages supported by thousands of pages of related documents, statements, supporting extracts from seized documents etc.).*

This report has established a case of large scale money laundering to the tune of Rs. 3,800 Crores against these persons/groups, large scale tax evasion, fraud, cheating, criminal conspiracy and violation of various statutes/laws and has recommended strong action to the SIT on Black Money appointed by Hon'ble Supreme Court of India, RBI, Enforcement Directorate (ED), SEBI, Income tax Department, ICAI, ICSI, Bar Council of India and other agencies.

2. Detailed report of the SFIO was received from the SFIO, Ministry of Corporate Affairs, Govt. of India dated 31.3.2016. The report has been examined carefully and its contents, annexures, statements and other documents have been perused. These have also examined with reference to the return filed by the assessee and earlier proceedings u/s 147/148 of the Income tax Act, 1961. The information received from investigation wing was not considered while finalizing the assessment and the assessment was completed at returned income.

2.1 Report and extracts of important documents including hand written cash books, names of intermediaries, amounts of cash received from intermediaries and the amounts of accommodation entries given to the beneficiaries including cheque nos., names of entry providing entities controlled by Jain brothers, etc., seized from the residence and offices of Shri Surender Kumar Jain and his family members and office premises of related persons/entities, was also received from the office of the 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 Sh. Surendra Kumar Jain group of cases (herein after known as Entry operator wherein after scrutiny of incriminating documents seized during course of search and subsequent post search enquiry, it has been noticed that the said group was involved in providing accommodation entries to the persons which were named in the report. The assessee company also figures in the list as one of the beneficiaries of the accommodation entries provided by the group.

2.2 As per the report of Investigation Wing, name of various companies/ persons used by the group to provide accommodation entries as well as list of beneficiary companies, firm and other entities were identified after extensive verification of documents seized as a result of search operation conducted against Sh. S.K. Jain

Group (Entry Operator). The incriminating document seized during search (date of search 14.09.2010) revealed that accommodation entries were obtained by way of share capital/ share premium/ loans. The details of accommodation entries viz. amount received by beneficiary companies, the cheque/PO number, the name of company engaged in providing accommodation entries, the mediator/ middle man, bank etc. noted from scrutiny of the seized documents have been tabulated and enclosed with the report.

2.3 In the appraisal report of Sh. Surendra Kumar Jain Group, has summarized evidences which have been summarized which had proved that Sh. Surendra Kumar Jain and his brother Sh. Virendra Jain were engaged in the business of providing accommodation entries. The modus operandi for providing accommodation entries in lieu of cash as adopted by the Jain Brothers have been discussed below in brief:

(i) During the course of search proceedings in the Sh. S.K. Jain Group it was found that a number of companies were running from the residential as well as other premises related to Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain. However, all the books of accounts and other relevant papers of these companies were found at the residence of Sr. Surendra Kumar Jain and Sh. Virendra Kumar Jain itself and no documents was found at the other addresses which were mentioned in the statutory records of these companies. The above facts and result of post search enquiries have revealed Shri Surendra Kumar Jain and Shri Virendra Kumar Jain companies are controlled by through dummy directors / Principal officers of these companies.

(ii) The seized records include blank unsigned as well as blank signed cheque book, acknowledgement of filing of return of these companies, user ID and password of all companies of e-filing of their return, bank account opening and closing letters, authorization letters for attending assessment proceedings, book of account in tally format as well as format for filing the return, proof of use of mobile numbers of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain in bank account opening forms where option of mobile banking was required. The companies were used in business of providing accommodation entries:

(iii) The investigation wing has listed 99 companies which were controlled by S.K. Jain Group.

2.4 The investigation wing has sent relevant details of accommodation entries to the Assessing Officers having jurisdiction over beneficiaries which had obtained accommodation entries from S.K. Jain Group. The report has also included the name of companies controlled by S.K. Jain and used for providing accommodation entries to the beneficiaries. Scanned copy of the relevant documents seized from S.K. Jain Group wherein the relevant details of accommodation entry taken by the beneficiary from S.K. Jain Group Company were recorded were also sent along with the report.

2.5 A careful scrutiny of the details and copies of seized documents have revealed that the assessee company has taken accommodation entry amounting to Rs. 2,30,00,000/- in the F.Y. 2009-10 relevant to A.Y. 2010-11 from S.K. Jain Group Companies. These transaction were found recorded at various documents seized from S.K. Jain Group Company

3. Details of analysis of information received and collected material:-

3.1 I have carefully examined the above referred to information as received from investigation wing along with the return of the assessee for A.Y. 2010-11. It is evident from the return that assessee has received share application money/loan amounting to Rs.2,30,00,000/- during the year under hen this received about the receipt of accommodation entries by the amounting to Rs. 2,30,00,000/- in form of share application money/loan.

3.2 I have carefully examined the report of investigation wing along with details of transaction as recorded in the seined documents which revealed following important facts:-

i. That passbooks and cheque books of approximately 200 persons/ firms/ companies engaged in the business of providing accommodation entries along with details of beneficiary companies/ entries were found and seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar.

ii. Undated blank cheque and signed by entities engaged in providing accommodation entries were also seized from custody and control of Jain.

iii. That computer hard discs seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain contained confidential details like user name, passwords and IDs of the various companies engaged in providing accommodation entries required for filing of e-returns of these companies, authority letter of these companies authorizing to represent these companies in various Govt. Department. These companies were used to provide accommodation entries of beneficiary including assessee company.

iv. That details of funds transferred through cheque / RTGS/pay order to various entities / persons through these dummy companies maintained by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain in excel sheets found and seized during the course of search on them.

v. That maintenance of books of accounts in tally format as well as in the format required for preparing Income Tax Return of these companies in the computer Hard Discs found and seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain.

vi. That daily cash books, balance sheet and cheque books found and seized from Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain wherein details of cash received from different beneficiary companies/ persons through various middleman/ agents in lieu of accommodation entries provided to them on different dates have been recorded.

vii. That one of the mediators Sh. Rajesh Aggarwal admitted that he arranged accommodation entries for a group through a person named Sh. Ravinder Goel through various companies directly controlled by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain and also accepted the fact that he knew since long that Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain are engaged in the business of providing the accommodation entries in lieu of cash charging a certain amount of commission for the same.

viii. That these dummy companies are running their activities from the residential and the other premises of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain.

ix. *That existence of third party correspondence with these companies in the custody of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain have been recovered from S.K. Jain Group Company.*

x. *That S.K. Jain/ Virendra Jain are / were director in many of these companies presently or at one point of time in the past.*

It is proved from above facts that all the relevant documents pertaining to conduit companies/firm were found in custody and control of Shri S.K. Jain

3.3 It has been further noticed that out of 99 companies controlled by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain, used for providing accommodation entries a large number of companies were registered at following common addresses:

(i) 106, Palco House, T-10, Main Patel Road, Patel Nagar, Delhi (12 companies).

(ii) 3198-15, 4th Floor, Gali No.1, Sangatrashan, Paharganj, New Delhi (14 companies).

(iii) 209, Bhanot Plaza, 3, D.B. Gupta Road, Paharganj, New Delhi. (11 companies).

4. *In order to verify the genuineness and the existence of these companies at the above mentioned addresses, a simultaneous survey action 133A of the 1.1. Act, 1961 was also carried out on 14.09.2010, on above referred to address by officers of investigation wing of the department which resulted following facts:*

a. On the address, 106, Palco House, T-10, Main Patel Road, Patel Nagar, Delhi, the survey party found only one person named Sh. Mukesh Kumar, S/o Sh. Satyender Kumar, R/o Village Guzera.

Distt. PauriGadhwali in this premises. He deposed before the survey party that his employer and owner of that place is one Sh. Virendra Jain R/o somewhere in Rajender Nagar, Delhi and provided his telephone No. as 9891095232. It was already proved from the call records that this telephone number pertained to Sh.

Virendra Jain. resident of 221/, New Rajinder Nagar, New Delhi. He also disclosed that Sh. Virendra Jain used to visit the place once in a while. Sh.

Mukesh Kumar also told that no books of account of companies registered on this address was available in the premises i.e. 106, Palco House, T-10, Main Patel road, Patel Nagar, Delhi.

b. During the course of the survey at premise no. 3198-15, 4th Floor, Gali No. 1, Sangatrashan, Paharganj, New Delhi, it was found that this premise was a small room, which was incapable of accommodating so many companies and persons. Books of accounts and document of companies registered at this address was not found.

c. At the third premises 209, Bhanot Plaza, 3, D.B. Gupta Road, Paharganj, New Delhi, there was single room office occupied by one Sh. Jaikishan Tikku S/o late Sh. Prem Nath Tikku, who was running his courier business from there in the name and style of M/s Linkers Couriers since Aug. 2006. Mr. Tikku had told the survey team that he was a tenant of Sh. Surendra Kumar Jain and was paying him monthly rent of Rs. 3,000/- in cash every month.

d. It is evident from the findings of the survey that the companies controlled by Shri S.K. Jain having registered office at the above mentioned three addresses, did not exist at those addresses. Neither books of account, and document relating to business nor was employee of these companies found at those addresses. From a single address a number of companies were registered as well as this address was also declared as the residential address of various directors of different companies and partners/ proprietors of various firms engaged in providing accommodation entries. As mentioned above, during the course of survey operation at these addresses, the premises were found to be very small dwelling units.

5. I have taken note of another fact that was highlighted by investigation wing that during the course of post search enquiries they had obtained the bank details of companies of S.K. Jain Group for example account opening forms, introducers' form and statement of accounts etc. for last few years. It was pointed out that in some cases where the option of mobile banking was exercised, the mobile numbers of either of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain

were provided in the account opening forms of those specific companies/firms/persons. Some of these bank accounts as illustration are mentioned in the following table. :-

Name of the Bank	Account No.	Name of the company	Mobile No.	Persons to whom this number belongs
Axis Bank	224010200005906	Eagle Infratech Pvt. Ltd	9891095232	Virendra Jain
Axis Bank	224010200007160	Kailash Textiles	9891095232	Virendra Jain
Axis Bank	223010200020846	Mani Mala Delhi Properties Pvt. Ltd.	9891095232	Virendra Jain
Axis Bank	224010200005890	Singhal Securities Pvt. Ltd.	9310395234	Surendra Kumar Jain
Axis Bank	224010200007016	Roshal Lal Lalit Kumar & Co.	9310395234	Surendra Kumar Jain
Axis Bank	224010200005845	Finage Leasing & Finance Ltd	9310395233	Surendra Kumar Jain
Axis Bank	223010200012014	Mani Mala Delhi Properties Pvt. Ltd.	9310395235	Surendra Kumar Jain
Axis Bank	224010200006989	Erode Clothing Empire	9310395235	Surendra Kumar Jain

5.1 The above facts prove beyond doubts that the 200 odd entities, data pertaining to which were found and seized from the premises of S.K. Jain Group, were controlled and used by Shri S.K. Jain his brother Shri Virendra Kumar Jain for providing accommodation entries.

6. It is also noticed from the following finding as recorded in the report of investigation wing that incriminating documents in the form of hand written cash books were also seized from the residence of Shri S.K. Jain showing the receipts of cash by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain to provide accommodation entries. Finding in this regards may be summarized as under:

a. Cash books seized during search operation were maintained on daily basis to keep a record of their daily transactions of receipts and payments of cash as well as to keep them updated in respect of accommodation entries provided as well as accommodation entries pending in lieu of the cash which they had received. However, the cash transactions which were being recorded by them in hand written cash books were not recorded in their regular books of accounts. To

introduce and channelize this unexplained cash in their books, they have shown the sales of various items including Rice etc., made through the bogus proprietary /partnerships firms directly controlled by them.

b. Thus, the cash received from the recipient parties for providing the accommodation entries was first deposited in the accounts of these: dummy firms/ companies in the disguise of the cash received against the bogus sales, duly shown in the books of accounts. Later, this cash was transferred to different paper companies floated by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain through complex series of transactions, so as to hide the actual sources of funds.

c. As part of well devised modus operandi the reserve & surpluses and the capital account of a specific set of companies were enhanced with the help of the unexplained cash received by Sh. Surendra Kumar Jan and Sh. Virendra Kumar Jain, which was routed to these companies through their dummy concern/ firm/companies. Once the funds of these companies were increased sufficiently, accommodation entries through RTGS/ Cheque/P.O. in the shape of the share capital, share premium, capital gains or loans as per the specific requirement of the recipient clients were provided to beneficiary in lieu of the cash received from them. In this way, the chain for providing an accommodation entry gets completed.

d. The above findings corroborated with the seizure of documents by investigation wing evidencing the above mentioned process used by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain for providing accommodation entry.

7. I have also noted that various specific documents were seized from S.K. Jain Group which established that Sh. SK Jain and Sh. Virendra Jain were engaged in the business of providing accommodation entries by issuing cheque in lieu of cash through several paper companies controlled by them by charging a certain amount of commission. The contents of seized documents are summarized as under:

(a) Pages No. 1 to 13 of the Annexure A-150 found and seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain contained one account in respect of one Sh. Satish Garg for a period spread over to three Financial Years i.e. April 2007 to March 2010. Below the printed table on page no. 2 the consolidated amount of commission on an aggregate amount of

accommodation entries of Rs. 81,67,02,000/- provided to different companies through this above mentioned person Satish Garg was calculated at Rs. 14292285/- @ 1.75%.

(b). Out of this total amount of commission of Rs. 14292285/- on the accommodation entries provided till 31.03.2010 an amount of Rs. 10159000/- was reduced apparently being paid, and an amount of Rs. 342343/- was added to the balance of Rs. 4133285/- recording new before it. Below these calculations three more amounts were recorded against three different dates which were apparently received by Sh. Surendra Kumar Jain and Sh. Virendra kumar Jain apart from the amount of Rs. 10159000/- shown as received till 31.03.2010. The date wise and amount wise breakup of the receipts of Rs 10159000/- is given in a printed table on page no. I of this seized annexure A-150.

8. It is further noted out that Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain kept a meticulous record of cheque/ RTGS(handwritten 'cheque books) issued from the bank accounts of these concerns to various beneficiary parties (in lieu of the cash) that had been regularly received by them over a period time and regularly entered in the cash books maintained by them in their own hand writing.-

9. Summary of evidences relating to the assessee:

9.1 Return of income

9.1.1 The return of income for the assessment year 2010-11 declaring income at Rs. Nil was filed. Thereafter the return was processed under 143(1) of the I.T. Act. Thereafter, the case was reopened u/s 147 of the I.T. act, 1961 but the information received from the Investigation Wing was not taken into consideration while finalizing the assessment order & the income was assessed at returned in case of Rs. 1,91,540/-.

9.1.2 The assessee has declared in its return of income that it has received share capital/loan of Rs. 2,30,00,000/- which matched with the information received from the investigation wing.

9.2 Relevant seized documents:-

9. 2.1 I have also gone through various documents (relevant to the instant case) seized from the premises of Shri S.K. Jain Group during the course of search. These documents have been supplied by the Investigation Wing in the form of scanned copies of seized document in a CD along with the report. It is noted from the perusal of the copy of seized document that the name of the assessee appeared on these documents along with details of accommodation entries amounting to Rs. 2,30,00,000/- from various companies controlled by S.K. Jain Group through intermediary Shri Y. Sharma as is evident from above discussion.

S.No	Particulars of cash book/lodger	Name of the intermediary/ company	Annexure	Page	Amount recorded in cash/cheque issued	Date
1.	Cash Book Ledger Account	Y. Sharma Attractive Fin Lease Pvt. I.td AXIS Bank To Sanyukta Developers Pvt. Ltd	A-16	35	Rs.40,00,000/- PO No. 031278	22/12/2009
2.	Cash Book Ledger Account	Y. Sharma Shalini Holidays Ltd. Axis Bank to Sanyukta Developers Pvt. Ltd	A-16	71	Rs.40,00,000/- PO No. 031278	22/12/2009
3.	Cash Book Ledger Account	Y. Sharma Victory Software Pvt. Ltd. Axis Bank to Sanyukta Developers Pvt. Ltd.	A-15	16	Rs.50,00,000/- Po No.031741	19/01/2010
4.	Cash Book Ledger Account	Y. Sharma Aashcesh Capital Services Pvt. Ltd. Axis to Sanyukta Developers Pvt. Ltd.	A-15	35 back page	Rs.50,00,000/- PO No. 031739	19/01/2010
5.	Cash Book Ledger Account	Y. Sharm Zenith Automotive Pvt. Ltd. Axis Bank to Sanyukta Developers P. Ltd	A-15	35 back page	Rs.50,00,000/- PO No. 031742	19/01/2010

It has been noticed from this table that S.K. Jain Group had received Rs. 2,30,00,000/- from the intermediary Shri Y. Sharma during the period from 01/04/2009 to 31/03/2010 and after that following cheques.

- (i) Rs.40,00,000/-vide P.O.No. 031278 through Axis Bank dated 22/12/2009
- (ii) Rs. 40,00,000/- Vidc P.O.No. 031279 dated 22/12/2009.
- (ii) Rs. 50,00,000/ - Vide PO.No. 031741 dated 19/01/2010.

(iv) *Rs. 50,00,000/- Vide PO. No. 031739 dated 19/01/2010.*

(v) *Rs. 50,00,000/ - Vide P.O.No 031742 dated 19/01/2010.*

were issued through intermediary Shri Y. Sharma through following companies. M/s Attractive Fin Lease Pvt. Ltd., M/s Shalini Holidays Ltd., M/s Victory Software Pvt. Ltd., M/s Aasheesh Capital Services Pvt. Ltd. and M/s Zenith Automotive Pvt. Ltd. through the Axis Bank to the assessee Company. The said information is corroborated with the income tax return of the assessee company and it is found that M/s Attractive Fin lease Pvt. Ltd., M/s Shalini Holidays Ltd., Ms Victory Software Pvt. Ltd., M/s Aasheesh Capital Services Pvt. Ltd. and M/s Zenith Automotive Pvt. Ltd. have made investment in the assessee company to the tune of Rs. 2,30,00,000/- Further, a part of cash was used to issue cheques to the assessee i.e. accommodation entries. The difference in the cash received from intermediary and cheques amounts" issued to the assessee company were on account of the intermediary acting on behalf of many beneficiaries including the instant assessee company.

9.2.3. The return of income filed by the assessee has also been analyzed with reference to the information received from the Investigation Wing and keeping in view the findings of the Investigation Wing on the basis of documents seized during the search operation and post search enquiries, as discussed above. Considering all these material in totality there is enough credible material on record to have a reason to believe that share application money/loan received by the assessee company during the year under consideration are merely a accommodation entries for which the assessee company has paid cash from its coffer and commission thereon.

9.3 Details of examination and enquiry after receipt of information from investigation wing:-

As sequel to the information received from the Investigation Wing, copies of available assessment orders & CIT (A) orders of members of accommodation entry group were obtained from assessment wing for examination.

9.4 Assessment Order in case of Shri S.K. Jain:-

9.4.1 Perusal of the assessment order for S.K. Jain for A.Y. 2005-06 has revealed that after examination of incrimination document seized during search and post search enquiry by the Investigation Wing the AO confronted these evidence to Sh. S.K. Jain and after considering explanation, the AO held that Jain brothers were engaged in the business of providing accommodation entries. Since Shri Jain chose not to explain the source of cash deposits, the entire cash received on unaccounted income and commission of 1.8% on providing accommodation entries were also charged to tax. The relevant portion of the AO's order for A.Y. 2005-06 is re-produced as under for the sake of clarity

"Thus, in view of facts as discussed above, the estimated amount of the commission earned by Sh. Virendra Kumar Jain is calculated @ 1.8% on the entire cash received by for the purpose of providing accommodation entries to the persons/firms/companies from whom such cash was received by them during the different financial years.

The aggregate amount of the cash received by Sh. Virendra Kumar Jain during the different financial years is reproduced year wise in a tabular form along with the average yearly commission income as below:

S.No	Financial Year	Assessment Year	Amount (Rs.)	Average Yearly commission income of the average rate of commission i.e. @ 1.8% of cash receipt
1	2004-05	2005-06	697,521,969	12375395
2	2005-06	2006-07	43558725.58	43558725.58
3	2006-07	2007-08	92924977.73	92924977.73
4	2007-08	2008-09	872355.31	872355.31
5	2008-09	2009-10	156366375	156366375
6	2009-10	2010-11	223800570.6	223800570.6
7	2010-11	2011-12	67454026.2	67454026.2
Total			3798,78,42,911	68,37,81,172.40

To sum up, various documents pertaining to various concerns (Companies as well as Firms) were seized from the premises of Sh. Virendra Jain during the course of search. These seized documents include blank unsigned as well as blank signed cheque books, acknowledgement of filing of returns of these companies, User Ids and password of these companies for e-filing of their returns, Bank A/c Opening &

Closing letters, Authorization letters for attending the assessment proceedings, books of account in tally format as well as in the format required for filing a return, etc. Further, in the preceding paras, it has also been elaborately discussed that how Sh. Virendra Jain have used these companies to undertake various financial transactions to further their activities of providing accommodation entries to various beneficiaries.

Jain Brothers have consistently refused to explain the various documents seized from their premises. It is apparent from seized record that Jain Brothers have been using a large no. of entities for the purpose of accommodation entries.

Jain Brothers have also kept a meticulous record of cheques/ RTGS issued from the bank accounts of these concerns to various beneficiary parties (apparently in lieu of the cash) that had been regularly received by them over a period of time and regularly entered in the cash books maintained by them in their own hand writing".

The assessment orders of subsequent years were passed u/s 153A r.w.s. 143(3) of the Act on similar lines.

9.5 CIT(A)'s Order in case of Shri S.K. Jain

9.5.1 A careful perusal of the order of the CIT(A) in case of Sh. Surendra Kumar Jain (S.K. Jain) for A.Y. 2005.06 to 2011-12 revealed that the CIT(A) not only confirmed the finding of AO that Jain brothers were engaged in providing accommodation entries but had also confirmed the addition on substantiate basis. The relevant portion of the order is re-produced as below:

"The assessing officer has assessed the entire addition u/s. 68 on protective basis in the hands of both Sh. Surendra Kumar Jain and Sh. Virendra Jain and assessed commission income in the hands of Sh. Surendra Jain on substantive basis and in the hands of Sh. Surendra Jain on protective basis, on the ground that Sh. Virendra Kumar Jain has owned up all the seized documents and role of Sh. Surendra Kumar Jain cannot be denied. I do not agree with the decision of the assessing officer Sh. Virendra Jain has after owning up the seized documents has not explained the contents of the seized documents on one pretext or another. The documents were seized from the bed room of both the person Sh. S.K. Jain

and Sh. Virendra Jain. The Assessing Officer himself has mentioned role of both the person in the assessment order. Mobile number of both brothers Sh. Virendra Jain and Sh. S.K. Jain were given to the bank for e-mobile banking of various concerns. Third party during the statement, namely, Sh. Rajesh Agarwal has stated that it is known that Jain Brothers are in the business of entry operation. Seized documents are in the hand writing of Sh. Surendra Kumar Jain. This has not been denied by Sh. Surendra Kumar Jain while recording the statement even after receiving the photocopy of seized documents. Sh. Surendra Kumar Jain is the authorized representative of various concerns used for the purpose of accommodation entries for income tax proceedings. Search warrant was issued in the name of both the brothers. Therefore, in my view, the entire entry operation and seized document belong to both the brothers. Accordingly, addition u/s. 68 and commission income pertains to both the Jain Brothers. Accordingly, addition u/s. 68 and commission income for all assessment years are equally divided between Sh. Surendra Kumar Jain and Sh. Virendra Jain for all assessment years as both the brothers are equally involved in the accommodation entry business and maintaining documents and records unitedly. Accordingly, all the grounds of appeal are here by dismissed in principle. Quantum of addition u/s. 68 and commission income is confirmed on substantive basis. On similar lines the appeal filed by Sh. Virendra Jain for all seven assessment years from A. Y. 2005-06 to A. Y. 2011-12 are also disposed off in ITA ns. 222-228/ 13-14/1373-1379."

9.5.2 It is evident from the above facts that findings of the Investigation Wing were confirmed by the AO and the CIT(A) that Jain Brothers were engaged in the business of providing accommodation entries and earned the commission on provision, accommodation entries. These facts clearly provided that findings of the investigation wing constitute credible information.

10. Reason for formation of belief:

10.1 I have carefully perused and considered the return of income of the assessee, information received from Investigation Wing and SFIO, copies of incriminating documents seized from custody and control of Jain Brothers: copies of assessment order and appeal order as discussed along with evidences related to the assessee and have reached the following conclusion:

i. That S.K. Jain Group was engaged in the business of providing accommodation entries to beneficiaries in lieu by entities controlled by them in cash.

ii. During the course of search operation and S.K. Jain Group various incriminating documents were been seized which showed that all the companies/entities controlled by the group do not have any known business activities and lack of independent existence as a separate entity and were a part of the group of companies engaged in providing accommodation entries.

iii. The above conclusion was corroborated with the following evidences found and seized during the course of search from their custody and control S.K. Jain Group:-

- Seizure of passbooks and/or cheque books in the name of approx. 200 persons/firms/companies i.e. entry provider companies.*
- Computer hard disks containing confidential details namely user name, password, id of various companies etc.*
- Documents containing the details of funds transferred through cheque / RTGS/pay order to various entities/ persons through these entries provider.*
- Seizure of daily cash books wherein details of cash received from by beneficiary companies/ persons through various middlemen/agents by Jain Brothers in lieu of accommodation entries provided to beneficiary on different dates.*
- That entry provider companies were running their activities from the residential and the other premises of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain through entry provider companies.*
- That third party correspondence with entry provider companies were seized from the custody of Sh. Surendra Kumar Jain and through entry provider companies.*
- That third party correspondence with entry provider companies were seized from the custody of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain.*
- That S.K. Jain / Virendra Jain and there close associates were directors of these entry provider companies during relevant but different time period.*

•Seizure of documents had revealed that commission income were earned by Jain Brothers and mediator.

iv. It was further proved that evidence relating to all the steps involved in providing accommodation entries by entry provider companies in lieu of cash payment to Jain Brothers on charging commission were seized from custody and control of Jain Brothers.

v. A perusal of documents as seized from the premises of Shri S.K. Jain Group and enclosed along with this note as Annexure has revealed that accommodation entry amounting to Rs.45,00,000/- by the assessee from S.K. Jain Group Companies were noted on the seized documents.

10.2 A careful scrutiny of information received from the investigation wing and subsequent analysis of report of investigation wing, copies of seized document and verification of assessment and appeal order in case of Jain Brothers lead to an irresistible conclusion that the assessee had received share capital/ loan of Rs.45,00,000/ - from companies/ entities engaged in business of providing accommodation entries in lieu of cash payment by beneficiary including assessee by charging commission, accordingly, an amount of Rs. 45,00,000/- represents unexplained credit u/s 68 of the Act in books of A/c of the assessee.

11. Income Chargeable to tax escaping assessment:-

11.1 Considering the above referred to credible information, incriminating seized documents u/s 132 of the Act and enquiries and investigation subsequent to the information, I have reason to believe that an amount at least 10 (a of Rs. 2,30,00,000/- has escaped assessment in case the of M/s Saraswati Realtech (P) Ltd for the A.Y 2010-11 within the meaning of Section 147/148 of Income-tax Act, 1961.

12. Moreover, as the case pertains to a period beyond four years from the end of relevant assessment years at the time of issue of notice, necessary sanction has to be obtained from Pr. Chief Commissioner of Income Tax or Pr. Commissioner of Income Tax Commissioner of Income Tax, in view of the amended provision of section 151 w. e. f 01.06.2015. The necessary sanction in this regard is being Tax-08, Delhi before the issue of notice u/s. 148.

5. We find that the entities from whom the assessee received the share application are the same which has been subject matter of Section 147 and the reasons recorded thereof in the year 2013 as well as in 2017. The five entities are as under:

1. M/s Attractive Finlease Pvt. Ltd.
2. M/s Shalini Holdings Ltd.
3. M/s Victory Software Pvt. Ltd.
4. M/s Aasheesh Capital Services Pvt. Ltd.
5. M/s Zenith Automotive Pvt. Ltd.

6. The same entities have been subject matter of order dated 29.01.2014 u/s 143(3)/147.

7. The provisions of Section 147 are as under:

"[Income escaping assessment.

147. *If the [Assessing] Officer [has reason to believe ⁸] that any income chargeable to tax has escaped assessment ⁸ for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess ⁸ such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*

Provided *that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to*

tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

[Provided further *that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.]*

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

(c) where an assessment has been made, but—

(i) income chargeable to tax has been underassessed ; or

(ii) such income has been assessed at too low a rate ; or

(iii) such income has been made the subject of excessive relief under this Act ; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.]

[Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.]”

8. Thus, we find that the amount received from these five entities have been examined u/s 148 accepted under the order passed u/s 147/143(3) in 2014 and again reasons for reopening has been for the same reasons and for the same entities in 2017 also. There was no new information received by the Assessing Officer other than what has been received by the Directorate of Investigation in 2013. Hence, reopening of the case twice for the amount received from same entities, in the absence of any new material is construed as bad in law and hence the Assessment order is treated as *void ab initio*.

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

Order Pronounced in the Open Court on 06/02/2024.

Sd/-
(C.N Prasad)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 06/02/2024

NV, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, DELHI