

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 702/JP/2023  
निर्धारण वर्ष / Assessment Years : 2010-11

M/s Padmavati Agrico (India) Pvt. Ltd., Ajmer	बनाम Vs.	ACIT Circle-01, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFCP 0965 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Tarun Mittal (CA)  
राजस्व की ओर से / Revenue by : Sh. Anoop Singh (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 05/08/2024  
उदघोषणा की तारीख / Date of Pronouncement: 05/09/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of National Faceless Appeal Centre, Delhi [ for short NFAC/ CIT(A) ] dated 29/09/2023 for assessment year 2010-11 which in turn arise from the order dated 28.03.2016 passed under section 143 r.w.s. 147 of the Income Tax Act,[ for short Act ] by Assistant Commissioner of Income Tax, Circle-1, Jaipur.

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

*“1. On the facts and in the circumstances of the case and in law, Id. CIT(A) has grossly erred in confirming the action of Id. AO in re-opening the assessment of the assessee u/s 147 of the Act arbitrarily.*

*1.1 That, Id.CIT(A) has further erred in confirming the reopening of assessment solely on the basis of statements of sh. Pravin Kumar Jain (a third party, not related to assessee in any manner) recorded during the course of search conducted at his premises. Appellant prays that reopening is thus made by Id.AO on borrowed satisfaction and without independent application of mind, which is not in accordance with law and order so passed deserves to be quashed.*

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) grossly erred in confirming the actions of Id. AO, in treating the share application money of Rs. 60,00,000/- received by assessee from various companies as undisclosed income of the assessee company arbitrarily.*

*2.1 That Id. CIT(A) further erred in confirming the action of Id. AO in making addition of Rs. 60,00,000/- without considering the submission made and evidence adduced. Thus the additions made solely on the basis of statement of third party, which stood retracted subsequently and without even bringing any corroborative evidence is not in accordance with law and deserves to be deleted.*

*2.2 That the Id. CIT(A) has grossly erred in confirming the additions, which were made by Id. AO without even providing complete statements of third party when specific requests were made before Ld. AO which were turned down arbitrarily.. Thus, the impugned Assessment completed, committing such a serious illegality deserves to be quashed and the consequent addition be deleted.*

*2.3. On the facts and in the circumstances of the case and in law, Id. CIT(A) further erred in confirming the addition made by Ld. AO, by completely ignoring the fact that Sh.Pravin Kumar, whose statements were heavily relied upon for making addition, had retracted such statements and copy of affidavit was also provided to both Id. AO and Id. CIT(A). Thus, addition made on the basis of retracted statements deserves to be deleted.*

*3. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.”*

3. Succinctly, the fact as culled out from the records is that in this case, the assessee e-filed its ITR on 25.09.2010 declaring loss of Rs. 23,590/-. A search and survey action was carried out in the case of Shri Praveen Kumar Jain, Mumbai (entry provider) and his Group by the DGIT (Inv.), Mumbai on 01.10.2013 when various incriminating documents were seized and impounded. The search action resulted into collection of evidence and other findings which conclusively proved that the assessee through a web of concerns run and operated by him, is engaged in providing accommodation entries of various nature like bogus unsecured loans, bogus share application and bogus sales etc.

3.1 As intimated by the DGIT (Inv.) the assessee company has obtained bogus share application money worth Rs. 60 lacs from the companies M/s Alka Diamond Industries Ltd., Ms Anchal Properties P. Ltd., M/s Atharv Business P. Ltd. (Faststone Tred (I) Ltd, M/s Casper Enterprises P. Ltd. (Oswal Trading (I) P. Ltd.), M/s Nakshatra Business P. Lid. (Hema Trading Co. P. Ltd.), M/s Olive Overseas P. Ltd. (Realgold Trading Co. P. Ltd.) & M/s Vanguard Jewels Ltd.

3.2 The accommodation bogus entries provided by the above company constitute bogus share application money in the hands of the assessee. The assessee has suppressed its profits by taking accommodation entries of bogus share application money. Therefore, minimum income of Rs. 60,00,000/-has remained escaped to be taxed. Therefore, in terms of section 147 r.ws. 148 of the Act, after recording the reasons in this case, a notice u/s 148 of the Act dated 13.02.2015 was issued to the assessee, which was served upon the assessee. Vide letter dated 09-03-2015 assessee submitted that the original return of income filed u/s 139(1) may be considered as return filed in response to notice u/s 148 of the IT. Act.

3.3 During the assessment proceeding Id. AR of the assessee raised objections on the re-opening of the case and also requested to provide the statement of Shri Praveen Jain, which was provided to the assessee and the rest of the objections raised was disposed by the Id. AO.

3.4 Considering the reasons so recorded the Id. AO asked the assessee to furnish various details about the share application money. The assessee vide letter dated 21.03.2016 replies to the queries raised by the Id. AO. Thereafter, the assessee was asked to show cause as to why the

accommodation entries of Rs. 60,00,000/- received in the form of share application money should not be added to its income. In response the assessee filed a written response. The reply / submission of the assessee was considered by the Id. AO carefully but he considered it not found tenable and acceptable on the following grounds :

"A. The payment by cheque does not make the transaction genuine. The Hon'ble ITAT, Jaipur, in the case of M/s Kanchwala Gems vs. JCIT, ITA No. 134/JP/02 dated 10.12.200 and affirmed by Hon'ble Supreme Court in 288 ITR 10 (SC) has held that even payment by account payee cheque is not sufficient to establish the genuineness of the transaction.

B. The contentions of the assessee that in the statement of Praveen Kumar Jain and group, the name of assessee company does not appear, is also not relevant to the material fact that in the statements he had described the modus operandi of their business, accepting the fact that they are indulged in providing accommodation entries through the concerns whose names Praveen Jain has given in the statement which automatically makes all the transactions done by them as mere paper transactions and in these circumstances, This admission is sufficient to reject the contentions of the assessee.

C. Even if, the confession has been retracted by Sh. Praveen Kumar Jain (yet the retraction made by Sh. Praveen Kumar Jain has not been accepted by the Department), it would still be binding on the assessee in view of following decisions of Supreme Court of India & High Courts:

*Hon'ble Supreme Court of India in very explicit terms in its decision dated 25.10.1996 in Special Leave Petition No. 14028 of 1996 in the case of Surjeet Singh Chhabra Vs. Union of India and Others, has held that the Revenue officials are not Police officers and the confession though retracted, is an admission and binds the petitioner. As such whatever the assessee has admitted during the search operation before the income-tax authorities is binding on him despite retraction.*

*In this regard decision of Punjab and Haryana High Court also supports the above view as it has also held in its decision dated 24.9.2008 in the case of Rakesh Mahajan vs. CII cited at 642 of 2007(Taxpert) and 214 CTR 218 that "it is well settled that admissions*

*constitute best piece of evidence because admission are self-harming statements made by the maker believing it to be based on truth it is well knows that no one will tell a lie especially harming one's own interest unless such a statement is true.*

In addition, the Id. AO discussed the various facts from the statement of Shri Praveen Kumar Jain wherein he confirmed that he is engaged in the accommodation entries and also controls the affairs of the various companies. Thus, based on these aspect of the matter as discussed in the order of the assessment the Id. AO held that Shri Praveen Kumar Jain has provided accommodation entry of Rs. 60,00,000/- to the assessee company through the dummy company M/s Alka Diamond Industries Ltd., Ms Anchal Properties P. Ltd., M/s Atharv Business P. Ltd. (Faststone Tred (I) Ltd, M/s Casper Enterprises P. Ltd. (Oswal Trading (I) P. Ltd.), M/s Nakshatra Business P. Lid. (Hema Trading Co. P. Ltd.), M/s Olive Overseas P. Ltd. (Realgold Trading Co. P. Ltd.) & M/s Vanguard Jewels Ltd., managed by Shri Praveen Kumar Jain. Based on these Id. AO noted that the transaction made by the assessee with the concerns owned or operated by Shri Praveen Kumar Jain are non-genuine and there are only paper transactions that took place instead of actual transaction. Therefore, the share application money of Rs. 60,00,000/- shown by the assessee is treated as diversion of profit to evade the tax liabilities.

4. Aggrieved from the order of the assessing officer, the assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

7. As per the facts noted in the assessment order, AO come in possession of information that assessee had obtained bogus share application money of Rs. 60,00,000/- from 7 private limited companies and these 7 private limited companies were in the business of providing various kind of accommodation entries and they were controlled by one Pravin Kumar Jain, Mumbai. During the course of search and seizure proceedings against Shri. Pravin Kumar Jain, he had admitted that he was the controller of these 7 companies (among other companies). The assessment order contains (page No. 7 to 19) the details of the statement of Pravin Kumar Jain, recorded during the course of search u/s 132 (statement recorded on 03.10.2013 and 06.10.2013) as well as statement of the agent (Dinesh Chaudhary) of Pravin Kumar Jain. The statements have clear admission of Pravin Kumar Jain regarding control of the 7 companies (apart from numerous other companies) from which the share application money totaling to Rs. 60,00,000/- was received as well as the details of the modus operandi. The statements of the brokers/agents also confirmed that they acted on behalf of Pravin Kumar Jain and they confirmed the modus operandi admitted by Pravin Kumar Jain. Paragraph No. 5.2 & 5.3 contain the details of some other parties who had obtained accommodation entries from Pravin Kumar Jain and they admitted the fact of accommodation entries when confronted by Income Tax Department. On his part, the assessee company contended that the share application money was received through cheques and the same was not returned back, hence, the transaction should be treated as genuine. For that, AO has pointed out the admitted modus operandi of Pravin Kumar Jain that cash is paid by the receiver of the entry and Pravin Kumar Jain would issue cheque/DD of that amount and relevant paper entries would be made. AO has reinforced this fact on the basis of the findings of Hon'ble Supreme Court in the case of M/s. Kanchwala Gems. AO finally recorded the finding that the amount of Rs. 60,00,000/- declared as an entry in the books of account in the form of share application money from 7 private limited companies was assessee's own undisclosed income. Therefore, he brought the same to tax. Hence, this appeal,

8. The details of the compliance of the assessee in appeal proceedings, have already been described above in this appeal order. It has been contended that assessee has proved the credit by furnishing his own bank account showing the credit entries, by furnishing certificate (from a private practicing company secretary) reflecting active status of the 7 companies as on 31.07.2017 and the share application money was converted into allotted shares to the 7 investors and by pointing out that the 7 companies continued to be shareholders till 31.07.2017. However, the fact remains that the 7 investor companies were in the business of providing accommodation entries of various types and Shri. Pravin Kumar Jain had provided accommodation entries to various beneficiaries from the said companies as well as many other companies controlled by him and many beneficiaries had admitted the fact when confronted by the Income Tax Department. Moreover, the financials of the assessee do not have anything to invite/attract an independent person to invest in the assessee company. In view of these facts, I find that AO was justified in treating the amount of Rs. 60,00,000/- as undisclosed income of the assessee. Accordingly, the addition made on that account is confirmed.

9. In view of the above, the grounds of appeal stand dealt with and are dismissed.”

5. As the assessee did not find any favors, from the appeal so filed before the Id. CIT(A)/NFAC, the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the assessee, the Id. AR of the assessee has filed the written submissions in respect of the various grounds raised.

The written submission reads as follows :

“Briefly stated facts of the case are that the assessee is a private limited company incorporated under the provisions of the Companies Act, 1956 and has filed its return of income for the year under appeal on 25.09.2010 declaring total income at Rs. Nil/-. Subsequently, case of assessee was reopened on the basis of information received by Id.AO from the office of DGIT (Inv.) Mumbai, wherein Investigation Wing reported that Shri Praveen Kumar Jain was indulged in providing accommodation entries in the form

of bogus share application from various entities including from M/s Alka Diamond Industries Ltd., M/s Anchal Properties P. Ltd., M/s Atharv Business Pvt. Ltd., M/s Casper Enterprises Pvt. Ltd., M/s Nakashatra Business Pvt. Ltd., M/s Olive Overseas Pvt. Ltd. & M/s Vanguard Jewels Pvt. Ltd. On the basis of said information from Id. DGIT (Inv), it was presumed by Id.AO that share application money worth Rs. 60,00,000/- received by assessee from aforesaid companies is also the accommodation entry obtained to reroute unaccounted money. In response to notice issued u/s 148, assessee vide letter dated 09.03.2015 requested Id. AO to consider original return filed u/s 139(1) of the Act as return of income filed in response to notice u/s 148 of the Act. Various details as sought by Id.AO were furnished and assessment was completed u/s 147 r.w.s. 144 of the Act after making addition to the tune of Rs.60,00,000/- viz. entire amount of share application money by treating the same as Unexplained cash credit u/s 68.

Aggrieved of the addition so made by Id.AO, assessee has preferred appeal before Id. CIT(A), wherein Id. CIT(A) arbitrarily dismissed the appeal of assessee without considering the submission made, evidence adduced before him and solely relying upon the information received from the Investigation Wing and statement of Shri Praveen Kumar Jain through the same was retracted by him on 15.05.2014 (APB 17-21).

Aggrieved by the order of Id. CIT(A), assessee company has preferred a present appeal before the Hon'ble Bench.

Grounds of Appeal Nos. 1:

In these grounds of appeal, assessee has challenged the reopening of assessment u/s 147 of the Income tax Act, solely on the basis of information received from the DGIT (Inv.) Mumbai.

Facts pertaining to the grounds of appeal are that the case of assessee was reopened on the basis of following information:

*“Reasons for the belief that income has escaped assessment*

*The assessee M/s Padmawati Agrico (India) Pvt. Ltd. filed its Return of income for AY 2010-11 on 25.09.2010 declaring total income as Nil. The return was processed u/s 143(1) on 28.04.2011.*

*As per the information available on record, it is found that the assessee has received accommodation entries from Sh. Praveen Kumar Jain, in whose case search was conducted at Mumbai by investigation wing. Shri Praveen Kumar Jain admitted in his statement recorded u/s 132(4) of the I.T. Act, 1961 that he provided accommodation entries in the form of bogus share application money.*

*After examination of the facts available on record, I found that in case of M/s Padmawati Agrico(India) Pvt. Ltd. following accommodation entries in the Loan of bogus share application money of Rs. 60 Lacs have been provided by Praveen Kumar Jain :-*

<i>S.No.</i>	<i>Name</i>	<i>Amount</i>
1.	<i>M/s Alka Diamond Ind. Ltd.</i>	<i>Rs.5,00,000/-</i>
2	<i>M/s Anchal Properties P. Ltd.</i>	<i>Rs.5,00,000/-</i>
3.	<i>M/s Atharv Business P. Ltd.</i>	<i>Rs.5,00,000/-</i>
	<i>(Faststone Tred (I) Ltd.</i>	
4.	<i>M/s Casper Enterprises P. Ltd.</i>	<i>Rs.20,00,000/-</i>
	<i>(Oswal Trading (1) P. Ltd.</i>	
5	<i>M/s Nakshatra Business P. Ltd.</i>	<i>Rs. 10,00,000/-</i>
	<i>(Hema Trading Co. P. Ltd.)</i>	
6.	<i>M/s Olive Overseas P. Ltd.</i>	<i>Rs.10,00,000/-</i>
	<i>(Realgold Trading Co. P. Ltd.)</i>	
7.	<i>M/s Vanguard Jewels Ltd.</i>	<i>Rs.5,00,000/-</i>
	<i>Total</i>	<i>Rs. 60,00,000/-</i>

*Therefore. I have reason to believe that income to the extent of Rs. 60 Lacs has escaped assessment within the meaning of section 147/148 of the I.T. Act, 1961."*

Thereafter, in Assessment Order, Ld.AO has referred the statement of the Shri Praveen Kumar Jain (which was later on retracted by himself through Affidavit dated 15.05.2014) and discussed general modus operandi and thereafter alleged that assessee had also routed undisclosed income through aforesaid entities which are controlled/ managed by the Shri Praveen Kumar Jain without establishing any nexus of assessee with the said Praveen Kumar Jain. Ld.AO has simply mentioned that assessee has diverted profit to evade tax by taking accommodation entry in the form of Share application money from the dummy companies controlled and managed by the Shri Praveen Kumar Jain. Thus, basically Ld.AO has not conducted any independent enquiries specific to the fact that how assessee has routed undisclosed income nor any evidence has been brought on record, which proves that share application money received by assessee from various entities were accommodation entry through entry provider Praveen Kumar Jain.

From perusal of above, it is also evident that assessment was reopened by Ld.AO solely on the basis of information received from the Investigation Directorate. In fact, Ld.AO has not even formed a belief as to how transaction of assessee is not genuine and how it amounts to accommodation entry. He has simply reproduced the contents as mentioned in the information supplied to him, based on which he initiated the reassessment proceedings. On receiving reasons recorded, the assessee raised objections to against reopening vide letter dated 07.12.2015 (APB 22-23) primarily objecting to recording of reasons done in a mechanical manner, i.e. on discussion of general information and modus operandi of entry providers and not specifically mentioning as to how transaction

of assessee was also accommodation entry & how funds have been routed for such alleged accommodation entry. Also, neither statements recorded nor any such information wherein name of assessee was appearing was supplied to the assessee.

It is further relevant to state that Id. AO disposed-off the objection raised by assessee vide notice dated 22.02.2016 (APB 24-26) in mechanical manner, wherein Id.AO straightaway solely relied upon the information received from Investigation wing and repeated the same. It simply shows that Ld.AO himself was not sure while forming his belief for re-opening, as to whether there was actually escapement of Income or not.

On perusal of aforesaid para, it is relevant that Id.AO formed belief regarding escapement of income solely on the basis of information supplied by investigation wing and without cross verifying the same/making enquiries as to how transaction of assessee was also accommodation entry/how funds have been routed for such alleged accommodation entry.

It is thus clear that case was solely reopened on the basis of generalized information and there was no specific information, which could prove that transactions of assessee were accommodation entries. It is submitted that the Ld. AO ought to have considered the issue objectively and not on the so called information received from some other official, therefore, the action of the Id. AO in reopening the completed assessment without independent application of mind deserves to be held bad in law. The Hon'ble Gujrat High Court in the case of Seth Brothers Vs. CIT reported in 169 CTR 519 has laid down following principles for the re-opening of the assessment u/s 148 of the Income Tax Act, 1961: (Reproduced in 28 TW 57,79)

- "11(a) There must be material for belief*
- (b) Circumstances must exist and cannot be deemed to exist for arriving at an opinion.*
  - (c) Reason to believe must be honest and not based on suspicion, gossip, rumour or conjuncture.*
  - (d) Reasons referred must disclose the process of reasoning by which he holds 'reasons to believe' and change of opinion does not confer jurisdiction to reassess.*
  - (e) There must be nexus between material and belief.*
  - (f) The reasons referred must show application of mind by the assessing officer. The validity of initiation of reassessment proceedings has to be judged with regard to the material available with the officer at the point of time of issue of notice u/s 148 and cannot be sought to be substantiated by reference to material that may have come to light subsequently in the course of reassessment proceedings.*

*In the light of what is stated above, we hold that there was no material with the AO for having reasons to believe that the income as chargeable to tax, has escaped*

*assessment. We are unable to hold that the jurisdiction assumed u/s 147/148 was legal and valid.”*

It is further submitted that the validity of initiation of reassessment proceedings has to be judged with regard to the material available with the assessing officer and that too by framing the opinion strictly based on the documents and information in possession, that certain income has escaped assessment and not in a mechanical manner as has been done in the case in hand. The re-opening of the case based on the borrowed satisfaction on the information provided by some other official without in any manner recording his own independent satisfaction deserves to be held illegal. In this regard reliance is placed on the decision of Hon'ble Delhi High court in case of Sarthak Securities Co. Pvt. Ltd. Vs. ITO reported in 329 ITR 110 wherein it has been held as under:

*Reassessment – Notice – Condition precedent – Formation of belief that income escaped assessment – Assessing Officer treating share application money as bogus accommodation entries – Payments through banking channel and companies investing money genuine – No independent application of mind by Assessing Officer but acting under information from investigation wing – Notice to be quashed – Income Tax Act, 1961, ss. 147, 148.*

Uma Strips Ltd. vs DCIT 3284/Del/2019 decision dated 11.05.2022 (Delhi ITAT) (decision para reproduced):

9. *From the above, we find that there is no live link presented by the AO between the material available with him i.e. the report of the investigation and to reason to belief that the assessee has tried to evade the assessment for the particular year in question. Simply stating and doubting that the assessee is involved in obtaining accommodation entries without providing proof, reason, information to back-up the claim cannot be considered as a valid reason to issue notice u/s 148 of the I.T. Act. There is no independent application of mind that could be deciphered from the reasons recorded. There is no reference to examination of the returns filed and whether the entries taken or on account of bogus capital, a balance sheet item or on account of bogus sales or purchases on account of revenue account. As per the record and the reasons recorded, no enquiries have been conducted by the Assessing Officer to come to a conclusion or reasons to belief with regard to evasion of tax which has escaped assessment.*
10. *Placing reliance on the decisions of Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT Vs. Meenakshi Overseas (P) Ltd. 395 ITR 677, G&G Pharma 384 ITR 147, Subh Infrastructure 398 ITR 198 and Pr . CIT Vs. RMC Polyvinyl (I) Ltd. 396 ITR 5 wherein the Delhi High Court has held that observations of the Investigation Wing should not be treated as conclusions without the AO independently verifying the same , in the absence of which the Hon'ble Court held that the reopening of assessment was bad in law.*
11. *Hence, we hold that the proceedings u/s 148 of the I.T. Act are void ab initio and are liable to be quashed.”*

In case of PCIT vs. RMG Polyvinyl (I) Ltd [2017] 83 taxmann.com 348 (Delhi) it was held by the Hon'ble Delhi High court that where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by Assessing Officer, said information could not be said to be tangible material per se and, thus, reassessment on said basis was not justified

In case of PCIT vs. Meenakshi Overseas (P.) Ltd. [2017] 82 taxmann.com 300 (Delhi) it was held by the Hon'ble Delhi High court that where reassessment was resorted to on basis of information from DIT(Investigation) that assessee had received accommodation entry but and there was no independent application of mind by Assessing Officer to tangible material and reasons failed to demonstrate link between tangible material and formation of reason to believe that income had escaped assessment, reassessment was not justified} In case of Haryana Acrylic Manufacturing Co. v. CIT [2008] 175 Taxman 262 (Delhi) it was held by the Hon'ble Delhi High Court that notice under section 148, giving reason that it had come to his notice that assessee had taken accommodation entries from 'H' during relevant year when assessee, in course of original assessment proceedings, had supplied all relevant details; in assessment order which were verified and moreover, in reasons supplied to assessee there was no allegation that it had failed to disclose fully and truly all material facts necessary for assessment and because of its failure there had been an escapement of income chargeable to tax, reopening of assessment after expiry of four years from end of relevant assessment year was without jurisdiction.

It is further relevant to state that Id. CIT(A) during the course of appellate proceedings without adjudicating on the legal ground and solely on the basis of information of third party confirmed the additions made by Id. AO. Thus In the circumstances it is submitted that there was no independent application of mind neither by Ld. AO while issuing notice u/s 148 nor by Id. CIT(A) while passing the order. They simply proceeded on borrowed satisfaction formed by some other officials on the basis of survey conducted and statements recorded in the case of third party, the same has no evidentiary value, therefore, the entire proceedings initiated u/s 148 deserves to be held bad in law and thus order deserves to be quashed.

#### Grounds of Appeal No. 2 & 2.3:

In these grounds of appeal assessee has collectively challenged the action of Id. CIT(A) in confirming the action of Id. AO in making the addition of Rs. 60,00,000/- on account of treating the share application money received from various companies as undisclosed income of assessee and thus same are canvassed together.

Brief facts pertaining to this ground of appeal is that the case of the assessee company was reopened u/s 148 of the Income Tax Act, 1961, based on alleged information supplied by the investigation wing of the department wherein it was informed to the Ld. AO that during the year under consideration assessee company has received alleged accommodation entries in the form of share application money from the following companies which are allegedly controlled/managed by the Shri Praveen Kumar Jain –

Sl. No.	Name of party	Amount	Ch./DD No. & date	Assessee's A/c no. & Branch Name
1	M/s Alka Diamond Ind. Ltd.	5,00,000/-	RTGS dt.17.08.2009	Account No. 61073593863 Kishangarh ND. Area (10746) State Bank of Bikaner & Jaipur (APB 43-44)
2	M/s Anchal Properties P. Ltd.	5,00,000/-	RTGS dt.17.08.2009	
3.	M/s Atharv Business P. Ltd. (Faststone Tred (I) Ltd.)	5,00,000/-	RTGS dt.17.08.2009	
4.	M/s Casper Enterprises P. Ltd. (Oswal Trading (1) P. Ltd.)	20,00,000/-	RTGS dt.10.08.2009	
5.	M/s Nakshatra Business P. Ltd. (Hema Trading Co. P. Ltd.)	10,00,000/-	RTGS dt.20.08.2009	
6.	M/s Olive Overseas P. Ltd. (Realgold Trading Co. P. Ltd.)	10,00,000/-	RTGS dt.20.08.2009	
7.	M/s Vanguard Jewels Ltd.	5,00,000/-	RTGS dt.17.08.2009	
<i>Total</i>		60,00,000/-		

It is again reiterated that assessee case was reopened solely on the basis of statement of unrelated party which was also later on reiterated and there was no specific information, which could prove that transactions of assessee were accommodation entries. Thus re-opening of the case based on the borrowed satisfaction on the information provided by some other official without in any manner recording his own independent satisfaction is against the law and deserves to be deleted.

It is further submitted that during the course of assessment proceedings as well as appellate proceedings assessee submitted necessary evidences regarding receipts of share application money from the above parties before the Ld. AO as well as Ld. CIT(A) details of which are summarized as under—

1.	Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Alka Diamond Ind. Ltd.	
a.	Copy of Share application form	60-61
b.	Copy of Board Resolution	62-63
c.	Copy of PAN Card	64
d.	Copy of Bank Statement	65
e.	Copy of ITR for A.Y. 2009-10 & 2010-11	66-67
f.	Copy of company master data as on 31.03.2009 & 31..03.2015	68-69

	g.	Copy of Confirmations & Affidavit	70-73
2.		Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Anchal Properties Pvt. Ltd.	
	a.	Copy of Share application form	74-75
	b.	Copy of Board Resolution	76-77
	c.	Copy of PAN Card	78
	d.	Copy of Bank Statement	79
	e.	Copy of ITR for A.Y. 2009-10 & 2010-11	80-81
	f.	Copy of company master data as on 31.03.2009 & 31..03.2015	82-83
	g.	Copy of Confirmations & Affidavit	84-87
3.		Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Athrav Business Pvt. Ltd	
	a.	Copy of Share application form	88-89
	b.	Copy of Board Resolution	90-91
	c.	Copy of PAN Card	92-93
	d.	Copy of Bank Statement	94
	e.	Copy of ITR for A.Y. 2009-10 & 2010-11	95-96
	f.	Copy of company master data as on 31.03.2009 & 31..03.2015	97-98
	g.	Copy of Confirmations & Affidavit	99-102
4.		Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Casper Enterprises Pvt. Ltd.	
	a.	Copy of Share application form	103-104
	b.	Copy of Board Resolution	105-106
	c.	Copy of PAN Card	107
	d.	Copy of Bank Statement	108
	e.	Copy of ITR for A.Y. 2009-10 & 2010-11	109-110
	f.	Copy of company master data as on 31.03.2009 & 31..03.2015	111-112
	g.	Copy of Confirmations & Affidavit	113-116
5.		Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Nakshatra Business Pvt. Ltd.	
	a.	Copy of Share application form	117-119
	b.	Copy of Board Resolution	120-121
	c.	Copy of PAN Card	122-123
	d.	Copy of Bank Statement	124
	e.	Copy of ITR for A.Y. 2009-10 & 2010-11	125-126
	f.	Copy of company master data as on 31.03.2009 & 31..03.2015	127-128
	g.	Copy of Confirmations & Affidavit	129-132
6.		Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Olive Overseas Pvt. Ltd.	
	a.	Copy of Share application form	133-134
	b.	Copy of Board Resolution	135-136
	c.	Copy of PAN Card	137
	d.	Copy of Bank Statement	138
	e.	Copy of ITR for A.Y. 2009-10 & 2010-11	139-140
	f.	Copy of company master data as on 31.03.2009 & 31..03.2015	141-142
	g.	Copy of Confirmations & Affidavit	143-146
7.		Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Vanguard Jewels Pvt. Ltd.	
	a.	Copy of Share application form	147-148
	b.	Copy of Board Resolution	149-150
	c.	Copy of PAN Card	151
	d.	Copy of Bank Statement	152

e.	Copy of ITR for A.Y. 2009-10 & 2010-11	153-154
f.	Copy of company master data as on 31.03.2009 & 31..03.2015	155-156
g.	Copy of Confirmations & Affidavit	158-160

At this juncture, provisions of section 68 are reproduced for the sake of convenience:

*“68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year*

*Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—*

*(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*

*(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory”*

It is further relevant to state that First Proviso to Section 68 wherein addition on account of Share Application Money/ Share Capital can be made, stood inserted to the statue book, by Finance Act 2012, w.e.f. 01.04.2013 and therefore that addition made by Id. AO on account of Share Application Money u/s 68 for the year under consideration is not in accordance with law and deserves to be deleted.

In this regard reliance is being place on the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax – 1 vs. M/s Gagandeep Infrastructure Pvt. Ltd. reported in 394 ITR 680, wherein it is held as under—

*“(e) We find that the proviso to Section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced “for removal of doubts” or that it is “declaratory”. Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. In any view of the matter the three essential tests while confirming the pre proviso Section 68 of the Act laid down by the Courts namely*

*the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in Lovely Exports (P) Ltd. (supra) in the context to the pre amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit."*

Further reliance is being place on the decision of Hon'ble Bombay High Court (Nagpur Bench) in the case of Principal Commissioner of Income Tax vs. M/s Apeak Infotech and Ors. reported in 397 ITR 148, wherein it is held as under—

"8. Regarding Question B:

- (a) We find .....
- (b) *It is further pertinent to note that the definition of income as provided under section 2(24) of the Act at the relevant time did not define as income any consideration received for issue of share in excess of its fair market value. This came into the statute only with effect from April 1, 2013 and thus, would have, no application to the share premium received by the respondent-assessee in the previous year relevant to the assessment year 2012-13. Similarly, the amendment to section 68 of the Act by addition of proviso was made subsequent to previous year relevant to the subject assessment year 2012-13 and cannot be invoked. It may be pointed out that this court in CIT v. Gagandeep Infrastructure Pvt. Ltd. (Income Tax Appeal No. 1613 of 2014, dated March 20, 2017) MANU/MH/1274/2017 : [2017] 394 ITR 680 (Bom) has while refusing to entertain a question with regard to section 68 of the Act has held that the proviso to section 68 of the Act introduced with effect from April 1, 2013 will not have retrospective effect and would be effective only from the assessment year 2013-14."*

Further from the perusal of section 68, it is evident that assessing officer can make addition u/s 68 only under two circumstances, i.e.:

- (i) Appellant does not offer any explanation about nature and source of such credit or
- (ii) Explanation offered by Appellant is not upto the satisfaction of Ld. AO.

In other words, whenever Appellant provides explanation, before rejecting the same Ld. AO has to record dissatisfaction as to why the explanation furnished by Appellant is not acceptable.

In the instant case, Appellant has not only offered explanation regarding nature and source of credits but also substantiated the same with documentary evidences in the shape of PAN, ITRs, Confirmations, Affidavit, Share Application Form, Board Resolution and Bank Statement of the different investor which were not at all doubted by Id. AO but all such vital evidences have been ignored solely on the basis of recorded statements of third party recorded by some other officials during the course of search & survey operation conducted in his case. These were recorded behind the back of assessee and moreover opportunity of cross examination was not provided moreover the said Shri Praveen Kumar Jain has himself retracted the statement earlier given by him by filing affidavit.

It is submitted that Id. AO further erred in ignoring the fact the Assessee has already discharged his initial onus laid down u/s 68 of Income Tax Act. By proving the 3 main ingredients of loans as under:-

(i) Identity:-

The identity of investors stood proven as details of PAN card along with ITR's and copies of bank statement and other documentary evidences already shared. Hon'ble Rajasthan High Court in the case of Aravali Trading Co Vs Income Tax Officer (2008) 8 DTR (Raj) 199 has held that once the existence of the creditors is proved and such persons own the credits, the Assessee's onus stands discharged and the assessee is not required to prove the source from which the creditors could have acquired the money deposited with him. Hon'ble jurisdictional High Court has held that merely because the depositors' explanation about the sources of money was not acceptable to the AO, it cannot be presumed that the deposit made by the creditors is money belonging to the assessee itself.

(ii) Genuineness of Transaction:-

The assessee has filed confirmation letter along with affidavit of the investors. The assessee also filed copy of account statement of cash credit where the amount of payment is reflected in bank statement.

(iii) Capacity proved:-

The assessee has also filed copy of bank statement of the investors which shows huge number of transaction of high value. There is no onus on the assessee to prove source of source. Once the assessee is able to establish that he has in fact received money from third party, it can't be burdened with a further onus of establishing the source from which such third party had been able to obtain the money.

Reliance is placed on the following decisions: -

- a. 24 Tax World 146 Sideways Investment Pvt. Ltd. Vs DCIT (JP ITAT)
- b. 87 ITR 349 CIT Vs. Daulat Ram Rawatmal (SC)
- c. 103 ITR 344 Saraogi Credit Corp. Vs. CIT (PAT)

It is further relevant to state that on perusal of the assessment order it is evident fact that the Ld. AO has summarily rejected the evidence submitted by the assessee and made no effort to bring on record some material to support his conclusion that during the year under appeal assessee has received share application money from bogus parties and the transaction entered was not genuine. The Ld. AO on the basis of the information supplied by the Directorate of Investigation, Mumbai and the on the basis of statement of Shri Praveen Kumar Jain (which was later on retracted vide affidavit dated 15.05.2014) has concluded as under—

*“7.1. From the above, it is clearly established that Shri Praveen Kumar Jain is indulged in providing various accommodation entries through various concerns run and operated by him. It is also came out from the statements of the persons who are actually the brokers for accommodation entries but shown as dummy directors in the concerns of Shri Praveen Kumar Jain.*

*7.2 In view of the above, it is crystal clear that the transactions made with the concerns owned or operated by Shri. Praveen Kumar Jain are non-genuine and there are only paper transaction took place instead of actual transactions. Although the transactions are completed through banking channel after getting commission in cash. Therefore, share application money of Rs. 60,00,000/- shown by the assessee is treated as diversion of profit to evade the tax liabilities. Therefore, the amount of Rs. 60,00,000/- is added to the total income of the assessee.”*

In this regard it is submitted that the Ld. AO has made the addition by solely relying upon the material stated to have been supplied by some other income tax authority which were stated to have been gathered during the course of search/survey proceedings conducted in the case of third party which includes the statements of the third party however, neither the material available with the Ld. AO was confronted nor the opportunity to cross examination of the witness of the department was provided to the assessee nor any such statements were ever supplied. Further from the perusal of the assessment order it appears that at no stage of the proceedings, the alleged information relied upon by the Ld. AO contained any admission of providing any accommodation entry in the shape of share capital to the appellant specifically, therefore, the entire addition was made solely on the basis of conjectures and surmises and theory of probability.

In the appellate proceeding all these were brought to the notice of the Ld. CIT(A) who has summarily rejected the claim of the assessee and evidences brought on record by the assessee by observing as under in para 8 of the order:

*“The details of the compliance of the assessee in appeal proceedings, have already been described above in this appeal order. It has been contended that assessee has proved the credit by furnishing his own bank account showing the credit entries, by furnishing certificate*

*(from a private practicing company secretary) reflecting active status of the 7 companies as on 31.07.2017 and the share application money was converted into allotted shares to the 7 investors and by pointing out that the 7 companies continued to be shareholders till 31.07.2017. However, the fact remains that the 7 investor companies were in the business of providing accommodation entries of various types and Shri. Pravin Kumar Jain had provided accommodation entries to various beneficiaries from the said companies as well as many other companies controlled by him and many beneficiaries had admitted the fact when confronted by the Income Tax Department. Moreover, the financials of the assessee do not have anything to invite/attract an independent person to invest in the assessee company. In view of these facts, I find that AO was justified in treating the amount of Rs. 60,00,000/- as undisclosed income of the assessee. Accordingly, the addition made on that account is confirmed"*

On perusal of aforesaid observation made by Id. CIT(A), it is clearly evident that addition has been confirmed solely on the basis of statement of third party which were recorded by some other officials behind the back of assessee. It is further relevant to state that Id. CIT(A) further failed to take cognizance of the fact that statement on which heavy reliance is placed has already been retracted by Shri Praveen Kumar Jain himself vide affidavit dated 15.05.2014 and same could not have been relied upon by Ld CIT(A).

Further the amounts were received through banking channel for which copy of bank statement were submitted before Ld. AO. The Ld. AO has failed to bring on record any cogent material from which it could be held that assessee has received accommodation entry in the guise of Share Capital. Merely on the basis of so called alleged generalized information in the form of statement of Shri Praveen Kumar Jain the Ld. AO has reached the conclusion that the share application money was unexplained money of the assessee whereas it is evident that statement has been retracted.

Further Ld. AO has not doubted the identity of the parties and also not doubted the amount given by the parties but he doubted the source from which these companies have given the share application money. In the matter it is submitted that assessee has not burden to prove the source of the source in the period under consideration i.e. from where these companies has got the amount for investment in shares of the appellant. Ld. AO has not even discussed the details submitted by the assessee during the course of assessment proceedings and has simply brushed aside these evidences without bringing any material to the contrary. It is submitted that the, assessee neither has any relation nor has any control on the business activity of those companies.

The Ld. CIT(A) has ignored the binding decision of the Hon'ble Supreme Court in the case of M/s Lovely Exports Pvt. Ltd. reported in 216 CTR 195 and has not even discussed the same in his order which squarely applicable in the present case as the assessee has filed the necessary confirmation and other particulars of share holders

and incidentally all the subscribers are Private Limited Companies and the appellant had received the application money through banking channel.

It was further held that the Hon'ble Chhattisgarh High Court in the case of ACIT Vs. Venkateshwar Ispat (P) Ltd. Reported in 319 ITR 393 had held as under:-

*"In the matters of CIT V/s. Lovely Exports (supra), the question before the Hon'ble Supreme Court was whether the amount of share money can be regarded as undisclosed income u/s 68 of the Act? Answering the above question, the Hon'ble Supreme Court has held that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but if cannot be regarded as undisclosed income of the assessee company."*

In case of the assessee, the assessee has not only given the names and addresses of the shareholders but has also given their PANs. Further assessee to prove genuineness of the transaction also submitted the Share Application form, Board Resolution, ITR's, Confirmation and Affidavit from investors. On the above facts, the decision of the Hon'ble Apex Court in the case of CIT V/s. Lovely Exports (P) Ltd. (supra) reported in 216 CTR 195 as well as the decision of the Hon'ble Chhattisgarh High Court in the case of Venkateshwar Ispat (P) Ltd. (supra) are squarely applicable as the assessee has filed the necessary confirmation and other particulars of shareholders and incidentally all the subscribers are Private Limited Companies and the appellant had received the application money through banking channel.

In view of above facts it is therefore submitted that the Ld. AO has ignored the vital evidences submitted in the shape of affidavits, bank statement of the investors, copy of their income tax return, return of allotment of etc and the Ld. CIT(A) has upheld the addition without properly considering the legal position in respect to the credits on account of share capital being received from private limited companies and has further ignored the effective compliance made by the assessee under the Companies Act, 1956 thus the assessee has duly explained share application money with all the plausible evidence, thus the addition of Rs. 60,00,000/- made by the Ld. AO deserves to be deleted.

Further reliance is also placed on the judgement of Hon'ble Income Tax Appellate Tribunal, Mumbai Bench in the case of Inter Publicity Pvt. Ltd. vs. Dy. Commissioner of Income Tax, in ITA No. 662/Mum/2021 dated 17.10.2023 wherein, in the similar circumstances case is decided in the favour of assessee by relying upon the judgment of Hon'ble Bombay High Court in the case of CIT Vs. Orchid Industries Pvt. Ltd. (ITA

No. 1433 of 2014 dated 05.07.2017) and coordinate bench decision in the case of M/s. Moraj Realty Pvt. Ltd. (ITA No.708 & 709/Mum/2019 dated 08-12-2020) (APB - )

Case Laws relied upon:

1. 283 ITR 377 (Raj.) Barkha Synthetics Ltd. Vs. ACIT  
Held: The principle relating to burden of proof concerning the assessee is that where the matter concerns the money receipts by way of share application from investors through banking channel, the assessee has to prove existence of person in whose name share application is received. Once the existence of investor is proved, it is no further burden of assessee to prove whether that person itself has invested said money or some other person had made investment in the name of that person. The burden then shifts on Revenue to establish that such investment has come from assessee-company itself. – CIT Vs. Shree Barkha Synthetics Ltd. (2003) 270 ITR (Raj.) 477 followed.
2. 126 ITR 48 Yadu Hari Dalmia Vs. CIT (Delhi)  
Income from undisclosed sources – Expenditure not accounted for – Can be estimated and treated as income from undisclosed sources – Correctness of estimate is question of fact and degree – Absence of direct evidence does not preclude assessment by inference and estimate – Duty of ITO to make exhaustive enquiries and gather some material as basis – Estimate without details may not be accepted – I.T. Act, 1961, ss. 68, 69, 69A, 69B, 69C.
3. 100 ITTD 5 (Jodh.) (T.M.) Uma Polymers (P) Ltd. Vs. DCIT, Sp. Range  
Section 68 of the Income Tax Act, 1961 – Cash credits – Assessment year 1989-90 – Whether distinction between a public and a private limited company is not very material, as far as introduction of share capital money is concerned – Held, yes – Whether in respect of share application money received from investors, assessee – company has to prove only existence of person in whose name share application is received – Held, yes – Whether if identity of creditor is established, then burden to prove that money advanced by creditor did not belong to him but to somebody else is on revenue who has to find real investor and, if any shareholder is found to have made unexplained investment, then addition of such investment is required to be made in hands of shareholder and not in account of assessee – Held, yes – Whether where assessee company had received share application money through banking channels and it had submitted detailed list of shareholders, their GIR Nos. and income tax particulars and their bank statements, identity of share holders was fully established and, therefore, no addition could be made in assessee's hands under section 68 on account of share application money – Held, yes.
5. 205 ITR 98 (Delhi ) CIT Vs. Sophia Finance Ltd.  
If the shares holders are identified and it established that they have invested money in the purchases of shares, then the amount received by the company would be regarded as a capital receipt.
6. 397 ITR 136 CIT Vs. Orchid Industries Pvt. Ltd. (Bom) – [DOD:05.07.2017]

Cash Credits – Company – Share application money – Issuance of shares – Genuineness and creditworthiness of persons allotted shares proved by assessee – Non-appearance of such parties before Assessing Officer irrelevant – Deletion of addition proper – Income Tax Act, 1961, s. 68.

7. 159 ITR 78 (SC) Orissa Corpn. (P) Ltd

When the assessee furnishes names and addresses of the alleged creditors, the burden shifts to the department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the inquiry and to establish the lack of creditworthiness and the mere issue of notice u/s 131 is not sufficient. Thus, the Appellant has discharged the primary burden of establishing the identity and genuineness of the creditor.

8. 187 Taxman 53 CIT Vs. K.C. Fibres Ltd. (Delhi)

Cash Credit – One 'D' Ltd. subscribed to share capital of assessee company – For said purpose, share application money on three different dates totaling a sum of Rs. 39 lakhs was given by 'D' Ltd. to assessee company – Assessing Officer after making enquiries from assessee company concluded that a sum of Rs. 25 lakhs subscribed by 'D' Ltd. remained unexplained under section 68 and added it to income of assessee – On appeal, Commissioner (Appeals) deleted addition – On revenue's appeal to Tribunal, assessee showed that 111 deposits of Rs. 19,000/- each in cash were made in bank account of 'D' Ltd. which were converted into drafts and in this manner 'D' Ltd. subscribed to share capital of assessee company – Whether, on facts, it was not for assessee- company to prove as to source from where 'D' Ltd. collected aforesaid money – Held, yes – Whether it was for Assessing Officer to inquire into affairs of 'D' Ltd. which was an independent company inasmuch as no finding was arrived at by Assessing Officer that two companies were umbrella companies or had any relationship with each other – Held, yes – Whether in view of aforesaid, impugned order passed by Tribunal deleting addition was to be upheld – Held, yes.

In light of the contentions raised above, supported with the relevant case-laws, it is most humbly submitted that the addition of Rs. 60,00,000/- on account of treating the share application money received from various companies as undisclosed income of assessee, despite of fact that assessee company duly substantiated its claim with necessary documentary evidence. Thus the addition so made by Id. AO and confirmed by Id. CIT(A) solely on the basis of generalised information received from other wing of department which remained uncorroborated is against the law and deserves to be deleted.”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No.	PARTICULARS	PAGE NOS.
1.	Copy of Return of Income, Acknowledgement and Computation of Total Income filed u/s 139(1) of Income Tax Act, 1961.	01-03
2.	Copy of Audited report and balance sheet for the year ending 31.03.2010	04-14
3.	Copy of Letter dated 09.03.2015 seeking reasons for re-opening assessment.	15
4.	Copy of the notice dated 12.02.15 wherein reasons for re-opening assessment was provided.	16
5.	Copy of Retraction dated 15/05/2014 by Sh. Praveen Kumar Jain	17-21
6.	Copy of Objections raised against the re-opening of assessment vide letter dated 07.12.2015.	22-23
7.	Copy of notice dated 22/02/2016 issued by Id.AO	24-26
8.	Copy of reply dated 26/02/2016 made before Id. AO against the notice dated 22/02/2016	27-28
9.	Copy of reply dated 21/03/2016 made before Id. AO against the notice dated 22/02/2016. Segregated letters	29-42
	a. Copy of bank statements of assessee showing receipt share application money	43-51
	b. Copy of Form-2 for allotment of Equity Share Capital dated 31.10.2009.	52-55
10.	Copy of notice dated 23/03/2016 issued by Id.AO	56-57
11.	Copy of reply dated 23/03/2016 made before Id. Assessing Officer	58-59
12.	Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Alka Diamond Ind. Ltd.	
	a. Copy of Share application form	60-61
	b. Copy of Board Resolution	62-63
	c. Copy of PAN Card	64
	d. Copy of Bank Statement	65
	e. Copy of ITR for A.Y. 2009-10 & 2010-11	66-67
	f. Copy of company master data as on 31.03.2009 & 31.03.2015	68-69

S. No.	PARTICULARS	PAGE NOS.
	g. Copy of Confirmations & Affidavit	70-73
13.	Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Anchal Properties Pvt. Ltd.	
	a. Copy of Share application form	74-75
	b. Copy of Board Resolution	76-77
	c. Copy of PAN Card	78
	d. Copy of Bank Statement	79
	e. Copy of ITR for A.Y. 2009-10 & 2010-11	80-81
	f. Copy of company master data as on 31.03.2009 & 31..03.2015	82-83
	g. Copy of Confirmations & Affidavit	84-87
14.	Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Athrav Business Pvt. Ltd	
	a. Copy of Share application form	88-89
	b. Copy of Board Resolution	90-91
	c. Copy of PAN Card	92-93
	d. Copy of Bank Statement	94
	e. Copy of ITR for A.Y. 2009-10 & 2010-11	95-96
	f. Copy of company master data as on 31.03.2009 & 31..03.2015	97-98
	g. Copy of Confirmations & Affidavit	99-102
15.	Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Casper Enterprises Pvt. Ltd.	
	a. Copy of Share application form	103-104
	b. Copy of Board Resolution	105-106

S. No.	PARTICULARS		PAGE NOS.
	c.	Copy of PAN Card	107
	d.	Copy of Bank Statement	108
	e.	Copy of ITR for A.Y. 2009-10 & 2010-11	109-110
	f.	Copy of company master data as on 31.03.2009 & 31..03.2015	111-112
	g.	Copy of Confirmations & Affidavit	113-116
16.	Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Nakshatra Business Pvt. Ltd.		
	a.	Copy of Share application form	117-119
	b.	Copy of Board Resolution	120-121
	c.	Copy of PAN Card	122-123
	d.	Copy of Bank Statement	124
	e.	Copy of ITR for A.Y. 2009-10 & 2010-11	125-126
	f.	Copy of company master data as on 31.03.2009 & 31..03.2015	127-128
	g.	Copy of Confirmations & Affidavit	129-132
17.	Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Olive Overseas Pvt. Ltd.		
	a.	Copy of Share application form	133-134
	b.	Copy of Board Resolution	135-136
	c.	Copy of PAN Card	137
	d.	Copy of Bank Statement	138
	e.	Copy of ITR for A.Y. 2009-10 & 2010-11	139-140
	f.	Copy of company master data as on 31.03.2009 & 31..03.2015	141-142
	g.	Copy of Confirmations & Affidavit	143-146

S. No.	PARTICULARS	PAGE NOS.
18.	Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Vanguard Jewels Pvt. Ltd.	
a.	Copy of Share application form	147-148
b.	Copy of Board Resolution	149-150
c.	Copy of PAN Card	151
d.	Copy of Bank Statement	152
e.	Copy of ITR for A.Y. 2009-10 & 2010-11	153-154
f.	Copy of company master data as on 31.03.2009 & 31..03.2015	155-156
g.	Copy of Confirmations & Affidavit	158-160
18.	Copy of Written Submission filed on 25/07/2017 before Id. CIT(A), NFAC	161-178
19.	Copy of Written Submission filed on 03/08/2017 before Id. CIT(A), NFAC	179-180
a.	Copy of certificate from practicing Company Secretary certifying master data of seven companies along with Form no. 2 & 20B.	181-198
b.	Copy of MGT-7	199-215
20.	Copy of Written Submission filed on 01/10/2018 before Id. CIT(A), NFAC	216-217

**Case laws relied upon:**

S.No	PARTICULARS	PAGE NOS.
1.	Copy of order passed by Hon'ble Gujarat High court in the case of ITO vs M/s Seth Brothers & ORS reported in 169 CTR 519	1-12
2.	Copy of order passed by Hon'ble Delhi High Court in the case of ITO vs Sarthak Securities Co. Pvt. Ltd reported in 329 ITR 110	13-26
3.	Copy of order passed by Hon'ble Delhi High Court in the case of PCIT vs RMG Polyvinyl (I) Ltd reported in 83 taxmann.com 348	27-30

S.No	PARTICULARS	PAGE NOS.
4.	Copy of order passed by Hon'ble Delhi High Court in the case of PCIT vs Meenakshi Overseas Pvt Ltd reported in 82 taxmann.com 300	31-40
5.	Copy of order passed by Hon'ble Bombay High Court in the case of Commissioner of Income Tax vs M/s. Gagandeep Infrastructure Pvt. Ltd. reported in 394 ITR 680	41-47
6.	Copy of order passed by Hon'ble Bombay High Court in the case of PCIT vs Apeak Infotech and Ors reported in 397 ITR 148	48-57

7. The Id. AR of the assessee stated that the re-opening done in this case is based on the borrowed satisfaction and there is no finding of the Id. AO in the reasons recorded that in fact the income has escaped the assessment. In support of this contention the Id. AR of the assessee relied upon the decision of the Hon'ble Gujarat High Court in the case of Seth Brothers vs. CIT 169 CTR 519. Revenue while re-opening the cash relied upon the statement of Shri Praveen Kumar Jain which has been retracted by him by filling the affidavit on 15.05.2014 (APB-17-21). As is evident from the retraction statement the whole basis of re-opening of the case does not exist. In support of this contention, he relied upon the decision of the PCIT Vs. RMG Polyvinyl (I) Ltd. 83 taxmann.com 348 (Delhi) and PCIT Vs. Meenakshi Overseas (P.) Ltd. 82 taxmann.com 300 (Delhi). The Id. AR thus submitted that the Id. AO merely on the statement relied re-opened the case of the assessee and also made the assessment without conducting

any independent inquiry. Therefore, the re-opening made in the case of the assessee is not sustainable.

So far as merits of the case of the assessee, his case is covered by the decision of the apex court in the case of Lovely Exports as the assessee has provided all the details related to the identity, genuineness and credit worthiness of all those companies who have made investment in the assessee company. All the details to prove the identity, genuineness of the transaction, capacity for making investment were placed on record and the Id. AO has not controverted the factual aspect of the matter.

8. Per contra, the Id. DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). The Id. DR stated that the case of the assessee was validly re-opened based on the investigation wing report and based on the detailed search conducted and the material collected by the revenue. Thus, based on that tangible material the case of the assessee has rightly been re-opened and in support of this contention he relied upon the decision of the apex court in the case of Raymond Woollen Mills Ltd. Vs. ITO [ 236 ITR 24(SC) ]

As regards the merits of the case Shri Praveen Kumar Jain he based on the information unearthed by the revenue has categorically confirmed that he is engaged in managing the affairs of the various companies including the 7 companies from whom the assessee received the share application money, and all these entities are used to provide the accommodation entries. Merely Shri Praveen Kumar Jain retracted from the statement the information unearthed during the search and the information can be used against the assessee. It is not only a statement of Shri Praveen Kumar Jain but in a detailed statement along with the various documents so found he has explained as to how he is engaged in providing accommodation entry in the form of unsecured loans, share capital, share application money bogus sale and purchase etc. All this information proves that the share application money accepted by the assessee is nothing but the accommodation entry benefit availed by the assessee. The Id. DR relying on the observation of AO at para 3.9 stated that at the premises of Shri Praveen Kumar Jain compute hard disc, PEN drive and tally data which contain the books of accounts of these companies. In addition the cheque book, and the detail of various middlemen have been found recorded. Thus, the retraction statement made by the Shri Praveen Kumar Jain will not change the facts. The Id. DR also relied upon the decision of

M/s. Kanchwala Gems Vs. JCIT wherein it was held that merely cheque payment is not sufficient to establish the genuineness of the transaction. Assessee was provided the relied upon the statement of Shri Praveen Kumar Jain the based on the decision of the Swati Bajaj it is not necessary to provide the cross examination to the assessee. The Id. DR also rely on the statement of the brother-in-law of Shri Praveen Kumar Jain who has also confirmed the facts. So, the re-opening in the case is based on the cogent material available on record and the addition is based on the detailed statement of Shri Praveen Kumar Jain which is based on the evidence found at his premises. Based on these arguments he relied upon the findings recorded in the orders of the Id. AO and Id. CIT(A).

9. We have heard the rival contentions and perused the material placed on record and gone through the judicial precedent cited by the parties to drive home this contention so raised. Ground no. 2, 2.1, 2.2 & 2.3 raised by the assessee challenges the addition of Rs. 60,00,000/- made in the hands of the assessee as undisclosed income of the assessee and the addition has been made ignoring the evidence placed on record. The brief facts related to the grounds so raised are that the assessee filed the return of income declaring loss of Rs. 23,590/-. The case of assessee was reopened

on the basis of information received by Id. AO from the office of DGIT (Inv.) Mumbai, wherein Investigation Wing reported that Shri Praveen Kumar Jain was indulged in providing accommodation entries in the form of bogus share application from various entities including from M/s Alka Diamond Industries Ltd., M/s Anchal Properties P. Ltd., M/s Atharv Business Pvt. Ltd., M/s Casper Enterprises Pvt. Ltd., M/s Nakashatra Business Pvt. Ltd., M/s Olive Overseas Pvt. Ltd. & M/s Vanguard Jewels Pvt. Ltd.

Based on said information from Id. DGIT (Inv), it was presumed by Id.AO that share application money worth Rs. 60,00,000/- received by assessee from aforesaid companies is also the accommodation entry obtained to reroute unaccounted money and therefore, proceeding u/s. 147 r.w.s. 148 was initiated after recording the reasons and notice u/s. 148 date 13.02.2015 was issued to the assessee. Vide letter dated 09.03.2015 assessee requested Id. AO to consider original return filed u/s 139(1) of the Act as return of income filed in response to notice u/s 148 of the Act.

Various details as sought by Id.AO were furnished and assessment was completed u/s 147 r.w.s. 144 of the Act after making addition to the tune of Rs.60,00,000/- viz. entire amount of share application money by treating the same as Unexplained cash credit u/s 68 of the Act.

The finding recorded in the assessment order was challenged before the Id. CIT(A). Ld. CIT(A) dismissed the appeal of assessee and thereby the assessee challenged that order by filling the present appeal.

10. Ground no. 2, 2.1, 2.2 & 2.3 raised by the assessee collectively challenged the action of Id. CIT(A) in confirming the action of Id. AO in making the addition of Rs. 60,00,000/- on account of treating the share application money received from various companies as undisclosed income of assessee. All these grounds are related to the merits of the case and the same were contended together decided together. The dispute relates to the fact that during the year under consideration assessee company has received alleged accommodation entries in the form of share application money from the following companies which are allegedly controlled/managed by the Shri Praveen Kumar Jain :-

Sl. No.	Name of party	Amount	Ch./DD No. & date	Assessee's A/c no. & Branch Name
1	M/s Alka Diamond Ind. Ltd.	5,00,000/-	RTGS dt.17.08.2009	Account No. 61073593863 Kishangarh ND. Area (10746) State Bank of Bikaner & Jaipur (APB 43-44)
2	M/s Anchal Properties P. Ltd.	5,00,000/-	RTGS dt.17.08.2009	
3.	M/s Atharv Business P. Ltd. (Faststone Tred (I) Ltd.)	5,00,000/-	RTGS dt.17.08.2009	
4.	M/s Casper Enterprises P. Ltd. (Oswal Trading (1) P. Ltd.	20,00,000/-	RTGS dt.10.08.2009	
5.	M/s Nakshatra Business P. Ltd. (Hema Trading Co. P. Ltd.)	10,00,000/-	RTGS dt.20.08.2009	
6.	M/s Olive Overseas P. Ltd. (Realgold	10,00,000/-	RTGS	

	Trading Co. P. Ltd.)		dt.20.08.2009	
7.	M/s Vanguard Jewels Ltd.	5,00,000/-	RTGS dt.17.08.2009	
	<i>Total</i>	60,00,000/-		

As is evident from the record that case of the assessee was reopened solely based on statement of unrelated party which was also later on retracted. Therefore, as such there is no specific information, which could prove that transactions undertaken by the assessee are of the nature of accommodation entries. It is further submitted that during the course of assessment proceedings as well as appellate proceedings assessee submitted necessary evidence regarding receipts of share application money from the above parties before the Ld. AO as well as Ld. CIT(A). The documents so submitted for all these investor companies consists of Copy of Share Application form, Copy of Board Resolution, Copy of investor company's PAN Card, Copy of Bank statement showing the payment by an account payee cheque, Income Tax return of the investor company for the year under consideration and of the previous year, copy of companies master data dated 31.03.2009 and 31.03.2015 as to show that the company are active and copy of confirmation and affidavit of the director of the investor company at the time of reassessment proceeding so as to confirm the investment made by the investor company. All this evidence so filed before the Id. AO has not been controverted including the affidavit of

the director of the investor company. These evidences so filed proves the identity, credit worthiness and genuineness of the transaction. The provision of section 68 as it stood for the year under consideration reads as under :

*“68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year*

*Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—*

*(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*

*(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory”*

Here it is worthwhile to note that First Proviso to Section 68 wherein addition on account of Share Application Money / Share Capital can be made, stood inserted to the statute book, by Finance Act 2012, w.e.f. 01.04.2013 and therefore that addition made by Id. AO on account of Share Application Money u/s 68 for the year under consideration is not in accordance with law and it is made without considering the provision of law stood related to the year under consideration. The relied upon by the assessee the facts of the case of the assessee being similar with the case

of decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax – 1 vs. M/s Gagandeep Infrastructure Pvt. Ltd. reported in 394 ITR 680, wherein court held that;

“(e) *We find that the proviso to Section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced “for removal of doubts” or that it is “declaratory”. Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. In any view of the matter the three essential tests while confirming the pre proviso Section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in Lovely Exports (P) Ltd. (supra) in the context to the pre amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit.”*

Thus, for the year under consideration from the perusal of section 68, it is evident that assessing officer can make addition u/s 68 only under two circumstances, i.e.:

- (iii) Appellant does not offer any explanation about nature and source of such credit or
- (iv) Explanation offered by Appellant is not upto the satisfaction of Ld. AO.

Here in this case as we note that the assessee provided the explanation and when the assessee provides explanation, before rejecting the same Id. AO has to record dissatisfaction as to why the explanation furnished by the assessee is not acceptable.

In the case of hand assessee has offered for the detailed explanation regarding nature and source of credits but also supported the same with documentary evidences in the shape of PAN, ITRs, Confirmations, Affidavit, Share Application Form, Board Resolution and Bank Statement of the different investor. All these records so placed on record were not at all dealt with so as to doubt the same by Id. AO but all such vital evidences have been ignored solely on the basis of recorded statements of third party recorded by some other officials during the course of search & survey operation conducted in that case. Whereas the assessee has already discharged his initial onus laid down u/s 68 of Income Tax Act. By proving the 3 main ingredients of share application money as under:-

(iv) Identity:-

The identity of investors stood proven as details of PAN card along with ITR's and copies of bank statement and other documentary evidence already shared.

(v) Genuineness of Transaction:-

The assessee has filed confirmation letter along with affidavit of the investors. The assessee also filed copy of account statement of cash credit where the amount of payment is reflected in bank statement.

(vi) Capacity proved:-

The assessee has also filed copy of bank statement of the investors which shows huge number of transactions of high value. There is no onus on the assessee to prove source of source. Once the assessee is able to establish that he has in fact received money from third party, it can't be burdened with a further onus of establishing the source from which such third party had been able to obtain the money.

All this evidence was neither dealt with in the assessment order nor commented upon about the veracity of the same. Ld. AO has summarily rejected the evidence submitted by the assessee and made no effort to bring on record some material to support his conclusion that during the year under appeal assessee has received share application money from bogus parties and the transaction entered was not genuine. He merely based on the information supplied by the Directorate of Investigation, Mumbai and the on the basis of statement pf Shri Praveen Kumar Jain (which was later on retracted vide affidavit dated 15.05.2014) made the additions.

When the matter carried to the Id. CIT(A) by the assessee the Ld. CIT(A) who has summarily rejected the claim of the assessee and evidences brought on record by the assessee by holding that;

*"..... However, the fact remains that the 7 investor companies were in the business of providing accommodation entries of various types and shri. Pravin Kumar Jain had provided accommodation entries to various beneficiaries from the said companies as well as many other companies controlled by him and many beneficiaries had admitted the fact when confronted by the Income Tax Department. Moreover, the financials of the assessee do not have anything to*

*invite/attract an independent person to invest in the assessee company. In view of these facts, I find that AO was justified in treating the amount of Rs. 60,00,000/- as undisclosed income of the assessee. Accordingly, the addition made on made on that account is confirmed”*

As is evident from the above finding that the Id. CIT(A) has also merely based on the statement of Shri Praveen Kumar Jain confirmed the addition. Without dealing with the provision of law and evidences provided by the assessee.

Thus, as discussed herein above the provision of section 68 of the Act and the evidence so placed on record, we are of the considered view that the addition made by the Id. AO and sustained by the Id. CIT(A) is without appreciating the provision of law prevailing and the evidence placed on record by the assessee. We get support of our view from the decision of apex court in the case of M/s Lovely Exports Pvt. Ltd. reported in 216 CTR 195. This view also further accepted and expanded by the Hon'ble Chhattisgarh High Court in the case of ACIT Vs. Venkateshwar Ispat (P) Ltd. Reported in 319 ITR 393 wherein it has been held that;

*“In the matters of CIT V/s. Lovely Exports (supra), the question before the Hon'ble Supreme Court was whether the amount of share money can be regarded as undisclosed income u/s 68 of the Act? Answering the above question, the Hon'ble Supreme Court has held that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but if cannot be regarded as undisclosed income of the assessee company.”*

As we have noted here in above that the assessee has not only given the names and addresses of the shareholders but has also given their PANs. Further assessee to prove genuineness of the transaction also submitted the Share Application form, Board Resolution, ITR's, Confirmation and Affidavit from investors. On the above facts, the decision of the Hon'ble Apex Court in the case of CIT V/s. Lovely Exports (P) Ltd. (supra) reported in 216 CTR 195 as well as the decision of the Hon'ble Chhattisgarh High Court in the case of Venkateshwar Ispat (P) Ltd. (supra) are squarely applicable as the assessee has filed the necessary confirmation and other particulars of shareholders and incidentally all the subscribers are Private Limited Companies and the appellant had received the application money through banking channel. Based on these set of facts the addition so made by the Id. AO for an amount of Rs. 60,00,000/- is directed to be deleted based on these observations ground no. 2, 2.1, 2.2 & 2.3 raised by the assessee stands allowed.

11. Ground no. 1 & 1.1 raised by the assessee challenges the re-opening of the assessment on technical grounds, since we have considered the merits of the case, we do not deem it fit to decide the same as it becomes educative in nature.

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

Order pronounced in the open court on 05/09/2024.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 05/09/2024

\*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Padmavati Agrico (India) Pvt Ltd., Ajmer
2. प्रत्यर्थी / The Respondent- ACIT, Circle-01, Ajmer
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 702/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar