IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.2185/Del/2024
[Assessment Year : 2008-09]

AGS Developers Pvt.Ltd., H.No.47, Pocket II, Near Appollo Hospital, Jasola, New Delhi-110076. ***PAN-AAFCA1795G***	vs	ITO, Ward -1(4), New Delhi.
APPELLANT		**RESPONDENT**

Appellant by	Shri Sandeep Goel, Adv.
Respondent by	Shri Siddharth B.S. Meena, Sr.DR
Date of Hearing	04.09.2024
Date of Pronouncement	18.10.2024

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre ("NFAC"), Delhi dated 14.03.2024 for the assessment year 2008-09.

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

1. *"That impugned assessment order passed u/s 147/143 of 1961 Act (dated 23.03.2016) and further impugned first appeal order passed u/s 250 of 1961 Act (dated 14.03.2024) are both invalid and deserve to be quashed in toto because they are founded and based on invalid and flawed reopening action u/s 148 of 1961 act which "reopening" is made totally contrary to mandate of 1961 Act;*

1.1 *Impugned Assessment order dated 23.03.2016 passed u/s 147/143 is invalid being based on invalid notice issued u/s 148 of 1961 Act dated 25.03.2015 as admittedly only stated/purported search based information is made as basis to infer escapement of income, same could only be done if at all under special and specific*

provision of sec 153C of 1961 Act; therefore first appeal order dated 14.03.2024 is also invalid. Both order may please be quashed and set aside;

1.2 *Impugned Assessment order dated 23.03.2016 passed u/s 147/143 is invalid being based on invalid notice issued u/s 148 of 1961 Act dated 25.03.2015 which lacks valid/requisite legal foundation and there under; therefore first appeal order dated 14.03.2024 is also invalid. Both order may please be quashed and set aside.*

1.3 *Impugned Assessment order dated 23.03.2016 passed u/s 147/143 is invalid being based on invalid notice issued u/s 148 of 1961 Act dated 25.03.2015 which is based on mechanical /borrowed "satisfaction" and without any valid "tangible" material and thereunder; therefore first appeal order dated 14.03.2024 is also invalid. Both order may please be quashed and set aside.*

PART-2

GROUNDS ON MERITS: ABRITRARY AND NON APPLICATION OF MIND ON PART OF LD AO AND LD CIT-A

2. *That Impugned Assessment order dated 23.03.2016 passed u/s 147/143 and first appeal order dated 14.03.2024 are totally invalid and unlawful in so far as impugned addition made of Rs 25,00,000 and Rs 50,000 are considered which are sustained based on perverse and arbitrary reasoning with no legal weight;*

3. *That Impugned Assessment order dated 23.03.2016 passed u/s 147/143 and first appeal order dated 14.03.2024 are totally invalid and unlawful in so far as impugned addition made of Rs 25,00,000 and Rs 50,000 are considered as admittedly there is no independent inquiry at end of Ld AO during assessment qua stated sum of Rs 25 lacs as added u/s 68 which vitiates the entire assessment;*

4. That Impugned Assessment order dated 23.03.2016 passed u/s 147/143 and first appeal order dated 14.03.2024 are totally invalid and unlawful in so far as impugned addition made of Rs 25,00,000 and Rs 50,000 are considered as admittedly there is no cogent material besides the "dictate" of investigation wing to support the impugned addition u/s 68 of Rs 25 lacs and consequential addition of Rs 50,000; entire impugned assessment is based on mere dictate and direction of investigation wing:

VIOLATION OF PRINCIPLE OF NATURAL JUSTICE

5. That Impugned Assessment order dated 23.03.2016 passed u/s 147/143 and first appeal order dated 14.03.2024 are totally invalid and unlawful in so far as impugned addition made of Re 25,00,000 and Rs 50,000 are considered as admittedly there is total violation of principle o natural justice including lack of valid SCN and lack of independent examination/cross examination is concerned;

PRAYER (RELIEF SOUGHT):

(A) TO QUASH THE UNDERLYING ASSESSMENT FRAMED BY LD AO FOR WANT OF VALID ASSUMPTION OF JURISDICITON U/S 148 AND SO HELD IMPUGNED FIRST APPEAL/NFAC/CIT-A ORDER U/S 250 IS ALSO INVALID.

B) TO DELETE THE IMPUGNED ADDITION MADE IN IMPUGNED ASST ORDER u/s 68 (total addition of Rs 25,50,000) AND ARBITRRAILY SUSTAINED IN FIRST APPEAL ORDER.

C) TO QUASH AND SET ASIDE BOTH LD AO AND FIRST APPEAL ORDERS IN TOTO.

D) ANY OTHER APPROPRIATE/SUITABLE RELIEF AS DEEMED FIT IN FACTS AND CIRCUMSTANCES OF THE CASE.

APPELLANT MOST RESPECTFULLY CRAVES FOR LEAVE TO ADD/MODIFY THE ABOVE GROUNDS OF APPEAL."

3. Facts giving rise to the present appeal are that the assessee company filed its return of income on 08.07.2008, declaring income of INR 1,954/-. The same was processed u/s 143(1) of the Income Tax Act, 1961 ("the Act"). Thereafter, the case of the assessee was re-opened and notice u/s 148 of the Act was issued on 25.03.2015 and duly served upon the assessee. In response to the notice u/s 148 of the Act, the assessee company stated that the return of income already filed, to be treated as return filed in response to notice u/s 148 of the Act. Thereafter, notice u/s 143(2) and 142(1) of the Act was issued to the assessee. In response to the notice issued u/s 143(2) of the Act, the Director the company, Shri Ashok Garg alongwith Ld.AR on behalf of the assessee attended the proceedings. Thus, Assessing Officer ("AO") framed the assessment u/s 143 r.w.s. 147 of the Act vide assessment order dated 23.03.2016 and made addition of INR 25,00,000/- i.e. share application money received by the assessee as accommodation entry from M/s. Tauraus Iron & Steel Co. Pvt. Ltd.. Further, a sum of INR 50,000/- was added to the income of the assessee as commission expenses. Thus, the AO assessed income of the assessee at INR 25,51,950/- against the income disclosed by the assessee at INR 1,954/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal of the assessee. Thereby, he sustained the finding of AO.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Ld. Counsel for the assessee has raised multiple grounds in respect of validity of assessment.

7. Apropos to the grounds of appeal, Ld. Counsel for the assessee submitted that the re-opening of assessment is *ex-facie* bad in law and is contrary to the settled position of law. He submitted that the basis for re-opening the assessment as per the reasons to believe is stated that a search operation u/s 132 of the Act was conducted at the office premises of Shri Tarun Goyal by the Investigation Wing, Delhi. The name of the assessee company, M/s AGS Developers Pvt. Ltd. appeared in the list of beneficiaries who had taken accommodation entries. The Investigation Wing in its report had recorded that true nature of such transactions being sham transactions/accommodation entries and the entry giving entities had been shown to be mere shell companies of no means. Ld. Counsel for the assessee vehemently urged that the re-opening of assessment u/s 147 of the Act, is *ex-facie,* illegal and unjustified in the light of binding precedents. The assessment order so framed deserves to be quashed under the facts of the present case. He further submitted that on facts, the impugned addition has been made on the basis of conjectures and surmises. He contended that the opinion of the AO is borrowed as it has highly relied on the report of Investigation Wing without independently verifying the issue and correct facts. He placed reliance on the following case laws:-

[i]. "ACIT vs Shri Deepak Gambhir in ITA No.2466/Del/2023 vide order dated 08.07.2024 [Delhi Trib.];

[ii]. ITO vs Vikram Sujitkumar Bhatia 453 ITR 417/293 Taxman 4/332 CTR 1/ 224 DTR 217 (SC), Civil Appeal No.911/2022 order dated 06.04.2023;

[iii]. Shri Rajender Aggarwal vs The ACIT in ITA No.2631/Del/2019 vide order dated 05.12.2023; and

[iv]. Shyam Sunder Khandelwal vs ACIT in D.B.Civil Writ Petition No.18363/2019 order dated 29.03.2024."

8. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. He fairly submitted that re-opening of assessment is based on the search. He submitted that therefore, the AO was having information about escapement of income. There is no embargo under the law that the AO cannot proceed u/s 147 of the Act, dehors the information or material is based on the search proceedings. In respect of addition that it fails the test of genuineness and creditworthiness. For this, he re-iterated the contents of written submissions. For the sake of clarity, written submissions filed by the Revenue is reproduced as under:-

"In the above case, it is humbly submitted that the following material facts and relevant case laws may kindly be considered with regard to issue of accommodation having been taken by the assessee from non-descript entities being operated, managed and controlled by an accommodation entry provider Mr. Tarun Goyal.

Factual Matrix & Background: *There was a search conducted at the premises of Mr. Tarun Goyal resulting in the seizure of large number of incriminating documents. Inquires during the post search investigations established that Mr. Tarun Goyal was engaged in providing accommodation entries. He had floated and operated large number entities for the purpose of providing accommodation entries to various beneficiaries in the form share capital, share application money and loans etc. routing*

the cash received from them through non-descript paper entities/companies. He used to charge commission from beneficiaries for such accommodation entries.

In the instant case entries of accommodation in the guise of share application money was provided to the assessee company from one of his non descript entities ***M/s Tauraus Iron & Steel Co. Pvt. Ltd, as described at Page 1 and 2 of AO, amounting to Rs.25 lacs during the vear under appeal.***

Accordingly, the AO after analyzing the facts, circumstances and evidences in details, concluded the assessment u/s.143/147 holding the credit of Rs.25,00,000/- as unexplained credit u/s 68. The AO has also discussed the modus operandi of the entry operator SK Jain and his associates in the assessment order. In spite of sufficient opportunities having been provided the assessee could only submit mere a paper trail of the documents and failed to controvert the adverse findings confronted to it by the AO.

The second addition of Rs.50,000/- was made u/s 69C on account of undisclosed commission expense paid towards taking the above accommodation entries from the entry operatorJain. [Ref. AO Page 4]

The Ld. CITI [Appeal] has also concurred with the findings of the AO and dismissed appeal of the assessee on both the issues i.e. reopening u/s 147/148 and merits of the additions.

Validity of Reopening and assuming jurisdiction u/s 147/148:

It is a settled legal position that at the stage of recording of reason, no final finding is required to be given and only prima facie belief is required to be reached by the assessing authority. The AO can initiate reassessment proceedings u/s 147 on the basis of credible and specific information available with him.

On the validity of reassessment proceedings, I am relying on the decision of Raymond Woollen Mills Ltd. Vs ITO 236 ITR 236 ITR4 (SC) wherein it

was held that the AO is not to conclusively prove the escapement of income to assume jurisdiction u/s 147 of the Act.

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

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

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

Hon'ble Jurisdictional Delhi High Court in the case of Pratibha Finvest P Ltd Vs ITO [2013] 29 taxmann.com 420(Del) has held that Reopening of assessment on the basis of investigation report in case of search on third parties revealing accommodation entries received by assessee, was justified.

Hon'ble Jurisdictional Delhi High Court in the case of JMD Global P Ltd Vs PCIT [2019] 112 taxmann.com 204 (Delhi) 31.10.2019 has held that where Assessing Officer issued reassessment notice on basis of an information received from Investigation wing that assessee had received bogus accommodation entries in form of share capital, since Assessing Officer did not examine issue related to share capital during original assessment, impugned reopening was justified.

Hon'ble Supreme Court in the case of ACIT Vs Rajesh Jhaveri Stock Brokers P Ltd [2007] 161 500 [SC] [2007] 210 CIT 30 [SC] has held that Section 147 authorizes Taxman 316 [SC] [2007] ITR and permits the AO to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word 'reason' in the phrase 'reason to believe' will mean cause or justification. If the AO has cause or justification to know or suppose that income has escaped assessment, it can be said to have 'reason to believe' that an income has escaped assessment. The said expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the AO is to administer the statute with solicitude for the public exchequer with an in-built idea of fairness to taxpayers.

The Hon'ble Supreme Court in its decision delivered on 28.03.2022 [SLP [C] No.22921 of 2019] in the case of DCIT Vs MR Shah Logistics P. Ltd [2022] 136 taxmann.com 373 (SC) laid down the proposition that reopening of a case u/s 147 with an objective to verify some information regarding accommodation entry or share premium and share capital is valid and sufficiency of that material cannot dictate the validity of Notice u/s 148.

[Sufficiency and Correctness of Material [information/reasons would not be considered at the stage of issue of notice u/s 148: This is the proposition held by the Hon'ble Delhi High Court in the case of Saif II Mauritius company Ltd Vs ACIT [2023] 148 taxmann.com 446 [Delhi] order dated 23.03.2022.

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

The important question is.....

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

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

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

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

Additional Grounds of Appeal with any specific application:

As regards challenge to initiation of proceedings under section 147, the assessee has raised a ground that the assessment proceedings should have been completed under section 153C of the Act, it is submitted that

a. *Notice under section 148 dated 25.3.2015 was issued on the basis of specific and relevant information. The assessee complied to the said notice stating that its already filed return u/s 139[1] may be treated return filed u/s 148. Accordingly, moved further in the proceedings by issuing notice u/s 143[2] on 9.7.20154. Copies of the reason recorded and even copy of the entry operator Tarun Goyal were also provided to the assessee during the course of assessment proceedings. Assessee participated in the assessment proceedings. No challenge to the jurisdiction was initially made before the AO and the CIT[A] relating to section 153C.*

b. Thus such objection to assumption of jurisdiction u/s 148 was not raised by the assessee at the initial stage of the reassessment proceedings. In CIT III Vs Shri Shyam Sunder Infrastructure (P) Ltd DOJ 04.02.2015 Hon'ble Delhi High Court has held as under:

5. Learned counsel for the assessee contended that the ITAT possessed jurisdiction to return a finding on whether the AOs order was a nullity, and can give the verdict that such adjudication cannot go into the merits of such proceedings. Facially, Section 124(3) stipulates a bar to any contention about lack of jurisdiction of an AO. It is not as if the provisions of the Act disable an assessee form contending that in the given circumstances the AO lacks jurisdiction, rather Section 124(3) limits the availability of those options at the threshold. The assessee upon receipt of notice of the kind mentioned in Clause (a) and (b) of sub-section 3 has the option to urge the question of jurisdiction; the expressed tenor and terms of the provisions clarify that such objections are to be articulated at the threshold or at the earlier points of time. The two points of time specifled in Section 124(3) (a) are as under:

(i) Within one month from the date of service of notice or;

(ii) After completion of assessment-whichever is earlier.

"6. In the present case, there is no dispute that the reassessment notice was issued by the AO on 22.03.2010; upon its receipt, the assessee reiterated its earlier return on 21.04.2010. Since its response led to objections as to the jurisdiction, it lost the capacity to urge the ground by virtue of the provision under Section 124(3) (a). This condition has been obviously overlooked by the ITAT which proceeded to set aside the assessment and completed the reassessment proceedings. The impugned order is consequently set aside; the question of law urged by the Revenue is answered in its favour. The matter is remitted for consideration on the merits

of the appeal concerning the additions made in the reassessment proceedings.

7. The Appeal is allowed is above terms."

In view of the above as the assessee did not raise objections at the initial stage and therefore the above decision of Hon'ble Delhi High Court is clearly applicable to the case of the assessee.

c. *In addition to the above it is further submitted that the assertion of the assessee that the assessment in his case should have been made u/s 153C is legally not tenable as in this case there is no satisfaction of the AO of the searched person where such AO has recorded his satisfaction that any assets and documents seized belong to the assessee (being a person other than the searched person). Provisions of section 153C are specific provision and they cannot be applied without following the procedures laid down in the said section. These are not the provisions that get automatically attracted in respect of any seizure of material/ documents relating to the different persons other than the searched person.*

At this stage it is expedient to refer to Section 153C(1) of the Act, which reads as under:- "153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to:

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or

reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A:

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person: Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated."

Therefore, the first and foremost condition for initiation of proceedings under Section 153C of the Act is for the AO of the searched person to be satisfied that any assets or documents seized belong to the Assessee (being a person other than the searched person). The AO of the Assessee, on receiving the documents and the assets seized, would have jurisdiction to commence proceedings under Section 153C of the Act. The AO of the searched person is not required to examine whether the assets or documents seized reflect undisclosed income. All that is required for him is to satisfy himself that the assets or documents do not belong to the searched person but to another person.

Thereafter, the AO has to transfer the seized assets/documents to the AO having jurisdiction of the Assessee to whom such assets/documents belong. Section 153C(1) of the Act clearly postulates that once the AO of a person, other than the one searched, has received the assets or the documents, he is to issue a notice to assess/re-assess the income of such person that is, the Assessee other than the person searched - in accordance with provisions of Section 153A of the Act.

Further, the proviso to Section 153C(1) of the Act expressly indicates that reference to the date of initiation of search for the purposes of second proviso to Section 153A shall be construed as a reference to the date on which valuable assets or documents are received by the AO of an Assessee (other than a searched person). Thus, by virtue of the second proviso to section 153A of the Act, the assessments/reassessments that were pending on the date of receiving such assets, books of account or documents would abate.

In Pepsi Foods (P.) Ltd. v. Asstt. CIT [2014] 367 ITR 112/52 taxmann.com 220/[2015] 231 Taxman 58 (Delhi), the Hon'ble Court had explained that on a plain reading of Section 153C of the Act, a notice under that section could be issued only after two preceding conditions had been met. First of all, the AO of the searched person would have to arrive at a satisfaction that document or asset seized does not belong to the person searched but to some other person and secondly, the seized documents/assets are handed over to the AO having jurisdiction over that person, that is, the person other than the one searched and to whom the seized documents/assets are said to belong. The relevant extract of the said decision is quoted below:-

"6. On a plain reading of section 153C, it is evident that the Assessing Officer of the searched person must be 'satisfied' that, inter alia, any document seized or requisitioned 'belongs to a person other than the searched person. It is only then that the Assessing

Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or reassess his income in accordance with the provisions of section 1534. Therefore, before a notice under section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is after such satisfaction is arrived at-that the document is handed over to the Assessing Officer of the person to whom the said document 'belongs'. In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to for the petitions that the first step it has above. Section 132(44)(1) clearly stipulates that when, inter alla, any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in section 292C(1)(1). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or 'satisfaction' that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of 'satisfaction'. 11. It is evident from the above satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under section 153C, there is nothing which would indicate as to how the presumptions which are to be normally raised as

indicated above, have been rebutted by the Assessing Officer. Mere use or mention of the word "satisfaction" or the words "I am satisfied" in the order or the note would not meet the requirement of the concept of satisfaction as used in section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized documents belong to a person other than the searched person. We are afraid, that going through the contents of the satisfaction note, we are unable to discern any "satisfaction" of the kind required under section 153C of the said Act'."

In CIT-7 vs RRJ Securities Ltd [2015] 62 taxmann.com 391(Delhi) the Hon'ble Court has discussed in details as to when and how the AO assumes jurisdiction under section 153C. The above reference to the case of Pepsi Foods (P) Ltd has also been discussed in that order. It is held by the Hon'ble Court:

"18. It, plainly, follows that the recording of a satisfaction that the assets/documents seized belong to a person other than the person searched is necessarily the first step towards initiation of proceedings under Section 153C of the Act. In the case where the AO of the searched person as well as the other person is one and the same, the date on which such satisfaction is recorded would be the date on which the AO assumes possession of the seized assets/documents in his capacity as an AO of the person other than the one searched."

19. The Allahabad High Court in the case of CIT v. Gopi Apartments [2014] 365 ITR 411/46 taxmann.com 280 has also expressed a similar view in the following words:-

"25. A bare perusal of the provision contained in Section 153C of the IT. Act leaves no doubt that, as is provided under Section 158BD, where the Assessing Officer, while proceeding under Section 153A against a person who has been subjected to search and seizure under Section 132(1) or has been proceeded under Section 132A, is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or

documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

Thus, there are two stages:

The first stage comprises of a search and seizure operation under Section 132 or proceeding under Section 1324 against a person, who may be referred as 'the searched person'. Based on such search and seizure, assessment proceedings are initiated against the 'searched person' under Section 1534. At the time of initiation of such proceedings against the 'searched person' or during the assessment proceedings against him or even after the completion of the assessment proceedings against him, the Assessing Officer of such a 'searched person', may, if he is satisfied, that any money, document etc. belongs to a person other than the searched person, then such money, documents etc, are to be handed over to the Assessing Officer having jurisdiction over 'such other person'.

The second stage commences from the recording of such satisfaction by the Assessing Officer of the 'searched person' followed by handing over of all the requisite documents etc. to the Assessing Officer of such other person thereafter followed by issuance of the notice of the proceedings under Section 153C read with section 1534 against such 'other person'.

The initiation of proceedings against 'such other person' are dependent upon a satisfaction being recorded. Such satisfaction may be during the search or at the time of initiation of assessment proceedings against the 'searched person', or even during the assessment proceedings against him or even after completion of the same, but before issuance of notice to the 'such other person' under Section 153C.

26. Even in a case, where the Assessing Officer of both the persons is the same and assuming that no handing over of documents is required, the

recording of 'satisfaction' is a must, as, that is the foundation, upon which the subsequent proceedings against the 'other person' are initiated. The handing over of documents etc. in such a case may or may not be of much relevance but the recording of satisfaction is still required and in fact it is mandatory,"

In the case present before this Hon'ble Bench none of the conditions discussed as above exist. Therefore, the AO in this case could not have assumed jurisdiction under section 153C and only course left with the AO to deal with the information and fact material was to make a reassessment under section 147. Hon'ble Delhi High Court in CIT Vs RRJ securities Ltd [2015] taxmann.com391 has discussed in detail as to when the AO assumes jurisdiction under section 153C. Though that decision has been rendered in a different context but lays down clear guidelines for the AOs to proceed under section 153C.

Further CASE LAWS on merits: There are various case laws which support the Revenue on this issue some of these are:

Hon'ble Jurisdictional High Court Delhi	*CIT vs Nova Promoters and Finlease P.ltd. [2012] 342 ITR 169 [Delhi]*	*"The ratio of a decision is to be understood and appreciated in the background of the facts of that case. So understood, it will be seen that where the complete particulars of the share applicants such as their names and addresses, income tax file numbers, their creditworthiness, share application forms and share holders' register, share transfer register, etc, are furnished to the Assessing Officer and the Assessing Officer has not conducted any inquiry into the same or has no material in his possession to show that those particulars are false and can not be acted upon, then no action can be made in the hands of the company under section 68 and the remedy open to the Revenue is to go after the share applicants in accordance with law. We are afraid that we can not apply the ration to a case, such as the present, where the Assessing Officer is in possession of material that discredits and impeaches the particulars furnished by the assessee and also establishes the link between self confessed accommodation entry providers', whose business is to help assessees bring into their books of account their unaccounted monies through the medium of share subscription and the assessee,... The existence with the Assessing Officer of material showing that the share subscriptions were collected as part of a premeditated plan-a smoke screen-conceived and executed with the connivance or involvement of the assessee excludes the applicability of the ratio.*

Hon'ble Jurisdictional High Court Delhi	*CIT II vs Jan Sampark Advertising & Marketing P.Ltd. 2015 TIOL-600-HC-Del-IT*	*Since Section 68 itself declares that the credited sum would have to be included in the income of the assessee in the absence of explanation, or in the event of explanation being not satisfactory. It naturally follows that the material submitted by the assessee with his TIOL-600-HC-explanation must itself be wholesome or not untrue. It is only when the explanation and the material offered by the assessee at this stage passes this muster that the initial onus placed on him would shift leaving it to the AO to start inquiring into the affairs of the third party.*
Hon'ble Jurisdictional High Court Delhi	*N R Portfolio P.Ltd. in ITA 1018 & 1019/2011 dated 22.11.2013*	*where Hon'ble Delhi High Court held that if AO doubts the documents produced by assessee, the onus shifts on assessee to further substantiate the facts or produce the share applicant in proceeding. Mere production of incorporation details, PAN Nos. or fact that third person or company had filed income tax details in case of private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts reflect and indicate proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive.*
Hon'ble SC	*Panipat Wollen and General Mills [1976] 103 ITR 66, 74*	
Hon'ble SC	*Gosalia Shipping P Ltd [1978] 113 ITR 307, 311*	
Hon'ble SC	*Aloke Mitra [1980] 126 ITR, 599, 611*	
Hon'ble SC	*MB Kharwar [1969] 72 ITR 603*	
Hon'ble Bombay HC	*Kolha Hirdagarh Co. Ltd [1949] 17 ITR 545, 555*	
Hon'ble SC	*Juggilal Kamlapat [1969] 73 ITR 702*	
Hon'ble SC	*McDowell & Co [1985] 154 TTR 148*	
Hon'ble SC	*CIT Vs Durga Prasad More [1971] 082 ITR 0540 SC*	
Hon'ble SC	*CIT Vs Sumati Dayal [1995] 214 ITR 80*	
Hon'ble Jurisdictional High Court Delhi	*Pr. CIT-6, New Delhi Vs NDR Promoters P. Ltd in ITA49/2018 dated 17.01.2019.*	*A case involving make-believe paper work to camouflage the bogus nature of the transactions is to be treated as unexplained credit u/s 68*
Hon'ble High Court of Delhi	*CIT Vs Focus Exports P Ltd [228 Taxman 88]*	*Where the assessee failed to offer a reasonable and acceptable explanation regarding the source and nature of credit, the AO is entitled to draw inference that the receipt are that of an assessable nature.*
Hon'ble ITAT Ahmedabad Bench	*CIT Vs Navodaya Castles P Ltd in Appeal No.320/2012*	*20.It is well settled that in order to discharge the onus the assessee must prove the identity of the cash creditor, capacity of the cash creditor to advance money towards capital, genuineness of the transactions. It the assessee has adduced evidences to establish the prima facie, the aforesaid onus shifts to the Department. However, mere furnishing of particulars or the mere fact of payment by account payee cheque or the mere submission confirmation letter by the share applicant is by itself, not enough to shift the onus to the department although these facts may along with other facts be relevant in establishing the genuineness of the transactions.*
Hon'ble Jurisdictional High Court of Delhi	*CIT Vs Navodaya Castles P Ltd in Appeal No.320/2012 dated 25.08.2014*	*14. Certificate of incorporation, PAN etc. are relevant for purpose of identification, but have their limitation when there is evidence and material to show that the subscriber was a paper company and not a genuine investor.....*

Hon'ble High Court of Delhi	*CIT Vs Sophia Finance Ltd 205 ITR 98 [Delhi*	*Provisions of Section 68 are applicable even to share application money and if on inquiry it is found that shareholders do not exist, sum credited may be treated as assessee's income*
Hon'ble Jurisdictional High Court of Delhi	*Titan Securities Ltd 357 ITR 184 [Delhi)*	*Where AO found that share applicants were established entry operators giving accommodation entries and thus be added amount paid by them to assessee's taxable income, Tribunal was not justified in deleting said addition without properly examining evidence brought on record by AO.*
Hon'ble High Court of Delhi	*MAF Academy P Lad 361 ITR 02858 [Delhi]*	*Mere production of incorporation details, PAN of returns may not be sufficient when surrounding and attending fats predicate cover up.*
Hon'ble Jurisdictional High Court of Delhi	*Empire Buildtech P Ltd, 366 ITR 110 [Delhi]*	*Merely because assessee had disclosed the identity of the investors, it can not be said that burden imposed upon it u's 68 has been discharged, particularly when investors not only did not submit any confirmation, but had concededly reported far less income than the amounts invested.*
Hon'ble Jurisdictional High Court of Delhi	*Independent Media P Ltd [25 Taxmann.com 276] [Delhi]*	*For addition u/s 68 AO need not establish money coming from assessee's coffers. For making addition u/s 68 it is not incumbent upon AO to establish that money had come from assessee's coffers.*
Hon'ble Jurisdictional High Court of Delhi	*CIT Vs Nipun Builders and Developers P Ltd [2013] 350 ITR 407 [Delhi]*	*The point at which the initial onus on the assessee to prove the unexplained credit would stand discharged depends upon the facts and circumstances of each case.*
Hon'ble Supreme Court	*Charan Singh Vs Chander Bhan Singh 1988 SC 637*	*Section 101, 102 of Indian Evidence Act, make it clear that initial onus is on person who substantially asserts a claim. If the onus is discharged by him and a case is made out, the onus shifts on the deponent.*
Hon'ble Supreme Court	*State of J&K Vs Bakshi Gulam Mohd. AIR 1967 [SC] 122*	*Right to cross examine is not an absolute right and it depends not only on the circumstances of the case but also on the statue concerned.*
Hon'ble Madras High Court	*T. Devasahaya Nadar Vs CIT [1965] 51 ITR 20 [Mad]*	*It is not an universal Rule that any evidence upon which the department may rely should have been subjected to cross examination. If the AO refuses to produce an informant for cross examination by the assessee there can not be any violation of natural justice.*
Hon'ble Jurisdictional High Court of Delhi	*Nath International Sales Vs UOI AIR 1992 Del 295*	*The right of hearing does not include a right to cross examine. The right to cross examine must depend upon the circumstances of each case and also n the statue concerned.*
Hon'ble ITAT Bombay	*GTC Industries Ltd Vs ACIT [1998] 60 TTJ [Bomb-Trib]*	*It was held that where statement of third parties are only the secondary and subordinate material which were used to buttress the main matter connected with the amount of addition, denial or opportunity to cross examine did not amount to violation of natural justice.*
Hon'ble Supreme Court	*N K Proteins Ltd Vs CIT (2017-TIOL 23-SC-IT)*	*Where Hon'ble Supreme Court held that entire undisclosed income generated out of bogus transactions, deserves to be added to total income*
Hon'ble Gujarat High Court	*N K Proteins Ltd Vs CIT (2016-TIOL-3165-HC-AHM-IT)*	*Hon'ble Gujarat High Court held that addition on basis of undisclosed income cannot be restricted to a certain percentage, when the entire transaction was found as bogus.*
Hon'ble Jurisdictional	*CIT VS Ultra Modern Exports (P.) Ltd (40*	*Hon'ble Delhi High Court held that where in order to ascertain genuineness of assessee's claim relating to*

High Court of Delhi	*taxmann.com 458, 220 Taxman 165)*	*receipt of share application money, Assessing Officer sent notices to share applicants which returned unserved, however, assessee still managed to secure documents such as their income tax returns as well as bank account particulars, in such circumstances, Assessing Officer was justified in drawing adverse inference and adding amount in question to assessee's taxable income under section 68.*
Hon'ble Supreme Court	*PCIT VS NRA Iron & Steel (P.) Ltd. [2019] 103 taxmann.com 48 (SC)*	*Supreme Court reverses order of lower Authorities holding that where there was failure of assessee to establish credit worthiness of investor companies, Assessing Officer was justified in passing assessment order making additions under section 68 for share capital/ premium received by assessee company. Merely because assessee company had filed all primary evidence, it could not be said that onus on assessee to establish credit worthiness of investor companies stood discharged.*
Hon'ble ITAT Delhi Bench	*Virender Jain & Surender Kumar Jain [ITA Nos. 6991 to 6997/Del/ 2014 & ITA Nos. 6998 to 7004/ Del/2014] ITAT, Delhi, Order dated 03.02.2016*	*The ITAT in the second paragraph of the order itself has summarized the findings of the CIT(A) that "Suffice to say that Shri Surender Kumar Jain and Shri Virender Kumar Jain were involved in providing accommodation entries. "Then the ITAT has decided to set aside the order to the AO asking him to assess Jain Brothers in light of certain judicial pronouncements all of which pertain to assessing accommodation entry operators on the basis of their commission income. In the nutshell, ITAT has not inferred with the findings of the department that Jain Brothers are accommodation entry providers. It is also clear from the perusal of assessment order that the findings of Investigation Wing have been confirmed by assessment unit that Jain Brothers are engaged in the business of providing accommodation entries in view of commission. This finding has also been upheld by learned CIT(A) & Hon'ble ITAT.*
Hon'ble SMC Bench ITAT Delhi	*Sanjeev Kumar Aggarwal HUF [ITA Nos. 6346/ Del/ 2019 Order dated 17.5.2022*	*The claim of the assessee about genuineness of the transaction having been made with a non descript/paper company not found engaged in any actual business but providing accommodation entries, was rejected.*

9. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The challenge to the assessment order is two folds; one, being against legality of re-opening of assessment and two, the AO has borrowed opinion on the facts since no independent inquiry has been made. The assessee in this regard has raised multiple grounds. It is submitted by the Ld. Counsel for the assessee that the issue raised against validity of re-opening of assessment is

squarely covered by the judicial pronouncements. There is no dispute that the re-opening of assessment u/s 147 of the Act has it genesis in the search operation carried out by the Revenue at the premises of one Shri Tarun Goyal wherein it was found that the assessee had obtained entry of INR 25,00,000/- from the entry operator. This transaction is the subject matter of dispute between the parties herein. The AO made addition of this amount of INR 25,00,000/- being share application received from M/s. Tauraus Iron & Steel Company Ltd. u/s 68 of the Act treating non-genuine transaction and accommodation entry. Ld. Counsel for the assessee during the course of hearing, submitted that even if it is assumed without admitting the same that the transaction is not a genuine transaction then also the assessment could not have been re-opened on the incriminating material found during the course of search. Under the identical facts, the Hon'ble Division Bench of this Tribunal in the case of ***ACIT vs Deepak Gambhir*** (supra) quashed the assessment by holding as under:-

5. *"It is not in dispute that the addition of ₹3,64,21,799/- has been made based on incriminating material found in the course of search of M/s Alankit Group as information pertaining to the assessee herein. Hence, the same becomes a search material/ incriminating material found during the course of search of M/s Alankit Group which pertains to assessee herein. Hence, the right course of action to be initiated on the assessee qua such incriminating material would be initiation of proceedings u/s 153C of the Act and not u/s 147 of the Act. This has been rightly addressed by the ld CIT(A) while deleting the addition in the hands of the assessee. Further, we find that the issue in dispute is squarely covered by the decision of the Hon''ble Karnataka High Court in the case of Sri Dinakara*

Suvarna v. Dy. CIT reported in 454 ITR 21 (Kar.) dated 08.07.2022 wherein it was held that the provisions of section 153C of the Act are pari materia with Section 158BD of the Act (erstwhile block assessment proceedings under Chapter XIVB of the Act). Hence, the ratio laid down by the Hon'ble Supreme Court in the case of Manish Maheshwari Vs. ACIT reported in 289 ITR 341(SC) referred in the context of section 158BD proceedings shall apply mutatis mutandis to Section 153C proceedings also. In the facts of the case before the Hon''ble Karnataka High Court, the ld AO in his order dated 24.12.2010 for assessment year 2005–06 had held in para 4.2 that reasons formed to reopen the assessment on the basis of assessee's voluntary depositions and seized materials are in order and further that assessee's objection on that aspect has been rejected by his order dated 07.06.2010. Admittedly, no proceedings were initiated u/s 153C of the Act thereon and hence there was patent non-application of mind on the part of the ld AO. Accordingly assessment was duly quashed by the Hon''ble Karnataka High Court. It is further noted that the Special Leave Petition (SLP) preferred by the revenue against this decision was dismissed by the Hon'ble Supreme Court in SLP (Civil) Diary No. 7976/23 dated 27.03.2023.

6. In view of the aforesaid observations and respectfully following the judicial precedents relied upon herein above, we hold that the ld CIT(A) had rightly quashed the reassessment proceedings u/s 147 of the Act in the facts and circumstances of the instant case. We do not find any infirmity in the said order. Accordingly, the grounds raised by the revenue are dismissed."

10. I find that the case laws relied by Ld. Sr. DR for the Revenue, are not on the point in issue. The contention of Ld. Sr. DR for the Revenue that the AO of the searched person, has not recorded his satisfaction regarding seized material is belonging to the assessee hence, information passed on by the Investigation Wing remained mere an information only, the provisions of

section 153C of the Act, would not be applicable is too far fetched. Undisputedly, the factum of alleged accommodation entry was unearthed during the course of search and is stated to be part of seized material. I am in agreement and bound by the view expressed by the Hon'ble Division bench of this Tribunal in the case of ***ACIT vs Deepak Gambhir*** (Supra) that the proper course in such cases is the proceedings u/s 153C of the Act. The case laws relied by the Ld.Sr.DR for the Revenue are not on direct on the point in dispute hence, being distinguishable on facts of the case. Therefore, respectfully following the above-mentioned binding precedents, I am of the view that the AO was not justified in re-opening of the assessment u/s 147 of the Act. The proper course if any, under the facts of the present case when admittedly the incriminating material which is the basis of re-opening of assessment was recovered during the course of search at the premises of the third party would be proceedings u/s 153C of the Act. The impugned order passed by the AO thus, cannot be sustained. Moreover, I find that Ld.CIT(A) failed to advert to the submissions made by the assessee and the specific grounds taken before him regarding legality of re-opening of assessment. In view of the aforesaid, the assessment order being unsustainable in law is hereby, quashed. Ground Nos. 1 to 1.3 raised by the assessee are accordingly, allowed.

11. Since the assessment has been quashed on account of being not framed under the applicable provision of the Act, rest of the grounds raised by the assessee have become academic in nature hence, are not being adjudicated, and same are left opened.

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

Order pronounced in the open Court on 18th October, 2024.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **
Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI