IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

	I.T.A. No. 5388/DEL/2015	
	A.Y. : 2007-08	
DCIT, CIRCLE 23(2), NEW DELHI ROOM NO. 248, C.R. BUILDING, I.P. ESTATE, NEW DELHI – 11 0002	VS.	SENORITA ENTERPRISES PVT. LTD., V-6/1, FIRST FLOOR, GREEN PARK EXTEN., NEW DELHI – 110016 (PAN : AAJCS7373P)
(ASSESSEE)		**(RESPONDENT)**

Revenue by : Sh. Amit Katoch, Sr. DR.
Assessee by : Sh. Yogesh Jagia, Adv.

ORDER

PER H.S. SIDHU : JM

The Revenue has filed this Appeal against the impugned Order dated 10.6.2015 of the Ld. CIT(A)-8, New Delhi relevant to assessment year 2007-08.

2. The grounds raised in the appeal read as under:-

i) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the AO has wrongly assumed the jurisdiction over the assessee u/s. 148 of the I.T. Act.

ii) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 4,60,00,000/- made by the AO u/s. 68 of the I.T. Act.

iii) The appellant craves to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of his appeal.

3. The brief facts of the case are that assessee filed its return of income declaring total income of Rs. 6,43,630/-, which was processed by the Assessing Officer u/s. 143(1) of the Income Tax Act, 1961 (in short "Act") on 27.2.2009. AO noted in the assessment order that the Directorate of Income Tax (Investigation)-I, New Delhi vide its letter dated 19.3.2014 informed the Assessing Officer that Investigation Wing carried out enquiries in the matter of the assessee based upon three STRs in the name of Valiant Agencies, Senorita Enterprises Pvt. Ltd. And Enliven Developers Pvt. Ltd. Dated 5.3.2018, details of which, AO has reproduced in the assessment order at Page No. 2. On the basis of these STRs and upon further investigation conducted by the Investigation Wing, it was noticed that the Assessee Company had taken share capital of Rs. 465.98 lacs from Investee companies, but identity, genuineness and creditworthiness of the investors remained doubtful, in view of the various reasons mentioned by the AO in the assessment order at page no. 1 to 3. On the basis of the aforesaid information, the AO recorded the reasons u/s. 147 of the Act for reopening of the case, which the AO has reproduced in the assessment order at page no. 3-4. After obtaining the approval from the Competent Authority, AO issued notice u/s. 148 of the Act on 25.3.2014 and in response to the same, assessee filed a letter dated 28.3.2014 requested to accept the return filed by the assessee u/s. 139(1) of the Act. AO provided the reasons to the assessee and issued notice u/s. 143(2) of the I.T. Act dated 11.6.2014 and fixed the case of the assesee for hearing on 23.6.2014. On 23.6.2014 on the request of the assessee, satisfaction obtained u/s. 151(2) was provided and assessee was directed to comply with notice u/s. 143(2) on 24.6.2014. Summons u/s. 131(1) of the Act were issued to both the Directors for 24.6.2014. The notice of the same remained unattended because of which final show cause notice was served upon the assessee on 25.6.2014 directed it to appear on 26.6.2014 at 10 AM and to show cause as to why an addition of Rs. 4,65,98,000/- received from various

companies as mentioned in the aforesaid notice alognwith their PAN Number be not made to the income of the assessee.

3.1 On 27.6.2014, AR of the assessee appeared and filed the objections against the notice issued u/s. 148 of the Act and furnished the reply to the final show cause notice dated 25.6.2014. He requested for inspection of the record on 24.6.2014 and further requested for copy of the satisfaction as received in proforma from Addl. Commissioner of Income Tax, Range-8, New Delhi and the counsel of the assessee was allowed inspection and also provided copy of the satisfaction obtained u/s. 151(2) of the Act. Thereafter, proceedings were adjourned for 30.6.2014 and on 27.6.2014 at about 5.00 PM Ld. Counsel for the assessee appeared and filed supplementary objections which were primarily based on the inspection of record carried out by him in the morning of the same date. On 30.6.2014 Ld. Counsel for the assessee filed a letter providing details as asked for by the order sheet entry dated 23.6.2014 and notice dated 25.6.2014. AO disposed off the objections filed by the assessee on 27.6.2014 alongwith supplementary objections on the same date i.e. 27.6.2014 as mentioned in the assessment order dated 30.6.2014 at page no. 6-8 and fixed the case of the assessee for hearing on 30.6.2014 at 10 AM and informed that no further adjournment would be possible. Some documents were filed by the assessee's counsel on 30.6.2014 of share holders as on 31.3.2007 alongwith their confirmations, bank statements, ITR acknowledgements, balance sheet as on 31.3.2007 etc. so as to justify three ingredients as required u/s. 68 of the I.T. Act as identity, genuineness, creditworthiness etc. of the investors. After examining all the documentary evidences filed by the assessee and the objection filed by the assessee, the AO had made the addition of Rs. 4,60,00,000/- u/s. 68 of the Act on the basis of the details forwarded by the Investigation Wing, vide order dated 30.6.2014 passed u/s. 143(3) r.w.s. 147 of the I.T. Act, 1961. Aggrieved by the aforesaid assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned

order dated 10.6.2015 has allowed the appeal of the assessee on the merit as well as on the legal ground. Against the impugned order dated 10.6.2015, assessee is in appeal before the Tribunal.

4. At the time of hearing, Ld. Sr. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal. In addition to that Ld. DR has also filed the Written Submissions in which he has supported the order of the AO with the help of various case laws mentioned in the said written submission. For the sake of convenience, the three written submissions filed by the Ld. Sr. DR are reproduced as under :-

> *"Sub: Written Submission in the above case- reg.*
>
> *The following points may kindly be taken into consideration in respect of the above mentioned proceedings:*
>
> *The asessee has taken certain pleadings before the Ld. CIT(A) which are being responded to as below:*
>
> - *At page 5 of the order of CIT (A), and then again at page 9, the assessee has mentioned that the AO has been directed by the Inv. Wing to initiate reassessment proceedings u/s 148. The contention is factually incorrect. The exact wordings in this regard are placed at page 7 of the order itself which, inter alia, reads that the ITO has been directed to request the AO to consider the case for reopening based on the findings contained in the report of the ITO. Hence it is clear that there is no direction whatsoever to the AO regarding reopening and the same is being mis-represented by the assessee.*
>
> - *At page 9, the assessee has contended that re-assessment proceedings based only on two documents - STR and letter containing the report of ITO(Inv) are not enough for reopening. In this regard, it may be mentioned that there are a plethora of decisions where it has been held that information received from the investigation wing is a valid reason for reopening of cases. Supporting case laws in this regard are also being submitted.*
>
> - *The assessee has projected as if the only basis of reopening is that the three mentioned companies are situated at the same address. The same is not true. The reasons why assessee's claims are not found sufficient and warrant further*

enquiry are clearly explained by the ITO. The belief of the AO is based on his own application of mind to the elaborate discussion by the ITO(Inv) in this regard.

- *At page 10 of the order, the assessee has claimed that the following reasons mentioned in the relevant report are not enough to warrant 'reason to believe' for reopening: 1. Huge reserves with no corresponding business activity; 2) non-furnishing of P&L a/c by most investing companies; 3) profit shown by all investing companies is either very small or loss; 4) most investee companies not doing any worthwhile business; 5) most investee companies appear to be sham and existing only onpapers, how have they raised such huge share premium, and 6) the case only having been processed earlier u/s 143(1) and no enquiry u/s 143(3) having been done. .. In this regard, it may be mentioned here that recent decisions of the Hon'ble Supreme Court, the Hon'ble Jurisdictional High Court as well as the Hon'ble Delhi Tribunal very clearly demonstrate the importance of these factors in arriving at the true state of affairs as regards the share premium received.*

Pr. CIT (Central-1) vs NRA Iron & Steel Pvt Ltd (SC]

ITO (Exemption), Ward 7(4), New Delhi vs. M/s Synergie finlease Pvt Ltd. [Delhi Trib] ITO ward-9(1), New Delhi vs. Sohail Financials Ltd [Delhi Trib.]

- *The second reason mentioned by the assessee is that there is no tangible material for forming 'reason to believe'. In this regard, as submitted above, there were numerous gaps in the submissions made and details provided by the assessee to the Inv. Wing which formed the reason to believe. Here it may be mentioned, as has been dealt with subsequently, that even upto the appellate stage, there is no sufficient material available to grant any benefit of doubt to the assessee in its transactions and that in light of the material available, the only conclusion possible is the culpability of the assessee u/s 68 as arrived at by the AO.*

- *It may also be mentioned in this regard that at the stage of re-opening, sufficieny or otherwise of the material is not to be seen. The only requirement is that there should be prima facie material on the basis of which the department could reopen the case. Hon'ble Supreme court has clearly spelt it out in the case of Raymond Woollen Mills 236 ITR 34. Under these circumstances, no refuge lies to the assessee as sought by it under CIT vs. Orient Craft Ltd.*

- *The assessee has claimed in the third ground at page 12 of the impugned order that power u/s 147 has been used as a substitute to 143(2). It needs no mention here that as per the provisions of the Income-tax Act, for a return pertaining to AY 2007-08, the only manner permitted by the Act to determine the correct income in 2014 is by way of sec 147/148. How 143(2) could have been the recourse in such circumstances is beyond any explanation under the extant law.*

- *It may also be mentioned here that processing of return u/s 143(1) is not assessment, and hence where an issue has not ever been the subject matter of any scrutiny whatsoever under any assessment proceedings, it cannot be claimed that the same is not relevant while acquiring jurisdiction to reopen the case. Attention in this regard is drawn towards the Hon'ble Delhi High Court judgment in Indu Lata Rangwala vs. DCIT 384 ITR 337 wherein it has been held that where initial return of income is processed under section 143(1), it is not necessary in such a case for the AO to come across some fresh tangible material to form 'reason to believe' that income has escaped assessment.*

- *The fourth ground raised is that the satisfaction of the Addl. CIT is a pretended satisfaction. In this regard, it may be mentioned that the Addl. CIT had the entire material available at his disposal while recording his satisfaction. The same has been provided to the assessee also during the course of the assessment proceedings. The facts have been clearly spelled out by the AO while putting up his case for approval accompanied with the details of the case sent by the investigation wing. The details are self explanatory and based on appreciation and analysis of the same, the Addl. CIT has stated that he is satisfied that it is a fit case for issuance of notice u/s 148. He has not merely stated "yes" but clearly stated that he is satisfied that it's a fit case. It may also be mentioned again at the cost of repetition that exact accuracy of the quantum in 'reasons to believe' is not required at the stage of reopening and the assessee cannot be allowed relief only on the basis that the final amount added is different from the amount believed to have been subject to tax, particularly when the basis and the transactions involved were of the same nature with the same parties as alleged.*

- *The fifth ground is regarding the speedy disposal of the objections on the same day. In this regard it may be mentioned here that when the assessee can inspect the record, file objections and supplementary objections on the same day, there is no reason why the AO cannot dispose of*

the same on the same day particularly when all the facts are already on record and the objections of the asseseee are of a repetitive nature. These were all a delaying tactics adopted by the assessee instead of filing the relevant details and substantiation to the AO how his reasons to believe were not well found. The assessee claims that there is violation of the settled principles of law in disposing of the objections also. However, it has failed to substantiate what those settled principles are and how they have been violated here.

- *At page no. 13 of the impugned order, in Ground no.2, the assessee has claimed that mandatory notice u/s 143(2) has not been served in accordance with GKN Driveshaft. It may be mentioned that the Hon'ble Court has only given a finding that the objections must be disposed off before the AO proceeds with the assessment. The same has been done here. The AO has, on filing of letter by assessee in response to the notice u/s 148, issued a notice u/s 143(2) as required by law. The law nowhere requires that the AO should keep waiting for the assessee to file objections, then supplementary objections, and only once the assessee assures the AO of no further objections, should the AO issue a notice u/s 143(2). What the assessee is proposing here as a procedure to be followed is not only devoid of elementary logic but has neither been provided for under the Act nor directed by way of judicial decisions as is being claimed here. The AO has followed the correct course of action and as per the entry in the order sheet, the said notice has been received by the AR of the assessee. Kind attention is drawn to the Hon'ble Supreme Court decision in Thakordas Maganbhai Patel 245 Taxman 333 where reopening of assessment was held to be valid despite the AO not passing speaking order against the objections filed by the assessee. It clearly shows that the objections filed by the assessee do not go to the core of the validity of the relevant proceedings.*

- *The third ground at Page 14 of the order taken by the assessee is that it has discharged the burden in light of the decision in Lovely Exports. In this case, reference is drawn to the recent decision of the Hon'ble Supreme Court in NRA Iron (supra), several decisions of the High Courts and of the Hon'ble Tribunal wherein the manner in which the burden has to be discharged by the assessee has been clearly spelled out. The same are being submitted herewith. How the assessee has failed to discharge its burden and how the CIT(A) has failed not only to appreciate the facts properly, but also to make any reasonable enquiry at his end is also being discussed in this submission.*

- *The Ld CIT(A) in his findings at page 16 onwards of the impugned order has stated as follows:*

1. From the letter dated 5-11-2012, it appears that the investigation wing has enquired all the bank deposits of the appellant - The Id. CIT(A) has omitted to mention and also to understand that in order to determine the identity, genuineness and creditworthiness u/s 68, it is imperative to have a detailed analysis of the bank details of the investors and merely stating that from the bank account of the assessee, it can be seen that amounts have come through banking channels is not enough.

2. The Ld. CIT(A) has stated that vide letter dated 16.11.2012, the assessee has furnished all relevant details and also furnished copy of Form no. 2. The said letter is placed at pages 83-87 of the paper book filed by the assessee.

A perusal of the same will reveal that it contains not even one detail which is relevant for determining the issue at hand i.e. the identity, genuineness and creditworthiness of the investee companies. It has again mentioned its own bank statement, which, as per the settled position, is not sufficient to discharge its onus. No other relevant detail has been submitted in this letter. How the CIT(A) considers this letter as supporting the cause of the assessee is beyond comprehension. It may also be mentioned that apparently the same have not been filed before the AO in response to his queries even though the assessment proceedings are independent proceedings and the assessee ought to file relevant details in response to the queries of the AO.

It may also be mentioned that in the paper book filed by the assessee, it has not even mentioned which documents were submitted before the AO and which were submitted before the CIT(A). under these circumstances, it is not understood as to how the CIT(A) has even attempted to give credit to the assessee in respect of the documents which are claimed to have been filed before the ITO(lnv.) and there is not even a mention whether they were ever brought to the notice of the AO at all. It clearly shows non-application of mind by the CIT(A) who has simply reiterated the claim of the assessee without using his own analysis both regarding the admissibility of such documents as well as their merit.

3. The Ld. Cit(A) has further given credit to the assessee that vide letter dated 29.11.2012, it has provided necessary details of share application money along with copy of balance

sheet for the year FY 2008-09 to 2011-12. The said letter is placed at pages 88-93 of the paper book. It may be mentioned that the said letter does not contain any details which can throw light on the genuineness of the transactions and the creditworthiness of the investing companies. It is impossible to comprehend the merit noticed by the CIT(A) in such documents which are essentially only self-serving documents readily available in public domain.

It may also be mentioned that in the paper book filed by the assessee, it has not even mentioned which documents were submitted before the AO and which were submitted before the CIT(A). under these circumstances, it is not understood as to how the CIT(A) has even attempted to give credit to the assessee in respect of the documents which are claimed to have been filed before the ITO(Inv.), and there is not even a mention whether they were ever brought to the notice of the AO at all. It clearly shows non-application of mind by the CIT(A) who has simply reiterated the claim of the assessee without using his own analysis both regarding the admissibility of such documents as well as their merit.

4. The Ld. CIT(A) has mentioned that the AO did not make any enquiries himself, and has reproduced the contents of the letter of the investigation wing. As discussed in this note before, a perusal of the note received from the investigation wing revealed that details asked for by the ITO(Inv.) were not provided completely, and whatever details were provided only showed that the investing companies did not have the financial capacity and requisite strength to make huge investments in the assessee company. It was also mentioned that the assessee had failed to provide any justification as to how the exorbitant share premium of Rs. 240/- was commanded by the newly formed company. It was in light of these details that the AO arrived at his own conclusion that income had escaped assessment for which he formed his reason to believe. In light of the findings of the Inv. Wing, it was not necessary for the AO to conduct further enquiry in order to arrive at his satisfaction. It may be mentioned again that at the time of reassessment, the sufficiency or complete accuracy is not required and only a prima facie case needs to be made as has been held by the Hon'ble Supreme Court in Raymond Woollen Mills (supra). The AO had sufficient details available at his disposal from which he formed his opinion.

5. The Ld. CIT(A) has given benefit to the assessee even as regards the difference in the amount mentioned regarding

share premium in the reasons recorded and the final assessment order. The CIT(A) appears to have only reiterated the claim of the assessee without appreciating the correct position of law. The absolute accuracy of the final amount is not a pre-requisite at the time of opening. The investing companies are correctly appreciated, the nature of transactions is correctly recorded, the share premium has been correctly mentioned and the difference appears to be only emanating from the amount of face value of the shares. Even otherwise, this cannot form a basis of impugning the assessment proceedings and the consequent order.

6. The Ld CIT(A) has stated that the AO has not indicated that how the charging of heavy premium indicates escapement of income. The CIT has conveniently ignored the fact that justification of high share premium is very relevant in cases like these to understand the genuineness of the transaction as well as the creditworthiness of the investors. The AO has on more than one occasion sought justification from the assessee in this regard, which has been ignored by the CIT(A).

7. The CIT(A) has made a mention of chart at page 13 of the impugned order saying that sequence of events shows that sufficient opportunity was not given to the assessee to file the objections. In this regard it may be mentioned, firstly that assessee not only filed objections but supplementary objections also which were duly disposed of. The CIT claims that the objections disposed of are not speaking one. However, as can be seen that while the objections may be lengthy, the main issue that they raise are the same and have been addressed both times by the AO.

8. The CIT(A) has stated that as per GKN Driveshaft, a notice was required u/s 143(2) even after the disposing of objections. The premise is wrong. A notice u/s 143(2) is required after the assessee files a return in response to notice

u/s 148 or writes a letter to this effect. The AO has issued the same properly. A series of objections that the assessee may keep filing till the later part of the proceedings cannot be an excuse to prevent the AO from acquiring jurisdiction to assess the income of the assessee. The argument is fallacious and so is the acceptance of the same by CIT(A).

9. The CIT(A) states that the AO has not made any enquiries other than asking justification for the high share premium. The claim is totally wrong and clearly shows total non-application of mind by the Ld. CIT(A). A perusal of the

order sheet dated 23.06.2014 clearly proves that several details were asked from the AO which included-a) justification for share premium, b) copies of the P& L A/c of the investing companies, c) note on business of the investing companies, d) copies of bank a/c showing the details of investments, e) produce the directors of the investing companies. Further summons u/s 131 were also issued in case of certain directors of investing companies. The Ld. CIT(A) appears to have only relied on the claim of the assessee without making any effort whatsoever to determine the truth. It appears that he has not even made an effort to understand that if no enquiries were made by the AO, how did the assessee file its reply dated 30.06.2014 and in response to what.

10. The Ld. CIT(A) has arrived at the conclusion that the reply filed by the assessee on 30.06.2014 fulfills all the requirements of section 68. However, he has not made even a slight effort to examine the said reply on merits. According to him, justification of charging high premium can be asked from the investing companies and not to be examined vis a vis the assessee. It appears that the ratio of numerous cases including NR Portfolio, Nipun Builders, Navodya Castle, Nova Promoters, Ultra Modern Exports and NDR Promoters (all decisions of Hon'ble Delhi High Court) has not been explored by the Ld. CIT (A). It is for such glaring omissions by the CIT(A) that the Hon'ble Supreme Court of India in NRA Iron has recently spelled out in unequivocal terms how matters relating to exorbitant share premiums have to be appreciated.

11. In so far as the details submitted by the assessee vide letter dated 30.06.2014 are concerned, the following may be noted:

(i) The justification regarding exorbitant share premium is that shares of Koutons were sold in April and profit of Rs. 125 per share was earned as STCG. It may be mentioned here that no detail whatsoever has been filed which can substantiate how a new company can command such a premium. As regards earning profit on sale of shares is concerned to establish the credentials, it may be noted that the share premium has been received in FY 2006-07 which was before any claimed STCG was earned. It can be appreciated that one cannot take premium based on an event which has not even happened at the time the investment of premium has been received by the assessee company. That the LD. CIT(A) has given credence to this argument and incorporated the same in his findings clearly shows that he has not analysed the submissions objectively while arriving at

his finding. The assessee has failed to produce even one director even though categorically asked for by the AO. There is not even a mention regarding that in the letter. Here it is pertinent to respond to the attempt by the assessee to seek refuge in Lovely Exports case. Assessee is a private limited company where investment is invited by way of approaching people who are known to the directors or members of the company. Linder these circumstances, it is not acceptable that they are not ready to come out and state the facts even though they have made huge investments in the assessee company. The onus on the assessee is not discharged by simply providing certain details with respect to these entities. If these people can provide confirmations, bank statements, huge funds to the assessee, it is incomprehensible how not even one of them could be produced before the AO. It may be reiterated that the assessee is not a public limited company where all investors cannot be expected to be known to the investee. It may also be mentioned that the CIT(A) has not made even one enquiry, either from the assessee or from the AO. He has not even bothered to find out that certain letters being cited before him may or may not have been submitted before the ITO(lnv) but they were apparently not submitted before the AO and hence would have constituted fresh evidence to be dealt with under rule 46A. Even though those letters are of no help to the assessee in discharging its onus, but reliance on them by CIT shows that there has not been adequate appreciation of the facts and law by him.

(iii) As regards the details submitted by the assesee, it appears that the same has not been looked into in detail by the CIT(A). The following points need to be noted:

A) Certain companies which have no financial strength appear to have common directors and authorized signatories. E.g. Incorp Securities Pvt Ltd and Raahul financial Services Pvt Ltd have one Rajesh Aggarwal as the common director and signatory; Jyoti Softsules Pvt Ltd and Kirthi Hitech textiles have Dharmenra Kumar as the common director and authorized signatory; Anu Colonisers pvt Ltd and SC Industries Ltd have Purshottam Das as the common director and authorized signatory. This is beyond human probabilities that same people can form different entities with no financial strength and invite huge premiums which are then passed on to the assessee company. The decisions of the Hon'ble Supreme Court in Sumati Dayal and Durga Prasad More apply to a situation like this.

B) The financial strength and true state of affairs of the details filed by the assessee as regards the investing companies is as follows:

(i) Anu Colonisers

Total Income -34,998/- No real/fixed assets Share application and premium received which is further invested in companies including the asseessee.

Bank account statement shows corresponding debit andcredit entries

No real business activity.

(ii) Indcorp Securities Net Profit — 79,161/-

The B/s does not even mention fixed assets as apparently there are none.

Share application and premium received which is further invested in companies including the asseessee.

Bank account statement shows corresponding debit and credit entries.

No real business activity.

(iii) Jyoti Softsules

Rs. 40 lacs invested by a company with total income of Rs. 33,788/-

Only one computer as fixed asset.

Share application and premium received which is further invested in companies including the asseessee.

Bank account statement shows corresponding debit and credit entries. Balance of Rs. 1,239/- No real business activity.

(iv) Gewapur Water Purification No B/s filed

No P&L filed No ITR filed

No bank statement filed.

(v) Kirti Hitech

35 lacs invested but No B/s filed No P&L filed No ITR filed

(vi) MMJ Investment

Only one fixed asset in computer

Share application and premium received which is further invested in companies including the asseessee.

Bank account statement shows corresponding debit and credit entries.

(vii) Namo Resorts (P) Ltd.

No relevant details filed.

(viii) Nipun Infotech

45 lacs invested with a total income of Rs. 19,890/- Only one fixed asset in computer.

Share application and premium received which is further invested in companies including the asseessee.

Bank account statement shows corresponding debit and credit entries. Closing balance after circulating the funds is Rs. 9,863/-

(ix) Nepostel (India)

25 lacs invested but No relevant details supplied.

(x) Pushpanjali Impex

50 lacs invested by a company with Total income of Rs. 20,019/-

No annexures to B/s Filed.

No P&L filed

Share application and premium received which is further invested in companies including the asseessee.

Bank account statement shows corresponding debit and credit entries. Closing balance after circulating the funds is Rs. 2,372/-

(xi) Raahul Financial No P&L filed

No fixed asset

Share application and premium received which is further invested in companies including the asseessee.

Bank account statement shows corresponding debit and credit entries.

(xii) SC Industries

No relevant detail provided.

(xiii) Sharda India

35 lacs invested on a total income of Rs. 8540/- Only one Ac in Fixed assets

Share application and premium received which is further invested in companies including the asseessee.

Bank account statement shows corresponding debit and credit entries. Closing balance of 1,600/-.

No real business activity.

(xiv) Sony Financial Services No relevant detail provided

(xv) Shri Vishnupriya

Total income of 51,670/-

Share application and premium received which is further invested in companies including the asseessee.

Bank account statement shows corresponding debit and credit entries. Closing balance of NIL.

Only one computer and some furniture in fixed asset.

No real business activity.

(xvi) SMB Securities

Total income of 99,444/-

Share application and premium received which is further invested in companies including the asseessee.

Bank account statement shows corresponding debit and credit entries. Closing balance of 23,688/-.

Almost nil fixed assets.

No real business activity.

(xvii) Udhav Fashion

Total income of 24,988/-

Share application and premium received which is further invested in companies including the asseessee.

Bank account statement shows corresponding debit and credit entries. Closing balance of 1,950/-.

NIL fixed assets.

No real business activity.

(xviii) Warsi Overseas

Total income of 27,833/-

Share application and premium received which is further invested in companies including the asseessee.

Bank account statement shows corresponding debit and credit entries. Closing balance of 2,371/-.

Only one computer and Ac in fixed assets.

No real business activity.

A perusal of the above details clearly show that the investing companies do not have the requisite creditworthiness to pay such huge premium. At the same time, the assessee company has no justification to charge the huge premium of Rs. 240/- per share. The onus on the assessee u/s 68 has not been discharged. The CIT(A) has not even gone through the submissions of the assessee in detail. Had he done so, he would have realised that several details which have been claimed by the assessee to have been filed have actually not been included in the submissions. He would have easily discovered that the so called investing companies lack the creditworthiness to make huge investments, that the transactions entered into by them with the assesee company are not genuine. He would have observed that assessee is taking refuge in submissions made before the ITO (Inv.) which have apparently not been presented before the AO (even though they are devoid of merit) and that if so, they would constitute new evidence to be dealt with as per Rule 46A. The Ld. CIT(A) has failed to remember that he has co-terminus powers with the AO and he cannot hide behind the alleged gap in the enquiries of the AO without himself making any effort whatsoever to arrive at the truth. The CIT (A) has failed to appreciate that there are a catena of cases which explain the manner in which the onus has to be discharged by the assessee in such cases and how the assessee has failed to do so. In any case, the matter has now gained clarity with the decision of the Hon'ble Supreme Court in NRA Iron (supra).

In light of the above, it is submitted that since the assessee has failed to discharge its onus u/s 68, in light of the above submissions demonstrating lack of creditworthiness of the investor companies and non-genuineness of the transactions,

the order of the AO be restored by deleting the findings of the Ld. CIT(A).”

“Sub: Written Submission in the above case- reg.

In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to reopening of cases u/s 147 of I.T.Act:

1 PCIT Vs Paramount Communication (P.) Ltd. (2017-TIQL-253-SC-IT) where Hon’ble Supreme Court dismissed SLP of assessee. Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.

PCIT Vs Paramount Communication (P.) Ltd.[2017] 79 taxmann.com 409 (Delhi)/r20171 392 ITR 444 (Delhi)

where Hon’ble Delhi High Court held that Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.

2 Aradhna Estate (P.) Ltd.Vs PCIT [2018] 91 taxmann.com H9 (Gujarat) where Hon’ble Gujarat High Court held that where reassessment proceedings were initiated on basis of information received from Investigation w:ng that assessee had received certain amount from shell companies working as an accommodation entry provider, merely because these transactions were scrutinised by Assessing Officer during original assessment, reassessment could not be held unjustified

3. Pushp Bullion (P.) Ltd. Vs DCIT [2017] 85 taxmann.com 84 (Gujarat)

where Hon’ble Gujarat High Court held that where investigation wing of department had during course of investigation in case of a third party found that he was indulged in providing accommodation entries and bogus bills, and assessee had made sizeable purchases from him, reopening notice against assessee was justified

4 Ankit Financial Services Ltd. Vs DCITr20171 78 taxmann.com 58 (Gujarat)

where Hon'ble Gujarat High Court held that where material recovered in search of another person indicated that assessee had received bogus share applications through accommodation entries, since assessee was beneficiary, initiation of re-opening was justified.

5. Aaspas Multimedia Ltd. Vs DCIT[20171 83 taxmann.com 82 (Gujarat)

where Hon'ble Gujarat High Court held that where reassessment was made on basis of information received from Principal DIT (Investigation) that assessee was beneficiary of accommodation entries by way of share application provided by a third party, same was justified.

6. MohammedallyNoorbhoyBandukwala Trust Vs ITO (2017-TIQL-341-HC-MUM-IT)

where Hon'ble Mumbai High Court held that assessment cannot be termed as invalid for non-consideration of assessee's objections, if there was undue delay on the part of assessee in objecting to the reasons.

7. Yogendrakumar Gupta Vs ITO (51 taxmann.com 383) (SC)/2014/227 Taxman 374 (SC) where Hon'ble Supreme Court held that where subsequent to completion of original assessment, Assessing Officer, on basis of search carried out in case of another person, came to know that loan transactions of assessee with a finance company were bogus as said company was engaged in providing accommodation entries, it being a fresh information, he was justified in initiating reassessment proceeding in case of assessee.

8 Raymond Woollen Mills Ltd. v. ITO And Othersf236 ITR 34]

Where Hon'ble Supreme Court held that in determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.

9 R.K. Malhotra ITO Vs KasturbhaiLalbhairi9771 109 ITR 537 (SC) where Hon'ble Supreme Court held that the intimation which the Income-tax Officer received from the audit department would constitute "information" within the meaning of section 147(b).

10.ACIT Vs Rajesh Jhaveri Stock Brokers (P.) Ltdr20071 161 Tay " 316 (SC)/[2007] 291 ITR 500 (SC)/r20071 210 CTR 30 (SC)

where Hon'ble Supreme Court held that so long as the conditions of section 147 are fulfilled, the Assessing Officer is free to initiate proceedings under section 147 and failure to take steps under section 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings, even when intimation under section 143(1) has been issued. ADANI EXPORTS v. DCIT[1999] 240 ITR 224 (Guj) was distinguished.

11 Yuvraj v. Union of lndia[315 ITR 841 (Bom)

where Hon'ble Court held that points not decided while passing assessment order under section 143(3) was not a case of change of opinion. It was held that assessment was reopened validly.

12. CIT vs. Madhya Bharat Energy Corporation Ltd. 245 CTR 35 (Delhi) High Court.

where Hon'ble Delhi High Court held that issuance of notice u/s 143(2) subsequent to 148 notice not mandatory.

13. Thakorbhai Maganbhai Patel vs. ITO 245 Taxman 333 (SC)

Where the Hon Supreme Court dismissed assesse'e SLP against High Court's ruling where reopening of assessment u/s 147 was held to be valid despite the AO not passing speaking order against objections filed by the assessee.

14 Home Finders Housing Ltd. Vs ITO T20181 256 Taxman 59 (SC)

SLP dismissed against High Court's order that non-compliance of direction of Supreme Court in GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963 that on receipt of objection given by assessee to notice under section 148, Assessing Officer is bound to dispose of objections by passing a speaking order, would not make reassessment order void ab initio.

15. Indu Lata Rangwala vs. DCIT (2017) 80 taxmann.com 102 (Delhi) 384 ITR 337 (Delhi)/(2016) 286 CTR 474 (Delhi).

where Hon'ble Delhi High Court held that where initial return of income is processed under section 143(1), it is not necessary in such a case for Assessing Officer to come across

some fresh tangible material to form 'reasons to believe' that income has escaped assessment

16. AravaliInfrapower Ltd. Vs DCIT(2017-TIQL-42-SC-IT)

where Hon'ble Supreme Court confirmed the decision of High Court, whereby it was held that reopening of assessment is justified, when the bank statements as well as the ITR form disclosing returns, raises more questions than satisfying the queries already raised.

AravaliInfrapower Ltd. Vs DCIT T20171 77 taxmann.com 372 (Delhi)/[2017] 390 ITR 456 (Delhi)

where Hon'ble Delhi High Court held that where assessee-company furnished only cheque numbers, but failed to provide bank details of share applicants and it was found that share applicants had meager income while investing huge sum of Rs. 8 crores, reopening notice was justified."

"Sub: Written Submission in the above case- reg.

In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to addition made u/s 68 of I.T.Act:

1. PCIT Vs NRA Iron & Steel (P.) Ltd. T20191 103 taxmann.com 48 (SC) (Copy Enclosed)

where Hon'ble Supreme Court reverse 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

2. PCIT Vs NDR PROMOTERS PVT LTD (f20191 102 taxmann.com 182 (Delhi)/r20191 261 Taxman 270 (Delhi)/r20191 410 ITR 379 (Delhi))

where Hon'ble Delhi High Court held that where Assessing Officer made additions to assessee's income under section 68 in respect of amount received as share capital from several companies, in view of fact that all of these companies were maintained by one person who was engaged in providing accommodation entries through paper companies and all such

companies were located at same address, impugned addition was justified

3. ITO Vs Synergy Finlease Pvt. Ltd (ITA No.4778/Del/2013)

where Hon'ble ITAT Delhi held that where investor of share application money had nominal income and cheques had been received just before issue of cheques for share application money, creditworthiness was not proved and addition u/s 68 was sustained.

4. CIT Vs Navodaya Castle Pvt Ltd T20141 367 ITR 306 (Del) (Copy Enclosed)

where Hon'ble Delhi High Court accepted that since the assessee was unable to produce the directors and the principal officers of the six shareholder companies and also that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer had observed that there were genuine concerns about identity, creditworthiness of shareholders as well as genuineness of the transactions.

"20. Now, when we go to the order of the Tribunal in the present case, we notice that the Tribunal has merely reproduced the order of the Commissioner of Income-tax (Appeals) and upheld the deletion of the addition. In fact, they substantially relied upon and quoted the decision of its co-ordinate Bench in the case of MAF Academy P. Ltd., a decision which has been overturned by the Delhi High Court, vide its judgment in CIT v. MAF Academy P. Ltd. [2014] 206 DLT 277; [2014] 361 ITR 258 (Delhi)). In the impugned order it is accepted that the assessee was unable to produce directors and principal officers of the six shareholder companies and also the fact that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer has observed that there were genuine concerns about identity, creditworthiness of shareholders as well as genuineness of the transactions.

21. In view of the aforesaid discussion, we feel that the matter requires an order of remit to the Tribunal for fresh adjudication keeping in view the aforesaid case law."

Navodaya Castle Pvt Ltd Vs CIT (T20151 56 taxmann.com 18 (SC)/r20151 230 Taxman 268 (SC)) (Copy Enclosed)

SLP of assessee dismissed by Hon'ble Supreme Court

5. Pratham Telecom India Pvt Ltd Vs DCIT (2018-TIQL-1983-HC-MUM-IT)

where Hon'ble Bombay High Court held that mere production of PAN numbers & bank statements is not sufficient enough to discharge the burden on taxpayer to escape the realms of Section 68

6 CIT Vs Nipun Builders & Developers (P.) Ltd (30 taxmann.com 292, 214 Taxman 429, 350 ITR 407, 256 CTR 34) (Copy Enclosed)

where Hon'ble Delhi High Court held that where assessee failed to prove identity and capacity of subscriber companies to pay share application money, amount so received was liable to be taxed under section 68. It was held as follows: "12. A perusal of the order of the Tribunal shows that it has gone on the basis of the documents submitted by the assessee before the AO and has held that in the light of those documents, it can be said that the assessee has established the identity of the parties. It has further been observed that the report of the investigation wing cannot conclusively prove that the assessee's own monies were brought back in the form of share application money. /As noted in the earlier paragraph, it is not the burden of the AO to prove that connection. There has been no examination by the Tribunal of the assessment proceedings in any detail in order to demonstrate that the assessee has discharged its onus to prove not only the identity of the share applicants, but also their creditworthiness and the genuineness of the transactions. No attempt was made by the Tribunal to scratch the surface and probe the documentary evidence in some depth, in the light of the conduct of the assessee and other surrounding circumstances in order to see whether the assessee has discharged its onus under Section 68. With respect, it appears to us that there has only been a mechanical reference to the case-law on the subject without any serious appraisal of the facts and circumstances of the case.

13. We, therefore, answer the substantial question of law framed by us in the negative, in favour of

the revenue and against the assessee. The appeal of the revenue is allowed with no order as to

costs. "

7 CIT Vs Nova Promoters & Finlease (P) Ltd (18 taxmann.com 217, 206 Taxman 207, 342 ITR 169. 252 CTR 187)

where Hon'ble Delhi High Court held that amount received by assessee from accommodation entry providers in garb of share application money, was to be added to its taxable income under section 68. It Was held as follows:

"41. In the case before us, not only did the material before the Assessing Officer show the link between the entry providers and the assessee-company, but the Assessing Officer had also provided the statements of Mukesh Gupta and Rajan Jassal to the assessee in compliance with the rules of natural justice. Out of the 22 companies whose names figured in the information given by them to the investigation wing, 15 companies had provided the so-called "share subscription monies" to the assessee. There was thus specific involvement of the assessee- company in the modus operandi followed by Mukesh Gupta and Rajan Jassal. Thus, on crucial factual aspects the present case stands on a completely different footing from the case of Oasis Hospitalities (P.) Ltd. (supra).

42. In the light of the above discussion, we are unable to uphold the order of the Tribunal confirming the deletion of the addition of Rs. 1,18,50,000 made under section 68 of the Act as well as the consequential addition of Rs. 2,96,250. We accordingly answer the substantial questions of law in the negative and in favour of the department. The assessee shall pay costs which we assess at Rs. 30,000/-. "

8 CIT Vs Ultra Modern Exports (P.) Ltd (40 taxmann.com 458, 220 Taxman 165)

where Hon'ble Delhi High Court held that where in order to ascertain genuineness of assessee's claim relating to 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. It was held as follows:

"9. As noticed previously, the CIT (A) was of the opinion that the assessee had discharged the basic onus which was cast upon it after considering the ruling in Lovely Exports (P.) Ltd. 's case (supra). The material and the records in this case show that notice issued to the 5 of the share applicants were returned unserved. The particulars of returns made available by the assessee and taken into consideration in paragraph 3.4 by the AO in this case would show that the said

parties/applicants had disclosed very meager income. The AO also noticed that before issuing cheques to the assessee, huge amounts were transferred in the accounts of said share applicants. This discussion itself would reveal that even though the share applicants could not be accessed through notices, the assessee was in a position to obtain documents from them. While there can be no doubt that in Lovely Exports (P.) Ltd. (supra), the Court indicated the rule of "shifting onus" i.e. the responsibility of the Revenue to prove that Section 68 could be invoked once the basic burden stood discharged by furnishing relevant and material particulars, at the same time, that judgment cannot be said to limit the inferences that can be logically and legitimately drawn by the Revenue in the natural course of assessment proceedings. The information that assessee furnishes would have to be credible and at the same time verifiable. In this case, 5 share applicants could not be served as the notices were returned unserved. In the backdrop of this circumstance, the assessee's ability to secure documents such as income tax returns of the share applicants as well as bank account particulars would itself give rise to a circumstance which the AO in this case proceeded to draw inferences from. Having regard to the totality of the facts, i.e., that the assessee commenced its business and immediately sought to infuse share capital at a premium ranging between Rs. 90-190 per share and was able to garner a colossal amount of Rs. 4.34 Crores, this Court is of the opinion that the CIT (Appeals) and the IT AT fell into error in holding that AO could not have added back the said amount under Section 68. The question of law consequently is answered in favour of the Revenue and against the assessee. ”

9. CIT Vs Frostair (P.) Ltd (26 taxmann.com 11. 210 Taxman 221)

where Hon’ble Delhi High Court held that where details furnished by assessee about share applicants were incorrect, addition under section 68 was proper. It was held as follows: 12 The application of the ratio of every decision by a quasi-judicial body like the IT AT has to be nuanced, and contextual. Thus, while the findings in Divine Leasing, Oasis International or even Lovely Exports might be preceded by a general discussion of the correct approach to be adopted by the AO, in a given case where additions are sought to be made on account of share application moneys not found to be genuine, the basic facts of the case cannot be lost sight of. On a proper application of the ratio in Oasis - and subsequently, the Division Bench ruling in CIT v. Nova Promoters & Finlease (P)

Ltd [2012] 206 Taxman 207/18 taxmann.com 217 (Delhi) it is evident that the AO took into account - if we may say so, in exhaustive detail, after a painstaking examination of the records after two or three layers of scrutiny- all the materials and held that the claim that the amounts claimed to be received on account of share applications were not based on genuine transactions. The CIT (A) upheld that order, after calling for a remand report. In these circumstances, the conclusion of the Tribunal, that the assessee had discharged its onus, appears to be based on a superficial understanding of the law, and an uninformed one about the overall facts and circumstances of the case.

13. In view of the above reasons, the questions of law in these appeals are answered in favour of the revenue. The orders of the Assessing Officer are restored. The appeals are to succeed and are therefore allowed.

10. CIT Vs N R Portfolio Pvt Ltd T20141 42 taxmann.com 339 (Delhi)/r2014l 222 Taxman 157 (Delhi)(MAG)/r20141 264 CTR 258 (Delhi) (Copy Enclosed)

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. It was held as follows:

"30. What we perceive and regard as correct position of law is that the court or tribunal should be convinced about the identity, creditworthiness and genuineness of the transaction. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive. Companies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the persons behind the company who take the decisions, controls and manage them. "

11 CIT Vs Empire Builtech (P.) Ltd (366 ITR 110)

where Hon'ble Delhi High Court held that u/s 68 it is not sufficient for assessee to merely disclose address and

identities of shareholders; it has to show genuineness of such individuals or entities.

12. CIT Vs Focus Exports (P.) Ltd (51 taxmann.com 46 (Delhi)/r20151 228 Taxman 88)

where Hon'ble Delhi High Court held that where in respect of share application money, assessee failed to provide complete address and PAN of certain share applicants whereas in case of some of share applicants, there were transactions of deposits and immediate withdrawals of money from bank, impugned addition made under section 68 was to be confirmed

13. PCIT Vs Bikram Singh f20171 85 taxmann.com 104 (Delhi)/r20171 250 Taxman 273 (Delhi)/r20171 399 ITR 407 (Delhi) (Copy Enclosed)

where Hon'ble Delhi High Court held that even if a transaction of loan is made through cheque, it cannot be presumed to be genuine in the absence of any agreement, security and interest payment. Mere submission of PAN Card of creditor does not establish the authenticity of a huge loan transaction particularly when the ITR does not inspire such confidence. Mere submission of ID proof and the fact that the loan transactions were through the banking channel, does not establish the genuineness of transactions. Loan entries are generally masked to pump in black money into banking channels and such practices continue to plague Indian economy."

4.1 Finally, Ld. Sr. DR stated that the case of the assessee was reopened on the basis of the various documentary evidences and on the information received from the Directorate of Income Tax (Investigation) by the Assessing Officer wherein, it was mentioned that based upon three STRs in the name of Valiant Agencies, Senorita Enterprises Pvt. Ltd. And Enliven Developers Pvt. Ltd., the Assessee Company had taken share capital of Rs. 465.98 lacs from Investee companies, but identity, genuineness and creditworthiness of the investors remained doubtful, hence, the AO made the addition in dispute as per law and the Ld. CIT(A) has wrongly deleted the same which are contrary to the material available

on record as well as various decisions rendered by the Hon'ble Supreme Court of India and the Hon'ble High Court as mentioned by him in the Written Submissions. He requested that the appeal filed by the Revenue may be allowed by cancelling the order passed by the ld. CIT(A) and restore the assessment order passed by the Assessing Officer.

5. On the contrary, Ld. Counsel for the assessee relied upon the order of the Ld. CIT(A) and stated that he has filed the written submissions before the Ld. CIT(A) and the same may be treated as his arguments before this Bench. He draw our attention towards the written submissions filed by the assessee before the ld. CIT(A) which are at pages 23-52 of the Paper Book filed before the Bench which contains pages 1-149 in which he has attached the various documentary evidences supporting the impugned order. In addition to the said documentary evidences filed by the assessee's counsel, he has also filed the various copies of the orders passed by the Tribunal including the Hon'ble Delhi High Court decision in the case of Pr. CIT-6 vs. Meenakshi Overseas Pvt. Ltd. Decided in ITA No. 692/2016 dated 26.5.2017 and stated that in this case the Hon'ble High Court has discussed the jurisprudence applicability of Section 147/148 of the Act for reopening of assessment which are totally applicable on the facts of the present case of the assessee. He further submitted that the Hon'ble Delhi High Court in the case of Pr. CIT-6 vs. Meenakshi Overseas Pvt. Ltd. (Supra) has discussed the various case laws and exactly on similar issue as involved in the present appeal and dismissed the appeal of the Revenue. Hence, he requested that by respectfully following the above ratio, the appeal of the Revenue may be dismissed. In this addition to this, he has also filed the following various orders passed by the ITAT, Delhi Bench on the issue in dispute which has been decided in the case of assessee and against the Revenue.

- **(On the issue of mechanical satisfaction u/s. 151 of the Act "Yes" I am satisfied, it is a fit case for issuance of notice u/s. 148 of the Act.)**

ITAT, Delhi decision dated 6.8.2018 in the case of Pioneer Town Planners Pvt. Ltd. Vs. DCIT in ITA No. 132/Del/2018

- Paras Land Developers Pvt. Ltd. Vs. ITO in ITA No. 6522/Del/2018 of ITAT, New Delhi dated 30.4.2019.

- **(On the issue where AO could not proceed within 4 weeks from service of order disposing off objections)**

  Asian Paints Ltd. Vs. DCIT & Anr. (2008) 296 ITR 90 (Bombay).

- **(On the issue of discharge of onus u/s. 68 of the Act)**

  CIT vs. Gangeshwari Metal Pvt. Ltd. In ITA No. 597/2012 of Hon'ble Delhi High Court dated 21.1.2013.

  Baba Bhootnath Trade & Commerce Ltd. Vs. ITO in ITA No. 1494/Kol/2017 of ITAT, Kolkata dated 5.4.2019.

  CIT vs. Ms. Mayawati 338 ITR 563 (Delhi).

6. We have heard both the parties and perused the relevant records, especially the orders of the revenue authorities as well as the written submissions/ case laws relied by both the parties. We note that in this case a complaint was received in the Investigation Wing and it has started investigation on 14.8.2008 by issuing a summon u/s. 131(1A). Vide letter dated 04-09-2008, assessee filed written details about the functioning of the company to the Investigation Wing. Apart from enquiring the facts of the assessee by the Investigation Wing, notice u/s 133(6) was also issued to the parties which were duly responded and complied with by them. From the letter dt. 05-11-2012, it appears that Investigation Wing has enquired all the bank deposit entries above Rs.5,0000/- of the assessee. Vide letter dt. 16-11-2012, assessee furnished all the details before the Investigation Wing and also furnished the copy of Form No.2 filed with the Registrar of Companies, Delhi and Haryana to comply the allotment of

shares. Vide letter dt. 29-11-2012, the details of share application money amounting to Rs. 4.60 crores was again informed to the Investigation Wing alongwith copy of balance sheet and financial for the FY 2008-09 to 2011-12. After that there was no query from the Investigation Wing. It is noted that the Investigation Wing vide letter dt. 19-03-2014 intimated to the AO about the investigation made by the Wing and also suggested for further investigation. AO reproduced the letter of the Investigation Wing in the assessment order. From the reasons recorded it is very clear that AO has not made any enquiries about the suspicion and doubt raised by the Investigation Wing. He has simply reproduced the letter under the column reasons recorded u/s 147 of the IT Act and also written that "since the share capital was not scrutinized, I have reason to believe that an income amounting to Rs.4,65,98,000/- which is chargeable to tax, has escaped assessment within the meaning of section 147 of the IT Act".

These words clearly indicate that AO has not applied his mind on the information received from the Investigation Wing. He has produced the content of the letter of the Investigation Wing. There is no reason to believe for escapement of any income. Content of the letter clearly indicates that this company has not started a business how it has charged a premium of Rs.240/- per share? This creates a suspicion and the documents of the investing companies also indicate that they have received a huge amount as a share capital and that amount is forwarded to the assessee company as a share application money. On the basis of this fact, Investigation Wing was having doubt about the identity of the allottees companies, genuineness of the transaction and creditworthiness of the allottee companies. The content of the letter clearly indicates that Investigation Wing was having some suspicion and doubt and it was forwarded to the Assessing Officer. Without making any enquiries, Assessing Officer recorded the reason on the basis of only suspicion and doubt. Even Assessing Officer has not formed his own opinion based on any information gathered or based on any information after perusal of the return filed by the appellant. From the return of income filed by the

appellant, it is clearly mentioned that the share capital amount alongwith premium was only Rs.4.60 crores, however, in the reasons recorded Assessing Officer has mentioned the share capital amount as Rs.4,65,98,OOO/-. Assessing Officer has copied this figure from the letter of the Investigation Wing. This clearly indicates that AO has not formed its own reason of belief and he has only believed the content of the letter of the Investigation Wing. This content also clearly indicates that while granting the satisfaction by the Addl. CIT, he has not gone through the records and not verified the facts sent by the Investigation Wing. The mismatch of the figure of share capital, whether or its Rs.4,65,98,OOO/- has not been looked into by the Addl.CIT, at the time of giving approval for issuing the notice u/s 148 of the IT Act. Therefore, the Ld. CIT(A) has agreed with the contention of the AR of the assessee that there is no tangible material available at the time of recording the reasons for reopening the case. The main observation of the Investigation Wing is that assessee company has charged share premium @Rs.240/- per share which is very high but how this charging of heavy share premiums indicate the escapement of income is not narrated in the letter. AO has also not applied his mind to find out how there is an escapement of income in the form of share capital and share premium. After considering these facts, we find that AO has wrongly assumed the jurisdiction u/s 147 of the IT Act. The sequence in the chart which is appearing on page 13 of this order also clearly indicates that AO has not given proper opportunity to the assessee to file the objection against the issue of notice u/s 148 of the Act. The objections disposed off by the AO are also not a speaking one. AO has relied upon the case of Hon'ble Supreme Court CIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd. 291 ITR 500 (SC) and rejected the claim of the assessee on the basis of this judgement and also information received from the Investigation Wing. He has not considered the facts, objections and case laws cited by the Ld. AR of the assessee. The directions given by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 83 (SC) was not followed

in the case of the assessee. It is also important to note that notice u/s 143(2) was issued on 11-06-2014 and the objections were disposed off on 27-06-2014. After 27-06-2014, no notice u/s 143(2) was issued. The order was passed on 30-06-2014, however, it was getting time barred on 31-03-2015. The action of the AO clearly indicates that proper opportunity to the assessee was not given. Even after disposing off the objections, no notice u/s 143(2) was issued. Hence, the Ld. CIT(A) agreed with the contentions of the Ld. ARs of the assessee that notice issued u/s 143(2) of the IT Act is premature and hence nonest. After considering the facts as narrated above, Ld. CIT(A) has rightly observed that the AO has wrongly assumed the jurisdiction u/s 147 of the IT Act and also not given proper opportunity to the assessee during the assessment proceedings. We draw support from the decision of the Hon'ble Delhi High Court in the case of *Pr. CIT v. Meenakshi Overseas (P) Ltd. v. ITO 395 ITR 677 (Del) which is directly applicable in the present case wherein it has been held as under:-*

> *"36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.*
>
> *37. For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law.*
>
> *38. The question framed is answered in the negative, i.e., in favour of the Assessee and against the Revenue.*

The appeal is, accordingly, dismissed but with no orders as to costs.

6.1 The judicial decisions relied upon by the Ld. DR have been duly considered. In our considered view, we do not find any parity in the facts of the decisions relied upon with the peculiar facts of the case in hand. Therefore, in view of these facts and circumstances of the case, the grounds raised against the assumption of jurisdiction u/s 147 were rightly allowed by the ld. CIT(A), which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the legal issue and reject the ground no. 1 raised by the Revenue before us.

6.2 As regards ground no. 2 on merits of the case is concerned, we note that AO has not made any enquiries on his own. He has only asked the question about the reason for charging the high premium @Rs.240/- per share. The assessee has filed its reply vide letter dt. 30-06-2014. Without considering the facts mentioned by the Ld. ARs of the assessee, AO added the amount with the following remarks:

"*Documents were filed by counsel of assessee on 30-06-2014 of share holders as on 31-03-2007 alongwith their confirmations, bank statement, ITR acknowledgements, balance sheets as on 31.03.2007 etc so as to justify three ingredients required u/s 68 of the Act such as identity, genuineness, creditworthiness etc of the investors. The same were examined and found to be routine documents as filed before Investigation Wing. Hence reply of the assessee is not acceptable and the assessee has failed in discharging its onus u/e 68 of the IT Act, 1961.*

8. Assessee in its objections filed on 27-06-2014 mentioned filing of these documents before investigation wing and verification caused by investigation wing. Since re-assessment proceedings are independent and separate proceedings, therefore, assessee was required to discharge its onus before the AO. It is obvious from the above facts that transactions of assessee with the investee companies having received capital of Rs.4.60 crores at a premium of Rs.240 per share without any justification is not genuine. The ratio of the following case laws are in full support with this case.

i) CIT v. Nupur Builders & Developers Pvt. Ltd. ITA No.120/2012, Delhi High Court.

ii) CIT v. NR Portfolio Pvt. Ltd. ITA No.1018 of 2011, Delhi High Court.

9. Therefore, after careful examination of details forwarded by the Investigation Wing and also after considering the submissions of the assessee, Rs. Four crores sixty lakhs received by assessee as capital is added back to the income of the assessee u/s. 68 of the IT Act.

6.3 We find that the remarks of the AO clearly indicate that assessee has filed all the necessary documents before the Investigation Wing to prove the identity of the companies, their creditworthiness and genuineness of the transaction. AO has rejected these documents on the ground that these are routine documents. Regarding the charging of premium @Rs.240/- per share, AO commented that this explanation was filed before the Investigation Wing, since reassessment proceeding is different from the proceedings of the Investigation Wing, appellant has not discharged its onus. From the comments mentioned in Para 8 reproduced above clearly indicates that assessee has given explanation for charging the high rate of premium. Without considering those facts and explanation, he has just set aside the explanation on the ground that these explanations were filed before the Investigation Wing. However, the AO was supposed to give reasons for not accepting those explanations. AO has relied upon the case of (i) CIT v. Nupur Builders & Developers Pvt. Ltd. ITA No.120/2012, Delhi High Court (ii) CIT v. NR Portfolio Pvt. Ltd. ITA NO.1018 of 2011, Delhi High Court. The facts of these cases are entirely different from the facts of this case. In the present case, AO has

proceeded entirely on the findings of the Investigation Wing and no investigation was made by him. He has not made any enquiry during the re-assessment proceedings. He has even not disclosed the facts on which he has treated that amount of Rs. 4.60 crores as a deemed income of the assessee. Charging of high rate of premium, even if assessee has not started its business has no bearing on the acceptance of the share application money and share premium. Only the companies which have applied for the shares and paid the premium can explain the reasons for paying so much high premium. AO has not made any enquiries from those companies. The enquiries conducted by the Investigation Wing also do not indicate any adverse findings against the assessee. After considering the whole issue, the assessee has established all the ingredients required u/s 68 of the IT Act.

6.4 We further find that the Hon'ble Delhi High Court in the case of CIT vs. Gangeshwari Metal (P) Ltd. (2013) 214 Taxman 423 (Delhi) (HC) has dealt the similar issue and distinguished the case law of Nova Promoters and Finlease (P) Ltd. as under:-

> *"As can be seen from the above extract, two types of cases have been indicated One in which the Assessing Officer carries out the exercise which is required in law and the other in which the Assessing Officer 'sits back with folded hands' till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The present case falls in the latter category. Here the Assessing Officer after noting the facts, merely rejected the same. This would be apparent from the observations of the Assessing Officer in the assessment order to the following effect-*

> *"Investigation made by the Investigation Wing of the department clearly showed that was nothing but a sham transaction of accommodation entry. The assessee was asked to explain as to why the said amount of Rs. 1,11,50,000/- may not be added to its income. In response, the assessee has submitted that there is no such credit in the books of the assessee. Rather, the assessee company has received the share application money for allotment of its share. It was stated that the actual amount received was Rs.55,50,000/- and not Rs. 1,11,50,000/- as mentioned in the notice. The assessee has furnished details of such receipts and the contention of the assessee in of the parties mentioned in the notice. The assessee has furnished details of such receipts and the contention of the assessee in respect of the amount is found correct. As such the unexplained amount is to be taken at Rs. 55,50,000/-. The assessee has further tried to explain the source of this amount of Rs. 55,50,000/- by furnishing copies of share application money, balance sheets etc. of the parties mentioned above and asserted that the question of addition in the income of the assessee does not arise. This explanation of the assessee has been duly considered and found not acceptable. This entry remains unexplained in the hands of the assessee as has been arrived by the Investigation Wing of the Department. As such entries of Rs. 55,50,000/- received by the assessee are treated as an unexplained cash credit in the hands of the assessee and added to its income. Since I am satisfied that the assessee has furnished inaccurate particulars of its income/ penalty proceedings under section 271(1)© are being initiated separately."*

The facts of Nova Promoters and Finlease (P) Ltd. (supra) fall in the former category and that is why this Court decided in favour of the revenue in that case. However the facts of the present case are clearly distinguishable and fall in the second category and are more in line with facts of Lovely Exports (P) Ltd. (supra). There was a clear lack of inquiry on the part of the Assessing Officer once the assessee had furnished all the material which we have already referred to above. In such an eventuality no addition can be made under Section 68 of the Income Tax Act 1961.

Consequently, the question is answered in the negative. The decision of the Tribunal is correct in law."

6.5 The judicial decisions relied upon by the Ld. DR have been duly considered. In our considered view, we do not find any parity in the facts of the decisions relied upon with the peculiar facts of the case in hand. Therefore, in view of these facts and circumstances of the case, the addition made by the AO was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 2 raised by the Revenue.

7. In the result, the Revenue's Appeal stands dismissed

Order pronounced on 26/07/2019.

Sd/-	**Sd/-**
[B.R.R. KUMAR]	**[H.S. SIDHU]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Date 26/07/2019

SRBHATNAGAR

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches