IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.1579/Del./2019
Assessment Year 2010-2011

M/s. Ganesh Ganga Investments Pvt. Ltd., A-52, Top Floor, Street No.1, Gurunanakpura, Laxmi Nagar, Delhi–110 092. PAN AAACG2710J	vs.,	The Income Tax Officer, Ward – 10 (1), Room No.206A, C.R. Building, I.P. Estate, New Delhi. PIN – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri Raj Kumar, C.A. And Shri Rajeev Ahuja, Advocate Shri Sumit Goel, C.A.
For Revenue :	Ms. Parmit M. Biswas, CIT-DR

Date of Hearing :	10.10.2019
Date of Pronouncement :	07.11.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-4, New Delhi, Dated 26.12.2018, for the A.Y. 2010-2011.

2. Briefly the facts of the case are that assessee company filed its return of income on 04.02.2011 for the A.Y. 2010-2011 declaring loss of Rs.9,616/- which was processed under section 143(1) of the I.T. Act, 1961. The assessee declared income from brokerage and commission, interest on loan and profit on sale of investment also.

2.1. An information was received from the O/o. CIT, Central-2, New Delhi, vide letter Dated 14.02.2014 mentioning therein that a search/survey operation under section 132/133A of the Income Tax Act, 1961 was conducted by the Investigation Wing at the business and residential premises of Shri Himanshu Verma and his Group on 29.03.2012 wherein after intensive and extensive inquiry and examination of documents seized during the course of search, it has been gathered that the said persons are involved in providing accommodation entries to the persons who were named in the report. During the course of inquiry made by the Investigation Wing, it also came to the notice that Shri Himanshu Verma was engaged in the business of providing accommodation entries through

cheques/PO/DD in lieu of cash to large number of beneficiary companies through various paper and dummy companies floated and controlled by him. The cash received from the parties for providing accommodation entries was first deposited in the account of these dummy firms/companies in the guise of cash received against the bogus sales duly shown in the books of account. On the basis of the material available on record, the A.O. after recording reasons for reopening of the assessment, issued notice under section 148 to the assessee on 31.03.2017 which was served upon the assessee. The assessee objected to the reopening of the assessment and requested to provide copy of the approval of Competent Authority under section 151 of the I.T. Act, 1961. The Assessee also contended that whatever material was collected at the back of the assessee was not confronted and requested to supply statement of Shri Himanshu Verma, report and data complied / received from Investigation Wing, report and data complied/received by ITO, Ward-10(1), New Delhi, diaries and registers considered as incriminating material seized from Shri

Himanshu Verma and any other documents which Department wanted to rely. It was further submitted that proceedings under section 147/148 of the I.T. Act, cannot be invoked for making inquiry or verification purposes. The assessee denied receipt of any accommodation entry from any such person. The A.O, however, rejected the objections of the assessee and proceeded to make assessment in the matter. The A.O. noted that in assessment year under appeal, assessee has received Rs.11,05,00,000/- on account of share capital and share premium from 38 parties as noticed during the course of assessment proceedings. The summary of the same is reproduced in the assessment order. The assessee was asked to file complete postal address, PAN and other details of these 38 parties. The A.O. also issued notice under section 133(6) to all 38 share subscriber companies and asked for the details from them. The A.O. received replies from 26 companies. In 06 cases, although notice issued under section 133(6) of the I.T. Act were issued as per new name as well as old name of the company, but, the same were returned back un-served by

the Postal Authorities. In the remaining 06 cases, no replies have been received. The A.O. noted that replies received from 26 parties under section 133(6) have been analysed and these companies furnished copy of the acknowledgment of ITR, balance sheet as on 31.03.2010, P & L A/c, copy of the bank statement. The A.O. however, did not accept the replies filed by the 26 investor companies on the reasons that replies have been received in bunch for similar style of envelopes and posted from three post offices. The A.O. also noted that none of the parties explained as to why high premium was paid and parties have not explained source of the investment. The A.O. also noted that 26 parties filed copy of the ITR, balance sheet, P & L A/c and bank statement, but, it shows that their income shown is very meagre in the return of income. The assessee was asked to produce the persons/Principal Officers of these entities for verification. However, assessee did not produce the same. The A.O. also analysed the statement of Shri Himanshu Verma through whom amount have been received and the A.O. ultimately rejected the explanation of assessee on

genuine share application money received from 38 parties and made addition of Rs.11.05 crores. The A.O. further noted that assessee has paid commission in cash for arranging these entries, on which, addition was made of Rs.22,10,000/- i.e., @ 2% of the amount in question which was also added to the returned income.

3. The assessee challenged the reopening of the assessment as well as additions on merit before the Ld. CIT(A). It was contended that assessment framed on the basis of material / documents / information received from third party and without application of mind by the A.O, therefore, whole assessment is invalid and bad in law. It was further submitted that assessee has shown all the amounts in his books of account and return of income filed with the Department. The A.O. has reopened the assessment by mentioning in the reasons that assessee has received entries of Rs.2.45 crores which fact is incorrect. The initiation of re-assessment have been made merely on the basis of Investigation Wing report without applying the mind. No right of cross-examination have been provided to

the assessee to the statement of Shri Himanshu Verma and others. The assessee relied upon the following decisions.

3.1. In the case of Pr. CIT vs., RMG Polyvinyl (I) Ltd., 396 ITR 5 (Del.) the Hon'ble Delhi High Court held as under:

> *"In the present case too, the information received from the Inv. Wing cannot be said to be tangible material per se without a further enquiry being undertaken by the learned assessing officer"*

3.2. In the case of Pr. CIT vs., Meenakshi Overseas (P) Ltd., 395 ITR 677 (Del.), the Hon'ble Delhi High Court held as under :

> *"Reassessment notice condition precedent recording of reasons to believe that income has escaped assessment mere reproduction of investigation report in reasons recorded absence of link between tangible material and formation of ceding illegal Income Tax Act, 1961, Sec.147, 148"*

3.3. In the case of Pr. CIT vs., G And G Pharma India Ltd., [2016] 384 ITR 147 (Del.), the Hon'ble Delhi High Court held as under :

> *"Reassessment condition precedent application of mind by assessing officer to materials prior to forming reason to believe income has escaped assessment - No independent application of mind to information received from Directorate of Investigation and no prima facie opinion formed- reassessment order invalid".*

3.4. In the case of Sarthak Securities Co. (P) Ltd., 329 ITR 110 (Del.), the Hon'ble Delhi High Court held as under :

> *"No independent application of mind by the Assessing officer but acting under information from Inv. Wing - Notice U/s. 147 to be quashed".*

3.5. The assessee also submitted that assessment is barred by time. The assessee further submitted that approval under section 151 have been granted in a most mechanical manner without applying independent mind by

the Pr. Commissioner of Income Tax. He has submitted that Pr. Commissioner of Income Tax has recorded in the approval as under :

"Form for recording the reasons for initiating proceedings u/s 147 and for obtaining the approval of the Ad CIT/CIT/CBDT

1.	*Name and address of the assessee*	*M/s. Ganesh Ganga Investment P. Ltd., A-52, Top Floor Street No.l, Guru Nanak Pura, Laxmi Nagar, Delhi 110092*
2.	*PAN*	*AAACG2710J*
3.	*Status*	*Company*
4.	*Ward/Circle*	*Ward-10(1)*
5.	*Asstt. Year in respect of which it is proposed to issue notice u/s 148*	*2010-11.*
6.	*The quantum of income which has escaped assessment*	*Rs.2,45,00,000/-*
7.	*Whether the provisions of section 147(a) or 147(b) are applicable or both the sections are applicable.*	*147(b)*
8.	*Whether the assessment is proposed to be made for the first time. If the reply is affirmative,*	*Yes*

	please state *(a) Whether any voluntary return has already been filed.* *(b) If so, the date of filing of return*	*Yes* *04.02.2011*
9.	*If answer to item 8 is negative, please state*	
(a)	*Income originally assessed*	*NA*
(b)	*Whether it is a case of under assessment, at lower rate, assessment which has been made the subject of excessive relief or allowing excess loss/depreciation.*	*NO*
10.	*Whether the provision of Sec. 150(1) are applicable. If the reply is in affirmative the relevant facts may be stated against Item No. 11 and 8 may also be brought out that the provisions of Sec. 150(2) would not stand in the way of initiating proceedings u/s. 147.*	*NO*
11.	*Reasons for the belief that the income has escaped assessment.*	*As per annexure.*

Sd/- H.K. Sharma

Dated: 29.03.2017. *ITO, Ward-10(1), New Delhi.*

12.	*Whether the Addl. Commissioner of I. Tax is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s.148.*	*In view of the facts notice u/s.148 to be issued.*
13.	*Whether the Pr. Commissioner of I. Tax is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s.148.*	*Yes I am satisfied that it is a fit case for issue of notice u/s.148 of the I.T. Act, 1961.*

Sd/-S.K. Mittal,
Pr. Commissioner of I. Tax, New Delhi."

3.6. This approval is not valid in Law because it would show that approval have been granted without application of mind. Learned Counsel for the Assessee relied upon Judgment of the Hon'ble Delhi High Court in the case of United Electrical Co. Pvt. Ltd., vs. Commissioner of Income Tax 258 ITR 317 in which approval by Addl. Commissioner of Income Tax under section 151 was given in the following terms – *"Yes" I am satisfied that it is a fit case for issue of notice under section 148 of the I.T. Act."* The Hon'ble Delhi

High Court considering the similarly worded approval did not approve the same and held that *"in the present case, there has been no application of mind by Addl. Commissioner of Income Tax before granting the approval."* The assessee also relied upon Judgment of Hon'ble Supreme Court in the case of Commissioner of Income Tax vs., S. Goyanka Lime & Chemical Ltd., [2015] 64 taxmann.com 313 (SC) approving the Judgment of Hon'ble Madhya Pradesh High Court in the case of Commissioner of Income Tax, Jabalpur vs., S. Goyanka Lime & Chemical Ltd., [2015] 56 taxmann.com 390 (M.P.) in which the Departmental SLP has been dismissed on the same reason because the Joint Commissioner of Income Tax recorded satisfaction in a mechanical manner and without application of mind. The assessee also relied upon Judgment of Hon'ble Madhya Pradesh High Court in the case of Arjun Singh vs., ADIT [2000] 246 ITR 363 (M.P.) in which also similarly worded sanction under section 148 was not found valid. The assessee also relied upon Judgment of Hon'ble Delhi High Court in the case of Pr. Commissioner of Income Tax vs.,

N.C. Cables Ltd., [2017] 88 taxmann.com 649 (Del.) in which also on similarly worded sanction, it was held that re-assessment was not valid. The assessee also submitted that since no right of cross-examination have been allowed to the statement of Shri Himanshu Verma, therefore, such statement cannot be read in evidence against the assessee. He has relied upon Judgment of Hon'ble Supreme Court in the case of M/s. Andaman Timber Industries vs., Commissioner of Central Excise, Kolkata-II reported in 281 CTR 241.

4. The Ld. CIT(A), however, did not accept the contention of assessee and confirmed the reopening of the assessment. The assessee also made submissions on merit to show that addition is wholly unjustified. However, the Ld. CIT(A) did not accept the contention of assessee and upheld the addition on merit as well. The appeal of assessee was accordingly dismissed.

5. The assessee in the present appeal challenged the reopening of the assessment under section 147/148 of the I.T. Act, 1961, on several grounds, addition of Rs.11.05 crores under section 68 of the I.T. Act and addition of Rs.22,10,000/- on account of commission.

6. We have heard the Learned Representatives of both the parties. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to reasons recorded in this case for reopening of the assessment, copy of which is filed at page-15 of the PB. PB-29 is approval/sanction granted by the Pr. Commissioner of Income Tax, New Delhi. PB-6 is balance-sheet to show that in preceding assessment year the share capital was of Rs.3.01 crores and in assessment year in increased to Rs.14.06 crores. Thus, about Rs.11 crores have increased and this fact was also disclosed to the Revenue Department. Such details are filed in the return of income. No verification could be allowed in the garb of proceedings under section 148 of the Income Tax Act, 1961. The name of

M/s. Management Services Pvt. Ltd., in the reason from whom alleged entry have been taken by the assessee do not figure in the appellate order because such party does not exist. M/s. Shubh Propbuild Pvt. Ltd., has been mentioned in the reasons do not belong to Shri Himanshu Verma. In assessment order name of M/s. Management Services Pvt. Ltd., do not appear. PB-13 of the assessment order referred to the statement of Shri Himanshu Verma in which name of M/s. Shubh Propbuild Pvt. Ltd., does not appear. The A.O, therefore, recorded incorrect reasons and did not apply his mind to the material on record. The A.O. has not gone through the record and the balance Company do not belong to the assessee. The statement of Shri Himanshu Verma was not subjected to cross-examination on behalf of assessee, despite making a request to the A.O. [PB-19]. In the statement of Shri Himanshu Verma filed on record, no such companies have been mentioned, therefore, no adverse inference could be drawn against the assessee. The assessee did not receive any notice for production of the parties before A.O. There is no evidence on record of any payment

of commission paid by assessee for arranging share capital. Learned Counsel for the Assessee relied upon Order of the ITAT, Delhi Bench in the case of Pioneer Town Planners Pvt. Ltd., vs. DCIT ITA.No.132/Del./2018 Dated 06.08.2018 in which in similar circumstances the re-assessment have been quashed which case also relates to entry provided by Shri Himanshu Verma. Learned Counsel for the Assessee submitted that the A.O. issued notices to all the parties under section 133(6) of the I.T. Act. In response to the same, 26 parties filed reply supported by documentary evidences to prove genuine share application money have been received. The A.O. did not take help of any handwriting export before forming any opinion. If replies were not in order, assessee should have been confronted with the material so that assessee could rebut the same. Therefore, such fact could not be taken adversely against the assessee. The assessee never received notice Dated 11.12.2017 for production of the parties for examination. In reasons 06 parties are mentioned which belong to Shri Himanshu Verma, but, in his statement he says 08 parties, but, the

A.O. made addition for 38 parties. A.O. made the addition only on the statement of Shri Himanshu Verma, but, the parties did not belong to him. Learned Counsel for the Assessee submitted that since approval is not in accordance with Law, therefore, reopening of the assessment is bad in Law and relied upon the same Judgments as were relied upon before Ld. CIT(A). He has submitted that A.O. did not apply his mind to the reasons and recorded incorrect facts and approval is also given on incorrect facts. The initiation and approval on the basis of wrong facts is not legally valid. He has relied upon Judgment of Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs., Kamdhenu Steel & Alloys Ltd., 248 CTR 33 and other decisions as was relied upon before the authorities below. The amount received from 30 companies is Rs.8.13 crores only out of total amount of Rs.11.05 crores. Therefore, there is no other material on record to justify the addition. He has submitted that A.O. cannot ask to explain source of the source. Learned Counsel for the Assessee, therefore, submitted that

reopening of the assessment is invalid and no addition could be made against the assessee even on merits.

7. The Ld. D.R. on the other hand relied upon the Orders of the authorities below and submitted that A.O. dealt with the objections of the assessee, but, for re-assessment proceedings no manner is provided as to how sanction is to be granted. A.O. recorded details in the reasons on which Pr. Commissioner of Income Tax was satisfied. Therefore, reopening of the assessment is valid because information was received from Investigation Wing that assessee has received accommodation entries. The name of assessee was appearing. Sufficiency of reasons is not required at this stage of formation of re-assessment proceedings. The A.O. cannot do any roving enquiry at initial stage. The assessee failed to prove creditworthiness of the Investor Companies as they were having meagre income. The assessee did not prove genuineness of the transaction in the matter. The A.O. made enquiry from Investors and assessee did not produce parties before A.O. Even a premium have been charged for allotment of shares for

which no reasons have been explained. The companies are having meagre income only. Apart from statement of Shri Himanshu Verma, there is enough material to justify the addition on merit. The assessee also did not prove identity and creditworthiness of the Investors even if no cross-examination to the statement of Shri Himanshu Verma have been allowed. The Ld. D.R. relied upon Judgment of Hon'ble Supreme Court in the case of Raymond Woollen Mills 236 ITR 34 (SC). He has submitted that information is prima facie relevant and there is sufficient material on record to justify the initiation of re-assessment proceedings. The assessee failed to prove that no notice Dated 11.12.2017 have been received. The Ld. D.R. relied upon the following decisions.

1. PCIT vs., Paramount Communication (P.) Ltd., 2017-TIOL-253-SC-IT.

2. PCIT vs., Paramount Communication (P.) Ltd., [2017] 392 ITR 444 (Del.) (HC)

3. Aradhna Estate (P.) Ltd., vs. DCIT [2018] 91 taxmann.com 119 (Gujarat) (HC).

4. Pushpak Bullion (P.) Ltd., vs. DCIT [2017] 85 taxmann.com 84 (Gujarat) (HC).

5. Ankit Financial Services Ltd., vs. DCIT [2017] 78 taxmann.com 58 (Gujarat) (HC).

6. Aaspas Multimedia Ltd., vs. DCIT [2017] 83 taxmann.com 82 (Gujarat) (HC).

7. Ankit Agrochem (P.) Ltd., vs. JCIT [2018] 89 taxmann.com 45 (Rajasthan) (HC).

8. Yogendrakumar Gupta vs., ITO [2014] 227 Taxman 374 (SC).

8. We have considered the rival submissions. It is well settled Law that validity of re-assessment proceedings is to be examined with reference to the reasons recorded for reopening of the assessment. The Counsel for Assessee has filed copy of the reasons recorded for reopening of the assessment at Page-15 of the Paper Book which reads as under :

"M/s. Ganesh Ganga Investments Pvt. Ltd.,

PAN AAACG2710J A.Y. 2010-11

The assessee filed return of income for the A.Y. 2010-11 on 04.02.2011 declaring loss of Rs.(-) 14,162/-. The return was processed u/s 143(1).

Information was forwarded to this office through the Addl.CIT, Range-10, New Delhi that search & seizure action was conducted by Inv. Wing at the office of Sh. Himanshu Verma where various incriminating documents/materials were seized during the course of search. During the post search investigation and perusal of seized documents it was observed that Sh. Himanshu Verma was engaged in the business of providing accommodation-' entries by providing cheques/PO/DD in lieu of cash to a large number of beneficiary companies thorough various paper and dummy companies floated and controlled by them. It was also evidently established by the Investigation Wing that Sh Himanshu Verma is known entry providers and is the actual controller of more than 100 companies/proprietary firms/partnership firms. They control these entities through various persons by appointing them as directors/partners/proprietors apart from nominating them as authorized signatories for maintaining the bank accounts of these entities but

in fact all these persons act only as their stooges. The cash received from the recipient parties for providing the accommodation entries was first deposited in the accounts of these dummy firms/companies in the disguise of the cash received against the bogus sales, duly shown in the books of accounts. From there, this cash was transferred to the different paper companies floated by Sh. Himanshu Verma through a complex trail of transactions, so as to hide the actual sources of funds of the last set of recipient companies of Sh. Himanshu Verma

In this way, the reserve & surpluses and the capital account of a specific set of companies are enhanced with the help of the unexplained cash received by Himanshu Verma, which is routed to these companies through their dummy firm/companies. Once the funds of these companies have been enhanced sufficiently, accommodation entries through RTGS/ Cheque in the shape of the share capital, capital gains or loans as per the specific requirement of the recipient

clients were provided to them in lieu of the cash received from them. In this way, the chain for providing an accommodation entry gets completed.

It is noticed from the list of entries that the assessee M/s Ganesh Ganga Investment P. Ltd. has taken following accommodation entries during the financial year 2009-10 :-

S.No.	Amount	Conduit companies through which cheque issued.
1.	4000000	Shubh Propbuild P Ltd.,
2.	4000000	Jaguar Softech P. Ltd.,
3.	4000000	Join Fashion P. Ltd.,
4.	4500000	Management Services P. Ltd.,
5.	4000000	Greenvision Construction P. Ltd.,
6.	4000000	USK Exim P. Ltd.,
TOTAL	2,45,00,000/-	

On the basis of the reports received from the Investigation Wing, I have downloaded the return from the ITD portal and verified the records and it is clear that the assessee company has not disclosed fully and truly all material facts necessary for its assessment for the assessment year under consideration as it emerges that transactions shown in the return are not genuine. Apart from the above the assessee company is not

doing any real business and keeping in view the huge investments, disallowances u/s 14A read with rule 8D also applicable in the case. The statement given by Shri Himanshu Verma also establishes the link with the self-confessed "accommodation entry providers", whose business is to help assessees bring back their unaccounted money into their books of account. Thus, there is a direct link between the information/ available with the department and the income escaping assessment.

I have, therefore, reasons to believe that income to the extent of Rs.2,45,00,000/- has escaped assessment relevant to A.Y.2010-11. Thus, the same is to be brought to tax under section 147/148 of the I.T. Act 1961.

Moreover, as the case pertains to a period beyond four years from the end of relevant assessment year, for issuing the notice u/s 148, necessary approval / sanction may kindly be accorded by the Pr.

Commissioner of Income Tax, Delhi-4, New Delhi in view of the amended provision of section 151 w.e.f 01.06.2015.

Sd/- H.K. Sharma,
Dated : 27.03.2017. ITO, Ward-10(1), New Delhi."

8.1. PB-29 is the sanction granted by Pr. Commissioner of Income Tax for reopening of the assessment in which it is mentioned as under :

13.	*Whether the Pr. Commissioner of I. Tax is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s.148.*	*Yes I am satisfied that it is a fit case for issue of notice u/s.148 of the I.T. Act, 1961.*

Sd/-S.K. Mittal,
Pr. Commissioner of I. Tax, New Delhi."

8.2. Learned Counsel for the Assessee relied upon Judgment of Hon'ble Delhi High Court in the case of United Electricals Company (supra) in which the Addl. Commissioner of Income Tax similarly recorded the approval "Yes" I am satisfied that it is a fit case for issue of notice

under section 148 of the I.T. Act." In this case the Hon'ble Delhi High Court held as under :

> *"On a careful perusal of the statement made by V' it was found that facts mentioned in reasons were de hors the facts available on record. It was evident that the said statement was too general. It did not mention any name much less the name of the assessee. It was not the stand of the revenue that a list of the creditors, which included the name of the assessees, was furnished by V' subsequently and the same was forwarded to the Assessing Officer of the assessee. Applying the aforenoted settled principles governing an action under section 147, there could be no hesitation in holding that there was no information on record which could provide foundation for the Assessing Officer's belief that the assessee's transaction with 'V' Ltd. was not genuine and its income had escaped assessment on that account. Therefore, the impugned action of the Assessing Officer could*

not be sustained. Even the Addl Commissioner had accorded his approval for action under section 147 mechanically. If the Addl. Commissioner had cared to go through the statement of said V 'perhaps he would not have granted his approval, which is mandatory in terms of proviso to sub-section (1) of section 151 as the action under section 147 was being initiated after the expiry of four years from the end of the relevant assessment year. The Legislature has provided certain safeguards to prevent arbitrary exercise of powers by an Assessing Officer particularly after a lapse of substantial time from completion of assessment. The power vested in the Commissioner to grant or not to grant the approval is coupled with a duty. The Commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. The said power cannot be exercised casually and in a routine manner. In the instant

case, there had been no application of mind by the Addl. Commissioner before granting the approval.

The petition was, thus, allowed and impugned notice was quashed."

8.3. The Hon'ble Supreme Court approving the Judgment of Hon'ble Madhya Pradesh High Court in the case of Commissioner of Income Tax, Jabalpur (MP) vs., S. Goyanka Lime & Chemicals Ltd., [2015] 46 taxmann.com 313 held as under :

"SLP dismissed against High Court's ruling that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid."

8.4. Similar view have been taken by Hon'ble Madhya Pradesh High Court in the case of Mr. Arjun Singh vs., Asst. Director of Income Tax [2000] 246 ITR 363 (MP) (supra), copy of which is filed at page-97 of the paper book. The

ITAT, Delhi Bench in the case of M/s. Pioneer Town Planners Pvt. Ltd., vs., DCIT (supra) in paras 7 to 22 on similar facts relating to entry provider Shri Himanshu Verma held as under :

> *"7. Apropos these legal grounds , we have heard the arguments of both sides and carefully perused the relevant material placed on the record of the Tribunal. As agreed by both the parties, we have heard argument of both the sides on these legal grounds of the assessee, wherein the assessee has challenged to the initiation of reassessment proceedings and reopening of assessment u/s. 147/148 of the Act. The ld. AR submitted that the impugned order of assessment is invalid and unsustainable in law as the same has been passed by the AO without providing the reasonable time of four weeks for taking remedy against the order of disposal of preliminary objection against the incorrect assumption of jurisdiction by the AO u/s. 147 of the Act in*

violation of principles enunciated by Bombay High Court in the case of Asian Paints Ltd. 296 ITR 90. He further submitted that the Impugned orders of authorities below need be set aside as the reassessment proceedings have been initiated without obtaining a subjective satisfaction by the Pr. CIT Delhi-7, New Delhi as the approval u/s 151 is mechanical and without application of mind.

8. *The ld. AR vehemently pointed out that the reassessment proceedings initiated by the Ld. AO is based on the information received from investigation wing and there was no material before him to substantiate the allegation contained in the information and therefore initiation of proceedings is bad in law. He also contended that the order under appeal is bad in law as the assessing officer has passed the order of assessment u/s 143(3) r/w. s. 147 of the Act without issuing notice u/s 143(2) of the IT Act.*

9. *The ld. AR drew our attention towards copy of proforma of obtaining approval u/s. 151 of the Act along with reasons recorded, which are placed at pgs. 16-18 of the assessee's paper book, submitted that in column 12 Addl. CIT has granted approval without application of mind by writing only 'Yes, I am satisfied'. The ld. AR submitted that as per decision of Hon Madhya Pradesh High Court in the case of CIT vs. M/s. S. Goyanka Lime and Chemicals Ltd. 231 Taxman 0073 (MP), where the Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice u/s. 148 of the Act and has only recorded so "Yes, I am satisfied" then, the reopening assessment has to be held as invalid. The ld. AR also placed reliance on the decision of ITAT, Delhi in the case of ITO vs. Virat Credit & Holdings Pvt. Ltd. in ITA No.89/Del/2012 dated 09.02.2018. The ld. AR submitted that as per decision of Hon'ble High*

Court of Bombay in WP (L) No.3063/2017 in the case of Smt. Kalpana Shantilal Haria vs. ACIT dated 22.12.2017, sanction for issuing a reopening notice cannot be mechanical but has to be on due application of mind. Sanction accorded despite mention of non-existent section in the notice is prima facie evidence of non-application of mind on the part of the sanctioning authority. Their lordship in this judgment categorically held that such defect cannot be cured u/s. 292B of the Act.

10. *The ld. AR placed reliance on the decision of Hon'ble High Court of Delhi dated 31.08.2017 in WP(C) No. 614/2014 in the case of Yum Restaurants Asia Pte Ltd. vs. DDIT it was held that the glaring mistakes in the proforma for approval is the valid ground for quashing the assessment on the premise of non-application of mind by all the authorities involved in the process of recording reasons and providing satisfaction/s. 151 of the Act. Further placed reliance on the decision of*

ITAT, Mumbai in the case of GTL Ltd. vs. ACIT reported in 37 ITR (Trib.) 0376 (Mum.), notice u/s. 148 of the Act does not mention the fact that the same is issued after the satisfaction of the authority u/s. 151 of the Act, such non-mentioning of this fact renders the consequent assessment invalid in law, Relied on the judgment of DSJ Communication vs. DCIT 222 Taxman 129 (Bom.).

11. *On the issue of validity of reopening and initiation reassessment proceedings u/s. 147 of the Act the ld. AR also pointed out that as per ratio of the decision of Hon'ble Bombay High Court in the case of Asian Paints Ltd. 296 ITR 90 (Bom), the AO to wait for four weeks to begin assessment after disposing of the objection and non-compliance of the same renders assessment proceedings void. He submitted that in the present case the objections of the assessee vide dated 29.11.2016 filed before the AO were disposed of/dismissed by the AO by the order dated 12.12.2016 and he*

passed impugned reassessment order u/s. 143(3) r/w s. 147 of the Act on 22.12.2016 which is clear violation of directions given by Hon'ble High Court in the case of Asian Paints (supra) and on this count also reassessment proceedings and consequent orders are void and thus, bad in law. This view was again approved by Hon'ble High Court of Bombay itself in the subsequent decision in the case of Aroni Commercials Ltd. vs. DCIT reported in 362 ITR 403 (Bom) and followed by ITAT, Bombay in the case of Shri Hirachand Kanuga vs. DCIT in ITA No.4261 & 4262/2012 dated 27.02.2015.

12. *On these submissions, the ld. DR could not controvert the facts that the AO disposed of objections of the assessee by way of passing order on 12.12.2016 and impugned reassessment order u/s. 143(3) r/w s. 147 of the Act was passed only after 10 days of disposal of objections. These facts trigger the ratio of the decision of Hon'ble*

Bombay High Court in the case of Asian paints (supra), wherein their lordship directed that the AO to wait for four weeks to begin assessment after disposing of the objections of the assessee and non-compliance the same renders assessment proceedings void and bad in law. Present impugned reassessment order cannot be held sustainable and valid as the AO has passed the same immediately after 10 days of disposal of/dismissal of objection of the assessee which is clear violation of direction of Hon'ble High Court of Bombay in the case of Asian paints (supra) and legal contention of the assessee on this issue are found to be acceptable and we hold so.

13. *The ld. AR drew our attention towards reasons recorded and submitted that there is no date in the reasons recorded which shows casual approach of the AO while recording the reasons. The ld. AR submitted that as per decision of Hon'ble Jurisdictional High Court of Delhi in the case of*

PCIT vs. Meenakshi Overseas P. Ltd. 395 ITR 677 (Del) if the reasons failed to demonstrate the link between the tangible material and formation of the reasons to believe that the income has escaped assessment then, it would amount to borrowed satisfaction and it has to be presumed that there is no independent application of mind by the AO to the tangible material which forms the basis of the reason to believe that income has escaped assessment. The ld. AR submitted that from the three pages of reasons recorded, it is discernable that in first four paras the AO has noted facts of the information received from DDIT (investigation), Faridabad, in para 6 modus operandi of entry providers has been noted thereafter, in para 7 & 8, it has been arisen that either during survey or post survey proceedings the assessee company has not submitted satisfactory explanation to prove identity, genuineness and creditworthiness of share capital/premium introducers and thus, the

same is from paper companies of entry operator and then, he recorded satisfaction that the assessee company taken bogus/ accommodation entries. The ld. AR vehemently pointed out that thereafter in last para 9 & 10, the AO, without applying mind to the information received from the Investigation Wing, recorded that he has reason to believe that the an income has escaped assessment which clearly shows that the AO proceeded to initiate initiatory assessment proceedings and reopening of assessment without having any valid satisfaction on the basis of borrowed satisfaction as there was no independent application of mind to the tangible material received from Investigation Wing, which could form the basis reason to believe that income has escaped assessment.

14. *Further placing reliance on the decision of Hon'ble High Court of Delhi in the case of PCIT vs. G&G Pharma India Ltd. reported in 384 ITR 147 (Del),*

the ld. AR submitted that reopening of assessment by an AO based on the information received from the Director of Investigation without making any effort to discuss the materials on the basis on which he formed a prima facie opinion that income had escaped assessment. The Court held that the basic requirement of s. 147 of the Act that AO should apply independent mind in order to form reasons to believe that income had escaped assessment had not been fulfilled.

15. *The ld. AR submitted that as per ratio of the decision of Hon'ble High Court of Delhi in the case of PCIT vs. RMG Polyvinyl (I) Ltd. reported in 396 ITR 5 (Del), where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by AO, said information could not be said to be tangible material as per se and, thus, reassessment on said basis was not justified. Finally, the ld. AR submitted that the impugned*

initiation of reassessment proceedings, notice and all consequent proceedings and orders are not valid and bad in law therefore, the same may kindly be quashed.

16. *Replying to the above, the ld. DR submitted that the copy of proforma for obtaining approval u/s. 151 of the Act and reasons recorded by the AO are the internal departmental communication between the PCIT and ACIT and the PCIT being administrative head and senior to the ACIT has power to peruse the approval u/s. 151 of the Act and his sings thereon does not make the same as mechanical and without application of mind and the same cannot be termed or alleged as invalid or bad in law. The ld. DR submitted that in column 12 of approval the ACIT Shri Sarabjeet Singh has granted valid approval by noting that "Yes, I am satisfied" which is sufficient to comply with the provisions of s. 151 of the Act. He also submitted that if there is any defect therein the same is*

rectifiable u/s. 292B of the Act and thus, the reassessment proceedings and orders cannot be challenged on this count. The ld. DR further submitted that the format/proforma for granting approval u/s. 151 of the Act has been designed by the Department and there is no role of AO in framing and designing the same and the allegation of non-application of mind on the basis of such proforma or words used by the approving authority cannot be made.

17. *The ld. DR submitted that the team of Revenue officers work under the supervision and guidance of PCIT and the Department is very careful about the compliance of the provision of the Act as well as directions of Hon'ble Supreme Court, Hon'ble High Court and CBDT Circulars and also towards working of the Revenue Officers in the cases of initiation of reassessment proceedings and framing of reassessment orders. The ld. DR submitted that the proforma of approval u/s. 151*

of the Act is being followed all over India and the ACIT applied his mind to the all material placed before him by the AO prior to granting approval u/s. 151 of the Act in column 12 of the proforma. Therefore, allegations made by the ld. AR are not sustainable and tenable and the same may kindly be dismissed.

18. *Placing rejoinder to the above, the ld. AR submitted that in the reasons para 6 the information of DDIT (Investigation) has been given and reference of various entry providers such as Shri Himanshu Verma, Shri Praveen Aggarwal etc. who are engaged in providing accommodation entries through dummy companies with dummy directors. The ld. AR submitted that in the table given in para 3 is taken along with para 6 of the reasons recorded then, it is clear that the names of companies are 13 and above named two persons at serial No. 11 & 12 have been noted and there is no name of entry provider in the other 11 columns*

and there is no link in the reasons recorded with regard to these 11 companies. The ld. AR submitted that these facts clearly show that the AO has acted on suspicion only and not on any credible input available to him through DDIT (investigation) information or otherwise on the basis of any exercise or application of mind by himself. Therefore, the reassessment proceedings and all consequent orders are not sustainable and bad in law. Reiterating his earlier arguments, the ld. AR vehemently pointed out that the approval/sanction given in para 12 of the proforma is not a valid sanction as per ratio of the various decisions including decision of Hon'ble High Court of Madhya Pradesh in the case of S. Goyanka Lime and chemicals Ltd. (supra), which has been upheld by Hon'ble Supreme Court by dismissing SLP of the Revenue reported in 237 Taxman 378 (SC) therefore, initiation of reassessment proceedings u/s. 147 of the Act,

notice u/s. 148 of the Act, reassessment proceedings and all consequent orders may kindly be quashed.

19. *On careful consideration of above rival submissions, first of all, we may point out that from the proforma of approval u/s. 151 of the Act placed at pgs. 16-17 of the assessee paper book, it is clear that in column 12 the ACIT has granted approval for the issue of notice u/s. 148 of the Act by writing that "Yes, I am satisfied" which is not sufficient to comply with the requirement of s. 151 of the Act. As per ratio of the decision of High Court of Madhya Pradesh in the case of CIT v. M/s. S. Goyanka Lime and Chemical Ltd. (supra), where the JCIT/ACIT has only recorded "Yes, I am satisfied" then, it has to be held that the approving authority has recorded satisfaction in a mechanical manner and without application of mind to accord sanction for issuing notice u/s. 148 of the Act for reopening of assessment and in this*

situation initiation of reassessment proceedings and reopening of assessment has to be held as invalid and bad in law. Therefore, we are inclined to hold that the reopening of assessment and notice u/s. 148 of the Act are bad in law and consequently all subsequent proceedings in pursuant thereto are also bad in law and the same cannot be held as valid and sustainable.

20. *So far as legal contention of the ld. AR on behalf of the assessee regarding non-application of mind by the AO, while recording reasons for reopening of assessment, is concerned from careful perusal and reading of the three pages of reasons recorded, we observe that in first four paras the AO has noted facts of the information received from DDIT (Investigation), Faridabad, further, in para 6 modus operandi of entry providers has been noted thereafter, in para 7 & 8, it has been arisen that either during survey or post survey proceedings the assessee company has not submitted*

satisfactory explanation to prove identity, genuineness and creditworthiness of share capital/premium introducers and thus, the same is from paper companies of entry operator and then, he recorded satisfaction that the assessee company taken bogus/accommodation entries. Thereafter, the AO in last para 9 & 10, without applying mind to the information received from the Investigation Wing states/writes that he has reason to believe that the income has escaped assessment. The text and words used by the AO in the reasons recorded for reopening of assessment clearly show that the AO proceeded to initiatory assessment proceedings and reopening of assessment without having any valid satisfaction and only on the basis of borrowed satisfaction as there was no independent application of mind by the AO to the tangible material received from Investigation Wing which

could form the valid basis and reason to believe that income has escaped assessment.

21. *In view of decisions of Hon'ble High Court of Delhi in the cases of PCIT vs. Meenakshi Oversaes (supra), PCIT vs. G&G Pharma (I) Ltd. (supra) and decision in the case of PCIT vs. RMG Polyviny (I) Ltd. (supra), where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by AO, said information could not be said to be tangible material per se and, thus, reassessment on said basis was not justified. In the case of Meenakshi Overseas (supra), their lordship speaking for the Hon'ble Jurisdictional High Court held that where the reasons recorded by the AO failed to demonstrate the link between the tangible material and the formation of the reasons to believe that income has escaped assessment then, indeed it is a borrowed satisfaction and the conclusion of the AO based on*

reproduction of conclusion drawn in the investigation report cannot be held as valid reason to believe after application of mind. In this judgment their lordship also held that where nothing from the report of investigation wing is set out to enable the reader to appreciate how the conclusions flow there from then there is no independent application of mind by the AO to the tangible material which form the basis of the reasons to believe that income has escaped assessment.

22. *In the present case, as we have noted above, the conclusion recorded by the AO in para 9 & 10 of the reasons is based on the information received from the director of investigation wing and the AO without making any effort to examine and discuss the material received from the Investigation Wing and without application of the mind to the same formed a reason to believe that income had escaped assessment. This shows that the AO*

proceeded to initiate reassessment proceedings on the basis of borrowed satisfaction without any application of mind and exercise on the information received from the Investigation Wing of the Department. Therefore, we have no hesitation to hold that the AO proceeded to initiate reassessment proceedings u/s. 147 of the Act and to issue notice u/s. 148 of the Act on the basis of borrowed satisfaction and without any application of mind and examination of the so called material and information received from the investigation wing to establish any nexus, even prima facie, with the such information. Therefore, in our considered opinion the initiation of reassessment proceedings u/s. 147 of the Act, notice u/s. 148 of the Act, reassessment proceedings and all consequent proceeding and orders, including impugned reassessment and first appellate order, are bad in law and thus, not sustainable and we hold so. Accordingly, on the basis of foregoing

discussion, grounds No.2, 3, 4 and additional ground of the assessee are allowed and impugned proceedings, notice u/s. 148 of the Act and all consequent orders are quashed."

8.5. The statement of Shri Himanshu Verma is also filed on record which did not find mention if M/s. Shubh Propbuild Pvt. Ltd., as mentioned in the reasons belong to Shri Himanshu Verma. There is no investor exist in the name of M/s. Management Services Pvt. Ltd., and no addition in respect of the same company have been made by the A.O. The A.O, therefore, recorded incorrect facts in the reasons for reopening of the assessment. Thus the same cannot be approved under the Law. It is well settled Law if wrong facts and wrong reasons are recorded for reopening of the assessment, reopening of the assessment would be invalid and bad in Law. We rely upon Judgment of Hon'ble Punjab & Haryana High Court in the case of Atlas Cycle Industries 180 ITR 319 (P&H). It is well settled Law that note already filed with return disclosing nature of capital receipt and no other tangible material found, therefore,

reopening of the assessment under section 148 was quashed. We rely upon Judgment of Hon'ble Delhi High Court in the case of CIT vs., Atul Kumar Swami [2014] 362 ITR 693 (Del.) and Judgment of Hon'ble Allahabad High Court in the case of Kanpur Texel P. Ltd., 406 ITR 353 (Alld.). Similarly, in the case of CIT vs., Vardhaman Industries [2014] 363 ITR 625 (Raj.), the Hon'ble Rajasthan High Court has held that *"reasons must be based on new and tangible materials. Notice based on documents already on record, 148 not valid."* In the instant case under appeal, the A.O. has reproduced the information received from Investigation Wing and reproduced the same in the reasons recorded under section 148 of the I.T. Act. This information shows that assessee has received the amount of credit from 06 parties, but, one of the party i.e., M/s. Management Services Pvt. Ltd., do not exist and that M/s. Shubh Propbuild Pvt. Ltd., do not belong to Shri Himanshu Verma. It, therefore, appears that A.O. has not gone through the details of the information and has not even applied his mind and merely concluded that he has reason to believe that

income chargeable to tax has escaped assessment. In the reasons A.O. has recorded that assessee has received accommodation entry of Rs.2.45 crores, but, ultimately made an addition of Rs.11.05 crores without bringing any material against the assessee. The reasons to believe are, therefore, not in fact reasons, but, only conclusion of the A.O. In the case of Meenakshi Overseas Pvt. Ltd., (supra), the A.O. in the reasons has even mentioned that he has gone through the information received which is lacking in the present case. The A.O. being a quasi-judicial authority is expected to arrive at subjective satisfaction independently on his own. The A.O. however, merely repeated the report of the Investigation Wing in the reasons and formed his belief that income chargeable to tax has escaped assessment without arriving at his satisfaction. Thus, there is no independent application of mind by the A.O. to the report of Investigation Wing to form the basis for recording the reasons. The reasons recorded by the A.O. are also incorrect as noted above. The reasons failed to demonstrate the link between the alleged tangible material and the formation of

reasons to believe that income chargeable to tax has escaped assessment. The decisions relied upon by the Learned Counsel for the Assessee in the cases of Pr. Commissioner of Income Tax vs., RMG Polyvinyl (I) Ltd., 396 ITR 5 (Del.), Pr. Commissioner of Income Tax vs., Meenakshi Overseas (P) Ltd., 395 ITR 677 (Del.), Pr. Commissioner of Income Tax vs., G and G Pharma India Ltd., 384 ITR 147 (Del.) and Sarthak Securities Co. (P) Ltd., 329 ITR 110 (Del.), clearly apply to the facts and circumstances of the case. Learned Counsel for the Assessee also relied upon Order of ITAT, Delhi Bench in the case of Pioneer Town Planners Pvt. Ltd., (supra) in which on identical facts reopening of the assessment have been quashed. The Ld. D.R. relied upon certain decisions in support of the contention that reopening of the assessment is justified, but, the same are distinguishable on facts of the present case. Considering the facts and circumstances of the case in the light of above discussion and decisions referred to in the Order, we are of the view that reopening of the assessment is bad in law and that sanction/approval granted by Pr.

Commissioner of Income Tax is also invalid. We may also note that vide Order sheet Dated 23.08.2019 the case was re-fixed for hearing because the Ld. D.R. argued that approval have been granted by Commissioner of Income Tax after due discussion of the matter and perusal of the relevant information and thereafter approval in prescribed proforma sent to the A.O. and he has mentioned that I am satisfied. However, no record was produced. Therefore, this case was re-fixed for fresh hearing. However, on the date of hearing no such record have been produced for the inspection of the Bench. Therefore, satisfaction recorded by the Pr. Commissioner of Income Tax is invalid and without application of mind. Therefore, the reopening of the assessment is invalid and bad in Law and cannot be sustained in Law. We, accordingly, set aside the Orders of the authorities below and quash the reopening of the assessment under section 147/148 of the I.T. Act, 1961. Resultantly, all additions stands deleted. Since we have quashed the reopening of the assessment, therefore, there is

no need to decide the addition on merit which is left with academic discussion only.

9. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-	Sd/-
(PRASHANT MAHARISHI)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 07th November, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "C" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches : Delhi.