IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'C' : NEW DELHI)

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5128/Del/2015
Assessment Year: 2006-07

M/S BANKE BIHARI PROPERTIES PVT. LTD. 144/2, ANS HOUSE, ASHRAM, MATHURA ROAD, NEW DELHI - 110 014 **(PAN: AACCB6652Q)**	Vs. ITO, WARD-4(1) NEW DELHI
(APPELLANT)	**(RESPONDENT)**

Assessee by : Sh. Amit Goel, FCA
Revenue by : Sh. Amit Jain, Sr. DR

ORDER

PER H.S. SIDHU, J.M.

The Assessee has filed the Appeal against the Order dated 26.5.2015 of the Ld. CIT(A)-2, New Delhi pertaining to assessment year 2006-07 and raised the following grounds:-

1. *That having regard to fact and circumstances of the case, Ld. CIT (A) has erred in law and on facts by not accepting the assessee's submission that, in any case, and in any view of matter, the notice u/s 147 is barred by limitation and the notice I order are based on incorrect facts in violation of principal of natural justice.*
2. *That having regard to facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO by treating the*

amount of Rs 3,50,00,000/- as unexplained credit, which is purely based upon the presumption and incorrect facts.

3. *That having regard to facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts by not accepting the assessee submission that amount is received through proper banking channel, and even loan creditors never denied granting the loans to the assessee.*

4. *That having regard to facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts by not accepting the assessee submission that he should not be punished merely on the statement of third party where opportunity of cross examine to Shri Tarun Goyal (whose statement was taken by the investigation wing) and other directors of the other companies had not been provided during the course of assessment proceeding.*

5. *That having regard to facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in treating Rs. 3,50,00,000/- as unexplained credit, because of the assessee failed to present the loan creditors before the Ld. A.O or failed to produce any documents of their identity / credit worthiness which is beyond his control, since Mr. Tarun Goyal and others are not co-operating with the assessee. This is bad in law and not sustainable on various legal and factual grounds.*

6. *That having regard to fact and circumstances of the case, Ld. CIT (A) has*

erred in law and on facts by not accepting the assessee's request that Ld. A.O should obtain the details by any means / power, since Mr. Tarun Goyal and others or not providing the desired documents / details of the assessee, after so many request.

7. *That having regard to facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO, who have failed to apply his mind while passing the assessment order. He failed to gather the information of loan creditors, which is available with investigation wing.*

8. *That in any case and in any view of the matter, action of Ld. CIT (A) in confirming of action of Ld. AO in making addition / disallowance is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.*

9. *That having regard to facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234 A, 234 B, and 234 D of Income Tax Act, 1961.*

10. *That having regard to facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts by stating that (Para- 4.2.14 of the order) "the Appellant is a Private Limited Company, where the money have been received through Private Placement and not through Public Issue. So being a Private Limited Company, the contributors must have been personally known to the Appellant."*

This is factually incorrect, since those are the Loan Creditors of the Appellant company, and not the Shareholders. Again, the amount was not received by Appellant Company through Private Placement for allotment of shares , but it was received through banking channels from the Loan Creditors of the Appellant Company.

11. *That having regard to the facts & circumstances of the case, the Ld. CIT(A) has not called for the remand report. Nowhere in the assessment order, the Ld. A.O has stated that these loans were not received by the Company. The receipt of the Loans were not objected. The Loans were actually received by the assessee company. The addresses , PAN No., Names, were duly provided, but the Ld. AO ignored them and relied only on the information of third party, i.e Investigating Department of 1. Tax without going with the details of the case.*

That the Investigating Department must have provided the names, addresses, and PAN No. of the Loan creditors, who could have summoned.

That the Ld. AO must have the details of the Bank Accounts of the Loan Creditors. They could have summoned the required information from Banks of the Loan Creditors.

That the Ld. AO fails to apply his mind and also Ld. CIT(A) failed gather information from third parties, in spite of the fact that all the resources of the information was available with the Ld. AO & Ld. CIT(A).

12. That the Appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

2. At the time of hearing, Ld. Authorised Representative of the Assessee filed the following concise/revised/additional legal grounds of appeal.

"1(a) On the facts and circumstances of the case and in law, the notice u/s 148 issued in this case is bad-in-law, without jurisdiction and barred by limitation and accordingly, the notice u/s 148 issued and also thy assessment order passed on the foundation of such notice are liable to be quashed. On the facts and circumstances of the case and in law, the Commissioner of Income Tax (A) erred in not quashing the notice u/s 148 and the assessment order passed by the assessing officer.

b) On the facts and circumstances of the case and in law, the notice u/s 148 issued in this case is contrary to the provisions of section 147 to section 151 of Income Tax Act, 1961 and the Commissioner of Income Tax (Appeal) has erred in not holding so.

2. On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the addition of Rs.3,50,00,000/- made by the assessing officer on account of alleged unexplained credits.

3. On the facts and circumstances of the case and in law, the alleged reasons given by the A.O. for making the addition of Rs.3,50,00,000/- on account of alleged unexplained credits and the reasons given by CIT(A) for confirming the said additions are erroneous and not sustainable both on facts and in law and accordingly the addition of Rs.3,50,00,000/- on account of alleged unexplained credits is liable to be deleted.

The appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal."

3. After filing the above grounds, Ld. Counsel of the assessee requested that before proceeding on merit in the case of the assessee, first the additional legal grounds raised by the assessee may be considered and decided, because the legal grounds goes to the root of the matter and very much essential, hence he requested that the additional grounds may be admitted in the interest of justice.

4. Ld. DR did not raise any serious objection on the admission of additional grounds.

5. We have heard both parties on the admission of additional grounds, as aforesaid, we are of the view that in the interest of justice, the additional grounds raised by the assessee mentioned in para no. 2 at page no. 5 of this order are purely legal and do not require fresh facts which is to be investigated and go to the root of the matter. In the interest of justice, we admit the additional ground raised by the assessee, in view of the decision of the Hon'ble Supreme Court of India in the case of ***NTPC Limited 229 ITR 383*** and proceed to decide the additional grounds first.

6. The brief facts of the case are that the proceedings u/s. 147/148 were initiated in this case after recording the reasons on the basis of the information received from Director of Income Tax (Investigation), New Delhi, that certain persons including the assessee company were beneficiaries of taking accommodation entries received from the private limited companies floated by Sh. Tarun Goyal during the period relevant to AY 2006-07. The findings of the "Investigation Wing" of the Department, were brought to the knowledge of all the Assessing Officers alongwith the data collected in the course of investigation. The modus operandi adopted by such beneficiaries of the services of accommodation entry providers was detected and the assessee was found to be the accommodation entry from such entry operator controlled by Sh. Tarun Goyal during the FY 2005-06 relevant to AY 2006-07 as per the following specific details of transaction:-

S.No.	**Beneficiary Company**	**Name of the entry operator**	**Amount involved. (Rs.)**
1.	Banke Bihari Properties Pvt.	Bhavani Portfolio	25,00,000/-

	Ltd.	P. Ltd.	
2.	Banke Bihari Properties Pvt. Ltd.	Countrywide Credit & Securities P. Ltd.	20,00,000/-
3.	Banke Bihari Properties Pvt. Ltd.	Deep Sa Drilling P. Ltd.	20,00,000/-
4.	Banke Bihari Properties Pvt. Ltd.	Geefcee Finance Ltd.	20,00,000/-
5.	Banke Bihari Properties Pvt. Ltd.	Karol Bagh Trading Ltd.	20,00,000/-
6.	Banke Bihari Properties Pvt. Ltd.	Rishabh Shoes P. Ltd.	25,00,000/-
7.	Banke Bihari Properties Pvt. Ltd.	Sadguru Finman Pvt. Ltd.	20,00,000/-
8.	Banke Bihari Properties Pvt. Ltd.	Tauru Finman Pvt.	15,00,000/-
9.	Banke Bihari Properties Pvt. Ltd.	Tejasvi Investment Pvt. Ltd.	25,00,000/-
10.	Banke Bihari Properties Pvt. Ltd.	Thar Steels Pvt. Ltd.	15,00,000/-
11.	Banke Bihari Properties Pvt. Ltd.	Unique Capital Pvt. Ltd.	25,00,000/-
			2,90,00,000/-

Accordingly, notice u/s. 148 of the I.T. Act, 1961 was issued and the assessee was supposed to file the return of income within 30 days in compliance to notice u/s. 148. In compliance to notice u/s. 148, the AR of the assessee has filed a letter dated 22.5.2013 alongwith a photocopy of e-filed return without any stamp/ receipt of the relevant Ward/Circle. The declared income / loss was shown at Rs. 11,172/-. The assessee also requested a copy of reasons vide the above letter. The reasons were provided to the assessee vide letter dated 16.7.2013. Thereafter, the AR of the assessee filed objections on the reasons recorded on 11.9.2013. The objections were disposed off vide order dated 4.10.2013 and the case was fixed accordingly. Thereafter, the AO has observed that in the absence of any supporting documents to substantiate the identity, genuineness and creditworthiness of loan giver, the information received from the DIT(Inv.), regarding accommodation entries of Rs. 3,50,00,000/- is corroborated with the bogus transactions through banking channel.

Accordingly, the AO added Rs. 3,50,00,000/- being received from entry operator and treated the same as undisclosed income of the assessee and completed the assessment at Rs. 3,49,88,828/- u/s. 147/143(3) of the Act vide order dated 28.2.2014.

3. Against the Order of the AO, assessee appealed before the Ld. CIT(A), challenging the reopening as well as the additions in dispute who vide impugned order dated 03.12.2013 has dismissed the appeal of the Assessee.

4. Aggrieved with the aforesaid order of the Ld. CIT(A), Assessee is in Appeal before the Tribunal for challenging the legal issue raised as well as the addition in dispute raised in the Additional Grounds filed during the hearing which are mentioned under para no. 2 of this order, as aforesaid.

5. At the time of hearing, Ld. Counsel of the assessee has only argued the legal ground that notice u/s. 148 issued in this case is contrary to the provisions of section 147 to section 151 of the Income Tax Act, 1961 by stating that action of the Assessing Officer is illegal. First of all, he draw our attention towards Page no. 1 of the Paper Book which is a copy of Notice dated 25.3.2013 issued u/s. 148 by the AO. Further he draw our attention towards page no. 17 to 21 which is a copy of the forwarding letter alongwith copy fo reasons for reopening the case u/s. 148 and stated that no proper reasons were recorded; no nexus between the materials relied upon and the belief formed for escapement of income; no application of mind; no proper satisfaction was recorded before issue of notice u/s. 148; no independent conclusion that there was escapement of income and no proper satisfaction / approval has been obtained from the Addl. CIT; Ld. Addl. CIT has granted the approval for

reopening of the assessment in a mechanical manner and without due application of mind by writing the word "approved". To support his contention he submitted that the issue in dispute is squarely covered in favour of the assessee by the ITAT decision dated 09.1.2015 in the case of G&G Pharma India Limited vs. ITO passed in ITA No. 3149/Del/2013 (AY 2003-04) in which the Judicial Member is the Author. He further stated that the above decision of the ITAT dated 9.1.2015 has been upheld by the Hon'ble Jurisdictional High Court in its Decision dated 08.10.2015 in ITA No. 545/2015 in the case of Pr. CIT-4 vs. G&G Pharma India Ltd. In this behalf, he filed the copy of the order dated 9.1.2015 of the ITAT, Delhi Bench passed in the case of G&G Pharma India Ltd vs. ITO (Supra) and referred the page nos. 21-39 of his another Paper Book i.e. Compilation of case laws. He further draw our attention towards the page no. 39-56, and relied upon the ITAT decision dated 22.10.2014 in the case ITO vs. NC Cables Ltd. He further relied upon the decision of the ITAT, Mumbai Bench in the case Amar Lal Bajaj vs. ACIT (2013) 37 Taxmann.com 7 (Mumbai) Trib. (copy thereof at page no. 67-71 of the Paper Book) and also referred the M.P. High Court decision in the case of CIT vs. M/s S. Goyanka Lime and Chemicals ltd. in which the Department filed SLP in the Hon'ble Supreme Court title CIT vs. M/s S. Goyanka Lime and Chemicals Ltrd. (2015) 64 taxmann.com 313 (SC) wherein the Hon'ble Supreme Court has upheld the decision of the Hon'ble High Court and dismissed the Department's Appeal. Therefore, he requested that by following the aforesaid precedents the

reassessment proceedings of the AO may be quashed by accepting the Appeal filed by the Assessee.

6. On the contrary, Ld. DR relied upon the order passed by the authorities below and draw our attention towards the page no. 17-21 of the Paper Book wherein the reasons recorded and approval thereof was mentioned. He stated that the AO has properly recorded the reasons for reopening and in turn Ld. Addl. CIT has granted the approval for the same, by due application of mind. He further stated that approval granted by the Addl. CIT is not mechanical on the contrary the Addl. CIT has fully considered the facts of the case and after due consideration of the facts has given a direction for reopening of the case by writing the word "approved". Therefore, he stated that, it cannot be said that the sanction was granted mechanically or without application of mind.

7. We have heard both the parties and perused the relevant records available with us, especially the orders of the revenue authorities and the case law cited by the assessee's counsel on the issue in dispute. In our view, it is very much necessary to reproduce the reasons recorded by the AO before issue of notice u/s. 148 and the approval of the Ld. Addl. CIT, Range-2, New Delhi for reopening of assessment which reads as under:-

"FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS U/S. 148 AND FOR OBTAINING THE APPROVAL OF THE ADDL. COMMISSIONER OF INCOME TAX / COMMISSIONER OF INCOME TAX

1.	*Name & Address of the Assessee*	*M/s Banke Bihari Properties Pvt. Ltd. 144/2, Ashram Mathura Road, New Delhi – 110 014*
2.	*PAN*	*AACCB6652Q*
3.	*STATUS*	*COMPANY*
4.	*RANGE / WARD*	*WARD-2(3), NEW DELHI*
5.	*Assessment Year in respect of which it is proposed to issue notice u/s. 148.*	*2006-07*
6.	*The quantum of income which has escaped assessment.*	*Rs. 2,90,00,000/-*
7.	*Whether the provisions of Section 147(a), 147(b) or 147(c) are applicable or all the Sections are applicable.*	*Yes*
8.	*Whether the assessment is proposed to be made for the first time. If the reply is in affirmative please state.* *Whether any voluntary return had already been filed.* *If so, date of filing the said return.*	*Yes* *No* *NA*
9.	*If the answer to item 8 is in negative please state* *The income originally assessed* *Whether it is a case of under assessment, assessment at too low a rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation.*	 *…..* *Yes*
10.	*Whether the provisions of section 150(1) are applicable, if the reply is in the affirmative, the relevant*	*NA*

	facts may be stated against item no. 11 and it may also be brought out that the provision of section 150(2) would not stand in the way of initiating proceedings u/s. 147.	
11.	*Reasons for the belief that income has escaped assessment.*	

In this case, the assessee has not filed any return of income as per the record of this office. Thereafter, an information was received from the Investigation Wing of the Department that the above named assessee is a beneficiary of accommodation entries received from the private limited companies floated by Shri Tarun Goyal during the period relevant to AY 2006-07. In the report it has further been stated that all the entry giving companies are operating from the office of Shri Tarun Goyal addressed at 13/34, WEA Arya Sarns] Road, Karol 8agh, New Delhi and his earlier office at 203- Dhaka Chambers, 2069/39, Naiwala, Karol Sa'gn, New Delhi. It has also been stated that the directors of these companies .. are former and present employees of Shri Tatun Goyal who were used merely for signing the documents, bank cheques etc. I have perused the information contained in the report and the evidences gathered. The report provides details of the modus operandi and explains how the unaccounted money of the beneficiaries are ploughed back in its books of account in the form of bogus share capital/capital gains, unsecured loans etc.after routing the same through the bank account (s) of the entry operators floated by Shri Tarun Goyal. Entry operators were identified after thorough investigation on the basis of definitive analysis of their identity, creditworthiness

and the source of the money ultimately received by the beneficiaries, In the instant case, the assessee is found to be the beneficiary of accommodation entry from such entry operator controlled by Shri Tarun Goyal during the FY 2005-06 relevant to AY 2006-07 as per the following specific details of transactions.

S.No.	**Beneficiary Company**	**Name of the entry operator**	**Amount involved. (Rs.)**
1.	Banke Bihari Properties Pvt. Ltd.	Bhavani Portfolio P. Ltd.	25,00,000/-
2.	Banke Bihari Properties Pvt. Ltd.	Countrywide Credit & Securities P. Ltd.	20,00,000/-
3.	Banke Bihari Properties Pvt. Ltd.	Deep Sa Drilling P. Ltd.	20,00,000/-
4.	Banke Bihari Properties Pvt. Ltd.	Geefcee Finance Ltd.	20,00,000/-
5.	Banke Bihari Properties Pvt. Ltd.	Karol Bagh Trading Ltd.	20,00,000/-
6.	Banke Bihari Properties Pvt. Ltd.	Rishabh Shoes P. Ltd.	25,00,000/-
7.	Banke Bihari Properties Pvt. Ltd.	Sadguru Finman Pvt. Ltd.	20,00,000/-
8.	Banke Bihari Properties Pvt. Ltd.	Tauru Finman Pvt.	15,00,000/-
9.	Banke Bihari Properties Pvt. Ltd.	Tejasvi Investment Pvt. Ltd.	25,00,000/-
10.	Banke Bihari Properties Pvt. Ltd.	Thar Steels Pvt. Ltd.	15,00,000/-
11.	Banke Bihari Properties Pvt. Ltd.	Unique Capital Pvt. Ltd.	25,00,000/-
			2,90,00,000/-

Theasesseehas received unexplained sums from the entry operators as per the above details as per information available with the undersigned. As explained above, the identify, creditworthiness and genuineness of transactions with the reasons found to be entry operator cannot be established. I therefore, have

reasons to believe that on account of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment for above assessment year, the income chargeable to tax amounting to Rs.2,90,00,000/- has escaped assessment within the meaning of section 147 of the Act.

Since four years has expired from the end of the relevant assessment year, and the assessee has not filed any return of income, the reasons recorded above for the purpose of opening of assessment is up for kind satisfaction of the Addl CIT, Range-2, New Delhi in terms of the provisions to section 151(2) of the IT Act, 1961.

Dated: 22.03.2013 *Sd/-*
(PAWAN MEENA)
ITO, WARD 2(3), NEW DELHI

12.	*Whether the Addl. CIT/CIT/CBDT is satisfied on the reasons recorded by the AO that it is a fit case for the issue of notice u/s. 148.*	*Approved*
	Dated:	*Sd/- (25.03.2013)* *(P.V. Gupta)* *Addl. CIT, Range-2, New Delhi"*

8. After going through the reasons recorded by the Assessing Officer/DCIT, Circle 2(3), New Delhi for reopening and the approval thereof by the Ld. Addl. CIT, Range-2, New Delhi, we are of the view that AO has not applied his mind so as to come to an independent conclusion that he has reason to believe that income has escaped during the year. In our view the reasons are vague and are not based on any tangible material as well as are not acceptable in the eyes of law. The AO has mechanically issued notice u/s. 148 of the Act, on the basis of

information allegedly received by him from the Directorate of Income Tax (Investigation), New Delhi. Keeping in view of the facts and circumstances of the present case and the case law applicable in the case of the assessee, we are of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed. Even otherwise, a perusal of the above demonstrates that the Addl. CIT has written ***"Approved"*** which establishes that he has not recorded proper satisfaction / approval, before issue of notice u/s. 148 of the I.T. Act. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act, on the basis of information allegedly received by him from the Directorate of Income Tax (Investigation), New Delhi. Keeping in view of the facts and circumstances of the present case and the case law applicable in the case of the assessee, we are of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed. Our view is supported by the following judgments/decisions:-

(A) The Tribunal in its decision dated 9.1.2015 passed in ITA No. 3149/Del/2013 (AY 2003-04) in the case of G&G Pharma India Limited vs. ITO, has held under:-

"8. We have perused the aforesaid reasons recorded by the AO for reopening the assessment in dispute and we are of the considered view that the AO has not applied his mind so as to come to an independent conclusion that he has reason to

believe that income has escaped during the year. A mere reference is made to certain information received from the Investigation Wing which was supplied to the assessee vide AO's letter dated 15.9.2010. In our view the reasons are vague and are not based on any tangible material as well as are not acceptable in the eyes of law. The AO had mechanically issued notices u/s. 148 of the Act, on the basis of information allegedly received by him from the Directorate of Investigation, Jhandewalan, New Delhi. Keeping in view of the facts and circumstances of the present case and the law applicable in the case of the assessee, we are of the considered view that the reopening in the case of the assessee for the asstt. year in dispute is bad in law and deserves to be quashed. We draw our support from the judgments of the Hon'ble High Court of Delhi in the following cases:-

(i) Signature Hotels (P)_ Ltd. vs. ITO and another reported in 338 ITR 51 (Del) *has under similar circumstances as follows:-*

> *"For the A.Y. 2003-04, the return of income of the assessee company was accepted u/s.143(1) of the Income-tax Act, 1961 and was not selected for scrutiny. Subsequently,*

the Assessing Officer issued notice u/s.148 which was objected by the assessee. The Assessing Officer rejected the objections. The assessee company filed writ petition and challenged the notice and the order on objections.

The Delhi High Court allowed the writ petition and held as under:

"(i) Section 147 of the Income-tax Act, 1961, is wide but not plenary. The Assessing Officer must have 'reason to believe' that income chargeable to tax has escaped assessment. This is mandatory and the 'reason to believe' are required to be recorded in writing by the Assessing Officer.

(ii) A notice u/s.148 can be quashed if the 'belief' is not bona fide, or one based on vague, irrelevant and non-specific information. The basis of the belief should be discernible from the material on record, which was available with the Assessing Officer, when he recorded the reasons. There should be a link between the reasons and the evidence/material available with the Assessing Officer.

(iii) The reassessment proceedings were initiated on the basis of information received from the Director of Income-tax (Investigation) that the petitioner had introduced money amounting to Rs.5 lakhs during F.Y. 2002-03 as stated in the

annexure. According to the information, the amount received from a company, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not satisfy the requirements of section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not indicate escapement of income.

(iv) Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company, S, had a paid up capital of Rs.90 lakhs and was incorporated on January 4, 1989, and was also allotted a permanent account number in September 2001. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to the quashed."

(ii). In the case of CIT vs. Atul Jain reported in 299 ITR 383 *it has been held as under:-*

"Held, dismissing the appeals, that the only information was that the assessee had taken a bogus entry of capital gains by paying cash

along with some premium for taking a cheque for that amount. The information did not indicate the source of the capital gains which in this case were shares. There was no information which shares had been transferred and with whom the transaction had taken place. The AO did not verify the correctness of information received by him but merely accepted the truth of the vague information in a mechanical manner. The AO had not even recorded his satisfaction about the correctness or otherwise of the information for issuing a notice u/s 148. What had been recorded by the AO as his "reasons to believe"was nothing more than a report given by him to the Commissioner. The submission of the report was not the same as recording of reasons to believe for issuing a notice. The AO had clearly substituted form for substance and therefore the action of the AO was not sustainable."

9. In view of above, we are of the considered view that above issue is exactly the similar to the issue involved in the present appeal and is squarely covered by the aforesaid decisions of the Hon'ble High Court of Delhi. Hence, respectfully following the above precedent, we decide the legal issue in dispute in favor of the Assessee and against the Revenue and accordingly quash the reassessment proceedings. The other issues are not dealt with as the same have become academic in nature.

10. In the result, the Appeal filed by the Assessee stands allowed."

(B). Pr. CIT vs. G&G Pharma India Ltd. in ITA No. 545/2015 dated 8.10.2015 of the Delhi High Court wherein the Hon'ble Court has adjudicated the issue as under:-

"12. In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered

along with the return, which was filed on 14th November 2004 and was processed under Section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case.

13. Mr. Sawhney took the Court through the order of the CIT(A) to show how the CIT (A) discussed the materials produced during the hearing of the appeal. The Court would like to observe that this is in the nature of a post mortem exercise after the event of reopening of the assessment has taken place. While the CIT may have proceeded on the basis that the reopening of the assessment was valid, this does not satisfy the requirement of law that prior to the reopening of the assessment, the AO has to, applying his mind to the materials, conclude that he has

reason to believe that income of the Assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity .

14. In the circumstances, the conclusion reached by the ITAT cannot be said to be erroneous. No substantial question of law arises.

15. The appeal is dismissed."

(C) ITAT, 'E' Bench, New Delhi in the case of ITO vs. M/s NC Cables Ltd. in ITA No. 4122/Del/2009 (AY 2001-02) and in Cross Objection No. 388/Del/2009 in the matter of M/s NC Cables Ltd. vs. ITO, vide order dated 22.10.2014, the Tribunal has held as under:-

"10.2. The Mumbai 'E' Bench of the Tribunal in ITA 611/Mum/2004 Amarlal Bajaj (supra) order dt. 24.7.2013 has considered the legal position and held as follows.

"5. We have considered the rival submissions and carefully perused the orders of the lower authorities and also the material evidences brought on 8 record from both sides. We have also the benefit of perusing the order sheet entries by which the Ld. CIT has granted sanction. Let us first

consider the relevant part of the provisions of Sec. 151 of the Act.

151. (1) In a case where an assessment under sub-section (3) of section 143or section 147has been made for the relevant assessment year, no notice shall be issued under section 148[by an Assessing Officer, who is below the rank of Assistant Commissioner [or Deputy Commissioner}, unless the [Joint} Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice} :

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice. (2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of [Joint} Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the [Joint} Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.}

[Explanation.-For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148,need not issue such notice himself.} "

6. A simple reading of the provisions of Sec. 151(1) with the proviso clearly show that no such notice shall be issued unless the Commissioner is satisfied on the reasons recorded by the AO that it is a fit case for the issue of notice which means that the satisfaction of the Commissioner is paramount for which the least that is expected from the Commissioner is application of mind and due diligence before according sanction to the reasons recorded by the AO. In the present case, the order sheet which is placed on record show that the Commissioner has simply affixed "approved" at the bottom of the note sheet prepared by the ITO technical. Nowhere the CIT has recorded his satisfaction. In the case before the Hon'ble Supreme Court (supra) that on AO's report the Commissioner against the question "whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148 merely noted "Yes" and affixed his signature there under. On

these facts, the Hon'bIe Supreme Court observed that the important safeguards provided in sections 147 and 151 were lightly treated by the officer and the Commissioner. The Hon'ble Supreme Court further observed that the ITO could not have had reason to believe that income had escaped assessment by reasons of the appellant-firm's failure to disclose material facts and if the 9 Commissioner had read the report carefully he could not have come to the conclusion that this was a fit case for issuing a notice under section 148. The notice issued under section 148 was therefore, invalid. It would be pertinent here to note the reasons recorded by the AO. "Intimation has been received from DCIT-24(2), Mumbai vide his letters dt. 22nd February, 2002 that one Shri Nitin 1. Rugmani assessed in his charge had arranged Hawala entries in arranging loans, expenses, gifts. During the year Shri Amar G. Bajaj, Prop. Of Mohan Brothers, 712, Linking Road, Khar (W), Mumbai-52 was the beneficiary of such loans, expenses and gifts. The modus-operandi was to collect cash from the parties to whom loans were given and cash was deposited into account of Shri Nitin 1. Rugani and cheques were issued to the beneficiary of the loan transaction. In order to ensure that the money reached by cheques to the beneficiary

Shri Nitin 1. Rugani kept blank cheques of the third parties. The assessee Shri Amar G. Bajaj had taken benefit of such entries of loans, commission ad bill discounting of Rs. 8,00,000/-, 11,21,243/- and 9,64,739/- respectively. The assessment was completed u/s. 143(3) of the 1. T. Act on 31st March, 1998 by DCIT-Spl. Rg. 40, Mumbai. It is seen from records that the aforesaid points have not been verified in the assessment. I have therefore reason to believe that by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, income has escaped assessment within the meaning of proviso to Sec. 147 and explanation 2 (c)(i) of the income-tax Act, 1961."

7. In the light of the above mentioned reasons, in our considerate view, Section 147 and 148 are charter to the Revenue to reopen earlier assessments and are, therefore protected by safeguards against unnecessary harassment of the assessee. They are sword for the Revenue and shield for the assessee. Section 151 guards that the sword of Sec. 147 may not be used unless a superior officer is satisfied that the AO has good and adequate reasons to invoke the provisions of Sec. 147. The superior authority has to examine the reasons, material or grounds and to judge

whether they are sufficient and adequate to the formation of the necessary belief on the part of the assessing officer. If, after applying his mind and also recording his reasons, howsoever briefly, the Commissioner is of the opinion that the AO's belief is well reasoned and bonafide, he is to accord his sanction to the issue of notice u/s. 148 of the Act. In the instant case, we find from the perusal of the order sheet which is on record, the Commissioner has simply put "approved" and signed the report thereby giving sanction to the AO. Nowhere the Commissioner has recorded a satisfaction note not even in brief. Therefore, it cannot be said that the Commissioner has accorded sanction after applying his mind and after recording his satisfaction.

8. Hon'ble Delhi High Court in the case of' United Electrical Co. Pvt. Ltd. Vs CIT 257 has held that "the proviso to sub-section (1) of section 151of the 10 Act provides that after the expiry of four years from the end of the relevant assessment year, notice under section 148 shall not be issued unless the Chief Commissioner or the Commissioner, as the case may be, is satisfied, on the reasons recorded by the Assessing Officer concerned, that it is a fit case for the issue of such notice. These are some in-builts safeguards to prevent arbitrary exercise of power by

an Assessing Officer to fiddle with the completed assessment". The Hon'ble High Court further observed that "what disturbs us more is that even the Additional Commissioner has accorded his approval for action under section 147 mechanically. We feel that if the Additional Commissioner had cared to go through the statement of the said parties, perhaps he would not have granted his approval, which was mandatory in terms of the proviso to sub-section (1) of section 151 of the Act as the action under section 147 was being initiated after the expiry of four years from the end of the relevant assessment year. The power vested in the Commissioner to grant or not to grant 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. We are constrained to observe that in the present case there has been no application of mind by the Additional Commissioner before granting the approval".

9. The observations of the Hon'ble High Court are very much relevant in the instant case as in the present case also the Commissioner has simply mentioned "approved" to the

report submitted by the concerned AO. In the light of the ratios/observations of the Hon'ble High Court mentioned hereinabove, we have no hesitation to hold that the reopening proceedings visa-vis provisions of Sec. 151 are bad in law and the assessment has to be declared as void ab initio. Ground No. 1 of assessee's appeal is allowed.

10. As we have held that the reassessment is bad in law, we do not find it necessary to decide other issues which are on merits of the case."

10.3 No contrary judgment or order is brought to our notice. This being a Co-ordinate Bench order, we are required to follow the same.

10.4 The decision cited by the Ld. DR does not pertain to the issue of contravention of provisions of S. 151 of the Act. These judgments are on other aspects relating to reopening. Thus respectfully following the decision of the Coordinate Bench in the matter, we hold that the reopening is bad in law for the reason that the Ld. CIT(A), Delhi has not recorded his satisfaction as contemplated u/s. 151 of the Act."

(D) ITAT, Mumbi Bench 'E' in the case of Amarlal Bajaj vs. ACIT reported in (2013) 37 taxmann.com 7 (Mumbai –Trib) it has been held as under:-

"5. We have considered the rival submissions and carefully perused the orders of the lower authorities and also the material evidences brought on record from both sides. We have also the benefit of perusing the order sheet entries by which the Ld. CIT has granted sanction. Let us first consider the relevant part of the provisions of Sec. 151 of the Act. 151. (1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 [by an Assessing Officer, who is below the rank of Assistant Commissioner [or Deputy Commissioner], unless the [Joint] Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice] : Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice. (2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of [Joint] Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the [Joint] Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.]

[Explanation.—For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.]"

6. A simple reading of the provisions of Sec. 151(1) with the proviso clearly show that no such notice shall be issued unless the Commissioner is satisfied on the reasons recorded by the AO that it is a fit case for the issue of notice which means that the satisfaction of the Commissioner is paramount for which the least that is expected from the Commissioner is application of mind and due diligence before according sanction to the reasons recorded by the AO. In the present case, the order sheet which is placed on record show that the Commissioner has simply affixed "approved" at the bottom of the note sheet prepared by the ITO technical. Nowhere the CIT has recorded his satisfaction. In the case before the Hon'ble Supreme Court (supra) that on AO's report the Commissioner against the question "whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148 merely noted " Yes " and affixed his signature there under. On these facts, the Hon'ble Supreme Court observed that the important safeguards provided in sections 147 and 151 were

lightly treated by the officer and the Commissioner. The Hon'ble Supreme Court further observed that the ITO could not have had reason to believe that income had escaped assessment by reasons of the appellant-firm's failure to disclose material facts and if the Commissioner had read the report carefully he could not have come to the conclusion that this was a fit case for issuing a notice under section 148. The notice issued under section 148 was therefore, invalid. It would be pertinent here to note the reasons recorded by the AO.

"Intimation has been received from DCIT-24(2), Mumbai vide his letters dt. 22nd February, 2002 that one Shri Nitin J. Rugmani assessed in his charge had arranged Hawala entries in arranging loans, expenses, gifts. During the year Shri Amar G. Bajaj, Prop. Of Mohan Brothers, 712, Linking Road, Khar (W), Mumbai-52 was the beneficiary of such loans, expenses and gifts. The modus-operandi was to collect cash from the parties to whom loans were given and cash was deposited into account of Shri Nitin J. Rugani and cheques were issued to the beneficiary of the loan transaction. In order to ensure that the money reached by cheques to the beneficiary Shri Nitin J. Rugani kept blank cheques of the third parties. The assessee Shri Amar G. Bajaj had taken benefit of such entries of loans, commission and bill discounting of Rs. 8,00,000/-, 11,21,243/- and 9,64,739/- respectively. The assessment was

completed u/s. 143(3) of the I.T. Act on 31st March, 1998 by DCIT-Spl. Rg. 40, Mumbai. It is seen from records that the aforesaid points have not been verified in the assessment. I have therefore reason to believe that by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, income has escaped assessment within the meaning of proviso to Sec. 147 and explanation 2 (c)(i) of the income-tax Act, 1961."

7. In the light of the above mentioned reasons, in our considerate view, Section 147 and 148 are charter to the Revenue to reopen earlier assessments and are, therefore protected by safeguards against unnecessary harassment of the assessee. They are sword for the Revenue and shield for the assessee. Section 151 guards that the sword of Sec. 147 may not be used unless a superior officer is satisfied that the AO has good and adequate reasons to invoke the provisions of Sec. 147. The superior authority has to examine the reasons, material or grounds and to judge whether they are sufficient and adequate to the formation of the necessary belief on the part of the assessing officer. If, after applying his mind and also recording his reasons, howsoever briefly, the Commissioner is of the opinion that the AO's belief is well reasoned and bonafide, he is to accord his sanction to the issue of notice u/s. 148 of the Act. In the instant case, we find from the

perusal of the order sheet which is on record, the Commissioner has simply put "approved" and signed the report thereby giving sanction to the AO. Nowhere the Commissioner has recorded a satisfaction note not even in brief. Therefore, it cannot be said that the Commissioner has accorded sanction after applying his mind and after recording his satisfaction.

8. Hon'ble Delhi High Court in the case of United Electrical Co. Pvt. Ltd. Vs CIT 258 ITR 317 has held that "the proviso to sub-section (1) of section151of the Act provides that after the expiry of four years from the end of the relevant assessment year, notice under section 148 shall not be issued unless the Chief Commissioner or the Commissioner, as the case may be, is satisfied, on the reasons recorded by the Assessing Officer concerned, that it is a fit case for the issue of such notice. These are some in-builts safeguards to prevent arbitrary exercise of power by an Assessing Officer to fiddle with the completed assessment". The Hon'ble High Court further observed that "what disturbs us more is that even the Additional Commissioner has accorded his approval for action under section 147 mechanically. We feel that if the Additional Commissioner had cared to go through the statement of the said parties, perhaps he would not have granted his approval, which was mandatory in terms of the proviso to sub-section (1) of section 151 of the Act as the action

under section 147 was being initiated after the expiry of four years from the end of the relevant assessment year. The power vested in the Commissioner to grant or not to grant 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. We are constrained to observe that in the present case there has been no application of mind by the Additional Commissioner before granting the approval".

9. The observations of the Hon'ble High Court are very much relevant in the instant case as in the present case also the Commissioner has simply mentioned "approved" to the report submitted by the concerned AO. In the light of the ratios/observations of the Hon'ble High Court mentioned hereinabove, we have no hesitation to hold that the reopening proceedings vis-à-vis provisions of Sec. 151 are bad in law and the assessment has to be declared as void ab initio. Ground No. 1 of assessee's appeal is allowed.

10. As we have held that the reassessment is bad in law, we do not find it necessary to decide other issues which are on merits of the case."

(E). Hon'ble High Court of Madhya Pradesh in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd. reported in (2015) 56 taxmann.com 390 (MP) has held as under:-

"7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am Satisfied". In the case of ARjun Singh vs. Asstt. DIT (2000) 246 ITR 363 (MP), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-

> *"The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commisisoner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material*

8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we

find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration."

(F.) Hon'ble Supreme Court of India in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. reported in (2015) 64 taxmann.com 313 (SC) in the Head Notes has held that *"Section 151, read with section 148 of Income Tax Act, 1961 – Income escaping assessment – Sanction for issue of notice (Recording of satisfaction) – High Court by impugned order held 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 – Whether Special Leave Petition filed against impugned order was to be dismissed – Held, Yes (in favour of the Assessee).*"

9. In view of above, we are of the considered view that the above issue is exactly the similar and identical to the issue involved in the present appeal and is squarely covered by the aforesaid decisions of the Hon'ble Supreme Court of India, Hon'ble High Courts of Delhi & Madhya Pradesh & ITAT, Delhi & Mumbai. Hence, respectfully following the above precedents, we decide the legal issue in dispute in favor of the Assessee and against the Revenue and quash the reassessment proceedings being bad in law.

10. As we have held that the reassessment is bad in law, we do not find it necessary to decide other issues which are on merits of the case.

11. In the result, the Assessee's Appeal stands allowed.

Order pronounced in Open Court on this 22-04-2016.

Sd/-	**Sd/-**
(PRASHANT MAHARISHI)	**(H.S. SIDHU)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 22-04-2016

SR BHATANGAR

Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT(A), New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.