

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 566 & 567/JP/2018
निर्धारण वर्ष / Assessment Year : 2006-07 & 2007-08

M/s Balaji Health Care Pvt. Ltd., B-2, Jaipur Tower, MI Road, Jaipur.	बनाम Vs.	The ITO, Ward-4(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACB 7551 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani (C.A.)
राजस्व की ओर से / Revenue by : Shri K.C. Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 01/11/2018
उद्घोषणा की तारीख / Date of Pronouncement : 30/01/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the assessee against the respective orders of Id. CIT(A), Jodhpur (Camp at Jaipur) dated 16.03.2018 for the Assessment Year 2006-07 and dated 19.03.2018 for the assessment year 2007-08 respectively.

2. In ITA No. 566/JP/2018, the assessee has taken the following grounds of appeal:-

"1.1 The impugned order u/s 147/143(3) dated 18.02.2014 is bad in law and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.

1.2 The action taken u/s 147 by the Id. AO confirmed by the Id. CIT(A) is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.

2. Rs. 25,00,000/- : The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 25,00,000/- made by the Id. AO on account of alleged accommodation entries received for share application money and also erred in ignoring the various evidence submitted without rebutting and AO also erred in not providing the cross examinations. Hence the addition so made by the AO and confirmed by the Id. CIT(A) is being totally contrary to the provisions of law and fact on the record and hence the addition may kindly be deleted in full.

3. The Id. AO has grossly erred in law as well as on the facts of the case in charging interest U/s 234A, 234B & 234C,. The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full."

3. Briefly the facts of the case are that the assessee engaged in the business of Real Estate and construction of flats filed its return of income on 30.11.2006 admitting the total income at Nil. Subsequently, the AO received information from Investigation Wing, New Delhi that a search and seizure operation was carried out in the case Shri Surendra Kumar Jain and Shri Virendra Kumar Jain, Delhi and in their statement recorded, they had categorically stated that they were engaged in the business of providing accommodation entries of share capital/share

premium to various beneficiaries and the assessee company was also one of the beneficiaries in respect of share capital/share premium of Rs. 25,00,000/-. Accordingly, the AO initiated the proceedings U/s 147 of the Act by issuing notice U/s 148 dated 23.03.2013. In response, the assessee stated that return filed originally on 30.11.2006 may be treated as return filed in response to notice U/s 148 of the Act. After hearing the assessee, the assessment was completed U/s 143(3) r.w.s. 147 of the Act on 18.02.2014 determining the total income by making addition of Rs. 25,00,000/- to the total income of the assessee. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the said addition and now the assessee is before us.

4. In ground No. 1, the assessee has challenged the order passed by the Assessing Officer U/s 147 of the IT Act. In this regard, the Id. AR submitted that it is a settled legal proposition that the AO is duty bound to carry out formation of belief with due diligence after due application of mind and not in a casual and mechanical manner. In the present case, from perusal of reasons recorded, it is evident that AO received a letter from the office of CIT, Jaipur-II on 21.03.2013 by which a report of Investigation Wing was forwarded to him. Thereafter, the Assessing Officer on the very next day, recorded the reasons to believe that income to the tune of Rs. 25,00,000/- has escaped assessment. It was submitted that from the reasons so recorded by the AO and subsequent letter written by the AO to ACIT, Delhi on 30.08.2013, it is manifest that formation of belief of escapement was not based on anything other than report of Investigation Wing and without any independent enquiry

conducted by the AO. It was submitted that as per the settled principles of reopening, what is expected from AO is corroboration, checking and cross checking of the Information, received from the Investigation Wing, with independent evidences and establishing a clear trail suggesting, even if prima facie, flow of unaccounted money from the assessee. However, in the present case, reopening has been done by directly jumping on to the information received from the Investigation Wing by considering it to be sacrosanct. It was accordingly submitted that the AO recorded the reasons in the most arbitrary manner without application of any mind and, thus, this is nothing but a case of borrowed satisfaction which renders the entire proceedings of reopening to be illegal and void-ab-initio. In support, reliance was placed on the decision of Hon'ble Delhi High Court in case of RMG Polyvinyl (I) B Ltd [2017] 83 taxmann.com 348, Meenakshi Overseas Pvt. Ltd. [2017] 395 ITR 677 and N.C. Cables Ltd. [2017] 88 taxmann.com 649 wherein it was held that where reassessment was resorted on the basis of information from DIT (Investigation) stating that the assessee had received accommodation entry and AO fails to independently apply his mind demonstrating link between tangible material and formation of reason to believe, reassessment was not justified.

5. It was further submitted that the reopening was based on the report sent by the Investigation Wing, Delhi, no underlying records were available with AO at the time of recording of reasons and this factum is proved by the order of the Coordinate Bench in case of Basesar Properties (P) Ltd. vs. ITO [2017] 88 taxmann.com 634 where

reopening was quashed which was initiated on the basis of same report of Investigation Wing in the case of Shri Surendra Kumar Jain and Shri Virendra Kumar Jain. It was further submitted that the Assessing Officer vide his letter dated 30.08.2013 has requested to ACIT, New Delhi to provide copies of all relevant documents such as statements of Surendra Kumar Jain, Virendra Kumar Jain and mediator PC Agarwal which strengthens the aforesaid fact that the AO has arrived at the satisfaction of escapement without analyzing any documents. It was further submitted that the statement of key persons i.e. P.C. Agarwal, Rajesh Agarwal and Ravindra Goel does not exist. Therefore, in the absence of such statements, how could the AO formed the belief that income has escaped assessment. It was further submitted that the AO has violated the principles of natural justice by not providing the assessee company copy of report of Investigation Wing which was the basis of entire reopening the assessment. Without prejudice, it was further submitted that the AO was duty bound to obtain necessary sanction from Id. JCIT/Add.CIT containing his satisfaction that the case is fit for reopening, however, on perusal of proforma for obtaining approval, it can be seen that the AO obtained sanction from Id. Add.CIT, however, the name of Id. Add.CIT is not mentioned and therefore, the validity of sanction is in doubt. It was further submitted that even where it is considered that the sanction was received from a competent authority, the same was not in accordance with the provisions of law. The Id. Add.CIT has just affixed his signature and has not written even a single word which could lead to a conclusion that any mind application was made and he was satisfied that it was a fit case for reopening. It was submitted that the reasons were recorded

on 22.03.2013 and thereafter, the notice U/s 148 of the Act was also issued on 22.03.2013, thus within a single day reasons were recorded, sanction was granted and notice was issued which further speaks of the quality of so called sanction which was granted by the Id. Add.CIT. In support, reliance was placed on the decision of Hon'ble Supreme Court in case of Chhugamal Rajpal Vs S.P. Chaliha (1971) 79 ITR 603, CIT vs. S. Goyanka Lime & Chemical Ltd. 64 Taxmann.com 313 (SC) and decision of Hon'ble Delhi High Court in case of PCIT vs. N.C. Cables Ltd. 88 taxmann.com 649 besides various other High Courts and Coordinate Bench decisions.

6. On merits, it was submitted that the AO by placing sole reliance on the report of the Investigation Wing, New Delhi and documents seized by Investigation Wing, considered the share application money of Rs. 25,00,000/- received by the assessee company as bogus. It was submitted that the assessee company issued 10,000 shares of Rs 10 each at a premium of Rs 240 per share to M/s Pelicon Finance & lease Ltd. It was submitted that the assessee company duly discharged its onus as required U/s 68 of the IT Act by submitting the following evidences as under:-

Particulars	Paper book Pages
Share application Form	5-7
Board Resolution of M/s Pelicon Finance & Leasing Ltd.	8
Bank Statement evidencing payment through Banking Channel	9,188-190
Income Tax return duly containing PAN	10,172

Audited Financials	11-25,179-186
Memorandum of Association	26-83
Assessment order u/s 143(3) of M/s Pelicon Finance & Lease Ltd for A.Y. 2006-07 i.e. the year under consideration.	84-88

7. In support of its aforesaid contention that where the assessee has discharged the initial onus, no addition can be made in its hands, reliance was placed on the decisions of Hon'ble Rajasthan High Court in case of CIT vs. ARL Infratech Ltd. 394 ITR 383, Barkha Synthetics Ltd. vs ACIT 283 ITR 377, CIT vs. Bhaval Synthetics 217 taxman 23 and CIT vs. Morani Authomotives (P) Ltd. 264 CTR 86 besides various other decisions.

8. It was further submitted that during the course of assessment proceedings, the assessee Company was provided with the copies of statements of Mr. Surendra Kumar Jain and Mr. Virendra Kumar Jain. In the statements both the brothers have categorically denied to have provided any accommodation entry to any person. Ld. AO has not rebutted the statements of Jain duo. Further, in the statements there was no whisper of M/s Pelicon Finance & Lease Ltd as well as the assessee Company and, therefore, no adverse inference can be drawn. It was further submitted that the AO also placed reliance on the statements of Mr. Rajesh Agarwal who allegedly admitted that he was engaged in arranging the accommodation entries for Ravindra Goel through companies managed by Mr. Surendra Kumar Jain and Mr. Virendra Kumar Jain. However, such statements were not provided to

the assessee Company and no opportunity of cross examination was provided in spite of repeated requests. The only reasonable inference which could be drawn is that no such statements existed and, therefore, there is no basis for the department to allege that Mr. Surendra Kumar Jain and Mr. Virendra Kumar Jain were engaged in the business of providing accommodation entries. Even otherwise there is no claim of Id. AO that Rajesh Agarwal or Ravindra Goel had admitted having arranged any entry for the assessee Company. It was further submitted that even if it is assumed that the Jain duo were engaged in the business of providing accommodation entries then also such fact may be relevant for suspicion but it ipso facto does not lead to conclusion that all of the transaction entered into would be bogus. Lower authorities have erred in inferring that an entity which provides accommodation entry to one person, provides accommodation entry to all.

9. It was further submitted that the AO at page 4 of assessment order discussed the contents of seized documents in which the name of the assessee Company was appearing and alleged that the assessee Company arranged an accommodation entry, through mediator being a person called P.C. Agarwal, from M/s Pelicon Finance & Lease Ltd. It is submitted that P.C. Agarwal was the prime witness and main evidence and his statements would have decided the fate of the allegations of Id. AO. However, his statements were not recorded during search, post-search, before reopening the assessment and not even during the course of reassessment proceedings as they are not available in the record of Id. AO. The non-recording of statements, at various stages, of

above key persons, cannot be accidental or a mere lapse. The very fact that these persons (P.C. Agarwal, Rajesh Agarwal and Ravindra Goel) ever existed is highly doubted.

10. It was further submitted that the AO issued notice u/s 133(6) to M/s Pelicon Leasing Finance Ltd which was duly served and duly responded. M/s Pelicon Leasing Finance Ltd has confirmed that it had given share application money to the assessee Company. Reliance is placed on the decision of Hon'ble ITAT Delhi in the case of Prinku landfin (P.) Ltd. vs. Income Tax Officer, Ward-14(4), New Delhi [2018] 91 taxmann.com 120 (Delhi - Trib.). Where the AO not being satisfied with the outcome of 133(6) enquiries (which were substantiating the case of the assessee Company) should have conducted further enquiry. Without such enquiry, under the law, he had no authority to disbelieve the outcome of the enquiry. It was submitted that the AO had information/ evidence from two sources i.e. one from M/s Pelicon Finance & Lease Ltd in response to notice u/s 133(6) and another in the form of report of Investigation Wing. Both the information, from different sources, were contradictory. Ld. AO has disregarded one and relied on the other to suit his own requirement. Otherwise also information from Investigation Wing per se without further enquiry cannot be used against the assessee Company. Reliance was placed on the various decisions wherein the Courts have categorically held that wherever any information is received from Investigation Wing, Id. AO is duty bound to carry out intensive investigation himself.

11. It was further submitted that section 68 of the IT Act, 1961 has been amended w.e.f. 01.04.2013. Prior to amendment the only onus contained in section 68 was proving the identity, genuineness and creditworthiness. The present case of the assessee Company falls in the pre amendment period and, therefore, placing on record the evidences as mentioned above and proving that the money was received through banking channel will lead to sufficient compliance with regard to section 68. Thus, the addition made and confirmed is bad in law. Reliance is placed on the decision of Hon'ble High Court of Bombay in the case of CIT-1 v. M/s Gagandeep Infrastructure Pvt. Ltd. [2017] 80 taxmann.com 272 (Bombay) wherein it was held that the amendment in section 68 is prospective and not retrospective.

12. It was further submitted that the AO, while rejecting the claim of the assessee Company, also held that the premium that was charged was too high and does not appear logical keeping in view the business activities and reputation of the company. It was submitted that Id. AO over-stepped his authority by analyzing whether the premium was logical or not. It is only and only the investor who has to analyze and negotiate on the amount of premium. It is further submitted that Id. AO just made bald statements and did not also give any working to support his contention that the premium charged was too high. It is pertinent to note that it is not the case where assessee Company issued shares at premium for the very first time. Assessee Company, in previous assessment years as well as in subsequent assessment years issued shares on premium and the premium is supported by the valuation report.

13. It was further submitted that Id. CIT(A) erred in not appreciating the facts of the present case of the assessee Company in correct perspective and assessee's rebuttal of the findings of Id. CIT(A) are as under:

- i) Ld. CIT(A) held that creditworthiness and genuineness was not proved as the fact of that M/s Pelicon Finance and Leasing Ltd. was carrying out any business activity was not established. It is submitted that the assessee Company during the assessment proceedings submitted the financial statements of shareholder for AY 2005-06 from which the business activities were evident. Thereafter, in response to notice u/s 133(6) M/s Pelicon Finance and Leasing Ltd. submitted its financial statements for AY 2006-07 from which again it was evident that it was engaged in regular business of investing and financing. It is further submitted that lower authorities have also not proved that it was a paper company.
- ii) Ld. CIT(A) at page 23 held that the assessee company failed to file confirmation of the shareholder. It is submitted that M/s Pelicon Finance and Leasing Ltd. itself in response to notice u/s 133(6) submitted confirmation of accounts. Thus, the confirmation was already on record.
- iii) Ld. CIT(A) at page 23 held that Mr. Surendra Kumar Jain and Mr. Virendra Kumar Jain stated that M/s Pelicon Finance and Leasing

Ltd. was a dummy company managed by them. It is submitted that the Jain duo categorically many times in their statements denied that they maintain or run any dummy company .

- iv) Ld. CIT(A) doubted the genuineness of transaction by holding that M/s Pelicon Finance and Leasing Ltd. transferred the amount immediately after the receipt. It is submitted that from perusal of bank account of M/s Pelicon Finance and Leasing Ltd. it is clear that there were no cash deposits. It is further submitted that Id. AO has also not pointed out any infusion of cash in the bank account of M/s Pelicon Finance and Leasing Ltd. Reliance is placed on the latest decision Hon'ble Delhi High Court in case of PCIT vs. Oriental International Co. Pvt. Ltd. ITA 9/2018 pronounced on 08.01.2018 wherein it was held as under:

"Furthermore, its bank details too were furnished to the AO. If the AO were to conduct his task diligently, he ought to have at least sought the material by way of bank statements etc. to discern whether in fact the amounts were infused into the share holder's account in cash at any point of time or that amount of Rs. 1.3 crores- in the case of M/s Creative Financial Services Pvt. Ltd. and Rs. 3.7 crores in the case of other share applicants were such as to be beyond their means. In the absence of any such enquiry, the Court is of the opinion that the findings holding that the assessee had not discharged the onus placed upon it by law cannot be considered unreasonable. No question of law arises.

10. The appeal is accordingly dismissed."

- v) Ld. CIT(A) held that the allotment of shares at a premium of Rs. 240 per share, itself is indicative of the fact that the transaction was not genuine and the assessee company has introduced its own income by routing the same through dummy company by way of share application/share premium money. It is submitted that the assessee Company, in order to justify its premium, furnished a certificate of Chartered Accountant, Yogesh Gautam (M. No.072676) dated 27.06.2016 before CIT(A). As per the certificate, for the year under consideration, fair value of the share of the assessee Company was Rs. 281.48. It is further not the case of Id. CIT(A) that any defect was found in the said certificate.

14. It was further submitted that the Id. CIT(A) has not at all appropriately evaluated and considered the specific and peculiar facts of the case. Before Id. CIT(A), following binding judicial precedents of Hon'ble Rajasthan High Court and Hon'ble ITAT Jaipur Bench were cited: CIT vs. First Point Finance Ltd. 286 ITR 477 (Raj), CIT vs. Barkha Synthetics 182 CTR 175 (Raj), Labhchand Bohra vs. ITO (2008) 8 DTR 44 (Raj), Kanhialal Jangid vs. ACIT (2008) 8 DTR 38 (Raj), Premalata Kedia vs. DCIT 22 TW 481 (JPR), Nirmal Kumar Dugar 31 TW-112 (JP), Narayan Singh vs. ITO 31 TW 191 (JP) and Mohan Sukhani vs. ITO 31 TW 61 (JP). The Id CIT(A) has neither followed the above judgements nor has distinguished the same and the decisions relied upon by the Id CIT(A) are distinguishable. It was finally submitted the assessee Company has discharged its initial onus laid down u/s 68, the summary of which is as under:

Particulars	Remarks
Identity	Shareholder is a Company and is having a valid PAN. Id. CIT(A) also at page 23 admits that identity stood established.
Creditworthiness	Bank Account Statements of shareholder and AO Order u/s 143(3) wherein no additions were made on account of unexplained investment are on record
Genuineness	Premium amount is justified by Certificate of Valuation which was not controverted by Id. CIT(A).

In view of above the addition made by Id. AO and confirmed by Id. CIT(A) is unjustified and deserves to be deleted.

15. Per Contra, the Id. DR submitted that the information received by the Assessing Officer from the DIT (Investigation), Delhi contains factual information and on the basis of this information, the AO prima facie formed a belief that the income has escaped assessment. It was further submitted that it is a case where there was no scrutiny assessment in respect of original return filed and therefore, there cannot be a question of change of opinion. It was submitted that the from the reasons recorded by the Assessing Officer, it is amply clear that the AO formed his belief on the basis of specific information arisen out of search proceedings in the case of persons who were bogus entry providers and for the purpose of reassessment proceedings, what has to be seen is whether there is any prima facie some material on the

basis of which the AO could reopen the case. The sufficiency or the correctness of the material is not to be considered at this stage of recording of the reasons. It was further submitted that once the AO has received specific information from DIT (Investigation), Delhi regarding bogus entries of share capital/ premium received on the basis of such information, the AO has recorded reasons for reopening, it cannot be held that the reasons were not those of the Assessing Officer and merely amounted to mechanical reproduction of the exercise undertaken by the DIT (Investigation), Delhi. It was accordingly submitted that there is nothing which prevent the Assessing Officer to rely on the exercise undertaken by other Wings of the Departments, if the material so collected through inquiry or investigation provides prima facie information, which enables the Assessing Officer to form a belief that income has escaped assessment. It was further submitted that it would undoubtedly require application of mind on the part of the Assessing Officer when certain materials collected by other wings of the department is placed before him, however, there cannot be any straight jacket formula of the manner in which mind can be applied or shown to have been applied and the same may be gathered from the reasons recorded and other contemporaneous material on record. It was accordingly submitted that there is no infirmity in the action of the Assessing Officer in initiating the proceedings U/s 147 of the Act on the basis of information received from DIT (Investigation), Delhi. It was further submitted that the notice u/s 147 has been issued after seeking approval from the appropriate authority and in support, the assessment records were produced which clearly show application of mind before granting approval on the part of the appropriate authority.

16. On merits, the Id. DR has drawn our reference to the findings of the Assessing Officer which are contained as under:-

"I have considered the submissions made by the assessee and have also perused the material available on record. The contentions raised by the assessee are dealt with as under:-

(i) Since the assessee company had not issued any shares during the year under consideration except share allotted to the company M/s Pelicon Finance and Lease Ltd., New Delhi, managed by Sh. S.K. Jain N.K. Jain that too at much high premium of Rs 240/- per share. The genuineness of the transaction is not established. Further the seized documents i.e. (page No. 43 of Annexure A-52 , page 25 of Annexure A-53, page 6 of Annexure A-54) which is daily cash book seized from the residence of Sh. S.K. Jain shows receipt of cash of Rs. 5,00,000/- through mediator Sh. P.C. Agarwal on 25.02.2006 and on the same date an entry of Rs 5,00,000/- vide cheque no. 048736 has been provided to the assessee company of Kotak Bank , through a dummy company named as Pelicon finance & Lease Ltd , receipt of cash of Rs. 10,00,000/- through mediator Sh. P.C. Agarwal on 17.03.2006 and on the same date an entry of Rs. 10,00,000/- vide cheque No. 005134 has been provided to the assessee company of UTI Bank through a dummy company named as Pelicon finance & Lease Ltd., and receipt of cash of Rs 10,00,000/- on 22.03.2006 and on the same date an entry of Rs 10,00,000/- vide cheque No. 051886 has been provided to the assessee company of Kotak Bank through a dummy company

named as Pelicon finance & Lease Ltd, managed by Sh. S.K. Jain /V.K. Jain. These entries clearly established that the amount of Rs 25,00,000/- routed through Sh. P.C. Agarwal then company M/s Pelicon Ltd, New Delhi the assessee for obtaining accommodation entry therefore the contention of the assessee cannot be accepted.

(ii) The contention of the assessee that assessee company is a un-natural personal and a legal entity and is not capable of earning unaccounted money is not tenable because the day to day affairs of the company are being looked after by the Directors as well as employees of the company and they are responsible for their action done on behalf of the company which is a legal entity as stated by the assessee.

(iii) The 3^d and 4th ground taken by the assessee is that the assessee company has not paid any cash to obtain the accommodation entry to Shri P.C. Agarwal and it may be that some Mr. P.C. Agarwal who had given money to M/s Pelicon Ltd, New Delhi to invest that amount in assessee company from his pocket as Real-estate sector is sun-shining sector in these days. In this regard it is pointed out that seized papers (pageNo.43 of Annexure A-52 , page 25 of Annexure A-53, page 6 of Annexure A-54) which is daily cash book seized from the residence of Sh. S.K. Jain shows receipt of cash of Rs. 5,00,000/- through mediator Sh. P.C. Agarwal on 25.02.2006 and on the same date an entry of Rs. 5,00,000/- vide cheque No. 048736 has been provided to the assessee company of

Kotak Bank, through a dummy company named as Pelicon Finance & Lease Ltd., receipt of cash of Rs. 10,00,000/- through mediator Sh. P.C Agarwal on 17.03.2006 and on the same date an entry of Rs. 10,00,000/- vide cheque No. 005134/- has been provided to the assessee company of UTI Bank through a dummy company named as Pelicon Finance & Lease Ltd., and receipt of cash of Rs 10,00,000/- on 22.03.2006 and on the same date an entry of Rs 10,00,000/- vide cheque No. 051886 has been provided to the assessee company of Kotak Bank through a dummy company named as Pelicon finance & Lease Ltd, managed by Sh. S.K. Jain /V.K. Jain. These entries clearly established that the amount of Rs 25,00,000/- routed through Sh. P.C. Agarwal then company M/s Pelicon Ltd, New Delhi the assessee for obtaining accommodation entry therefore the contention of the assessee cannot be accepted.

(iv) The contention of the assessee that issue of notice u/s 148 is against the law is not tenable as the seized papers (page No.43 of Annexure A-52 , page 25 of Annexure A-53, page 6 of Annexure A-54) which is daily cash book seized from the residence of Sh. S.K. Jain shows receipt of cash of Rs. 5,00,000/- through mediator Sh. P.C. Agarwal on 25.02.2006 and on the same date an entry of Rs 5,00,000/- vide chque no. 048736 has been provided to the assessee company of Kotak Bank , through a dummy company named as Pelicon finance & Lease Ltd, receipt of cash of Rs. 10,00,000/- through mediator Sh. P.C. Agarwal on 17.03.2006 and on the same date an entry

of Rs. 10,00,000/- vide cheque No. 005134 has been provided to the assessee company of UTI Bank through a dummy company named as Pelicon finance & Lease Ltd. , and receipt of cash of Rs 10,00,000/- on 22.03.2006 and on the same date an entry of Rs 10,00,000/- vide cheque No. 051886 has been provided to the assessee company of Kotak Bank through a dummy company named as Pelicon finance & Lease Ltd, managed by Sh. S.K. Jain N.K. Jain. These entries clearly established that the amount of Rs 25,00,000/-routed through Sh. P.C. Agarwal then company M/s Pelicon Ltd, New Delhi the assessee for obtaining accommodation entry therefore the contention of the assessee cannot be accepted.

(v) The 6th ground taken by the assessee is regarding issue of shares at high premium at Rs. 240/- per share, the contention of the assessee is that it was entering into new venture of real estate and also got allotment from JDA which gave extra benefit to the Investors and therefore allotment of shares at the face value of Rs. 10/-and on high premium of Rs. 240/- is justified. In this regard it is submitted that during the year no shares were allotted by the assessee company except 10,000 shares allotted to the aforesaid dummy company named Pelicon finance & Lease Ltd, New Delhi. The assessee company is engaged in the business of Real estate. Looking to the business activity of the company, and reputation of the company the allotment of shares at a premium of Rs. 240/- per share does not appear logical, particularly when no such shares at a higher premium was allotted

to anyone. This itself is an indicative of the fact that the transaction of the assessee company with the dummy company named Pelicon Finance & Lease Ltd New Delhi is not genuine and the assessee has introduced its own income from undisclosed sources by routing the same through the dummy company by way of share application/share premium money.”

17. We have heard the rival contentions and perused the material available on record. For assumption of jurisdiction u/s 147, the Assessing officer has to satisfy the following cardinal tests so laid down by the Courts and only on satisfaction of such tests, he can assume jurisdiction under section 147:

- (i) The Assessing Officer must form a tentative or prima facie opinion on the basis of material that there is under-assessment or escapement of income;
- (ii) He must record the prima facie opinion into writing;
- (iii) The opinion formed is subjective but the reasons recorded or the information available on record must show that the opinion is not a mere suspicion.
- (iv) Reasons recorded and/or the documents available on record must show a nexus or that in fact they are germane and relevant to the subjective opinion formed by the Assessing Officer regarding escapement of income.
- (v) The reasons are required to be read as they were recorded by the Assessing officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the Assessing

officer to disclose and open his mind through the reasons recorded by him and he has to speak through the reasons.

(vi) In cases where the first proviso applies, there is an additional requirement that there should be failure or omission on the part of the assessee in disclosing full and true material facts. Explanation to the Section stipulates that mere production of books of accounts or other documents from which the Assessing Officer could have, with due diligence, inferred material facts, does not amount to "full and true disclosure of material facts".

18. In the present case, the reasons recorded by the Assessing officer before issuance of notice u/s 148 reads as under:

"Reasons for the belief that income has escaped assessment:-

The Commissioner of Income-tax, Jaipur – II vide office letter No. 3022 dated 21.03.2013 has forwarded a letter No. 293 dated 15.03.2015 along with its enclosures of the Director of Income-tax (Inv.)-III, New Delhi. As informed, a search and seizure action was conducted on 14.09.2010 in the case of Sh. Surendra Kumar Jain and his brother Sh. Virendra Kumar Jain in Delhi. During the course of search and post search investigation it has been established that they are engaged in the business of providing accommodation entries of share capita and share premium to various beneficiaries through cheques through a number of paper and dummy companies in lieu cash.

The assessee company M/s Balaji Healthcare Pvt. Ltd. Jaipur has also obtained accommodation entries in the form of share

capital/premium/loan during the financial year 2005-06 for a amount of Rs. 25,00,000/- with the help of the aforesaid accommodation entry providers, the details of which are reproduced as under:-

<i>Date</i>	<i>From</i>	<i>To</i>	<i>Bank</i>	<i>Cheque /RTGS/ PO No</i>	<i>Cheque date</i>	<i>Amount</i>	<i>Name of Middle Man/Mediator</i>	<i>Annex ure No.</i>	<i>Page No.</i>
25.02.2006	PELICON FINANCE & LEASE LTD.	Balaji Healthc are Pvt. Ltd.	Kotak	P/o No. 048736	25.02.2006	Rs. 5,00,000/-	P. C. Agarwal	A-52	43
17.03.2006	PELICON FINANCE & LEASE LTD.	Balaji Healthc are Pvt. Ltd.	UTI	P/o No. 005134	17.03.2006	Rs. 10,00,000/-	P. C. Agarwal	A-53	25
22.03.2006	PELICON FINANCE & LEASE LTD.	Balaji Healthc are Pvt. Ltd.	Kotak	P/o No. 051886	22.03.2006	Rs. 10,00,000/-	P. C. Agarwal	A-54	6
						Rs. 25,00,000/-			

I have perused and gone through the contents of the report of the Investigation Wing, New Delhi and am satisfied that the amount is undisclosed income which has been routed back to the books of accounts of the assessee company in the form of share capital. Thus, in view of the above, I have reason to believe that income to the tune of Rs. 25,00,000/- for the AY 2006-07 has escaped assessment within the meaning of section 147 of the I.T. Act, 1961 on account of failure on the part of assessee to disclosure fully and truly all material facts in respect of the share capital/premium for which a notice u/s 148 of the Act is required to be issued.

In view of the above reason, it is requested that necessary approval as laid down under sub-section (2) of section 151 of the I.T. Act, 1961 may kindly be accorded."

19. The assessee has originally filed its return of income on 30.11.2006, thereafter notice u/s 148 was issued on 23.03.2013 after recording the reasons and seeking the necessary approval from the Add.CIT. Given that the original return was not assessed and no order u/s 143(3) was issued, the proviso to section 147 doesn't apply even though the notice u/s 148 has been issued after the expiry of four years from the end of the relevant assessment year. The additional condition so specified in proviso to section 147 in terms of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the assumption of jurisdiction u/s 147 doesn't apply in the instant case. Therefore, the Assessing officer assumption of jurisdiction for the reasoning that income has escaped assessment on account of failure on the part of the assessee to disclose fully and truly all material facts in respect of share capital/premium is not correct and cannot be accepted where there is no such requirement at first place.

20. Further, the material and information on the basis of which reasons have been recorded that income in the hands of the assessee has escaped assessment relates to search and seizure operation in case of Surendra Kumar Jain and Virendra Kumar Jain conducted on 14.09.2010 and the report of the Director of Income tax (Inv)-II, New Delhi. The reasons states that during the course of search and post search investigation, it has been established that these two persons are engaged in the business of providing accommodation entries of share capita and share premium to various beneficiaries through cheques through a number of paper and dummy companies in lieu cash. The reasons further states that the assessee company has also obtained

accommodation entries in the form of share capital/premium/loan during the financial year 2005-06 for an amount of Rs. 25,00,000/- with the help of the aforesaid accommodation entry providers. Thereafter, the Assessing officer gives details of the transactions and states that he had perused and gone through the contents of the report of the Investigation Wing, New Delhi and am satisfied that the amount is undisclosed income which has been routed back to the books of accounts of the assessee company in the form of share capital. We therefore find that based on perusal of the report of the DIT, Investigation Wing, New Delhi, the Assessing officer has formed not merely a prima facie belief but has reached a conclusion that the assessee has routed back his undisclosed income in the form of share capital. For reaching such a decisive finding that it is assessee's undisclosed income which has reached the investor company M/s Pelicon Finance & lease Ltd and thereafter, the latter has invested the amount so received in the assessee's company by way of share capital, there is nothing which has been stated in the reasons so recorded. As we have noted above, the satisfaction of the Assessing officer should be discernable from the reasons so recorded only and nothing can be added or supplemented to the reasons. In the instant case, the particulars of the transactions have been given in terms of name of the investor company, date of investment, mode and amount of investment. A reading of such particulars doesn't give any prima facie impression that these are transactions where the assessee's own money has been routed back in form of share capital. Therefore, without establishing the nexus, the Assessing officer has not just formed a prima facie view but has concluded that the amount invested is

undisclosed income which has escaped assessment cannot be accepted. Further, it is noted that after recording of the reasons, the Assessing officer has subsequently written a letter on 30.08.2013 to ACIT New Delhi requesting for copy of statements of Surendra Kumar Jain, Virendra Kumar Jain at whose premises the search was conducted and P C Agarwal, so called mediator in these transactions. Given that search proceedings in respect of these two persons have formed the basis for the present reassessment proceedings in the hands of the assessee, it was essential to atleast examine the statements of these three persons and seized material if any found during the course of search which in any ways indicate that these two persons have carried out certain transactions with the assessee and prima facie these transactions are suspected to be accommodation entries and not actual transactions. However, there is nothing in the reasons so recorded that the Assessing officer has gone through the statements so recorded during the course of search and the seized material to show prima facie linkage of assessee's undisclosed income being routed back in form of share capital. This shows that the Assessing officer has merely gone by the report of the DIT, Investigation Wing and the said report even didn't have the statements of these persons which either find mention in the report or as enclosures when the same was forwarded to the Assessing officer. Therefore, it transpires that there is no further examination which has been carried out by the Assessing officer. The fact that the assessee has filed its return of income u/s 139(1) was very much in the knowledge of the Assessing officer and the latter could have verified the transactions with the reported transactions in the financial statements and could have asked for more information to establish the necessary

nexus, however nothing of that sort has been done by the Assessing officer and he has merely gone by the report of DIT, Investigation Wing. It is true that the Assessing officer can rely on the report of DIT, Investigation Wing but at the same time, where he is assuming jurisdiction u/s 147, he is required to carry out further examination and analysis in order to establish the nexus between the material and formation of belief that income has escaped assessment and in absence thereof, the assumption of jurisdiction u/s 147 has no legal basis and resultant reassessment proceedings deserve to be set-aside. Our view is fortified by the decision of the Hon'ble Delhi High Court in case of Meenakshi Overseas Pvt Ltd (supra) wherein it was held as under:

“19. A perusal of the reasons as recorded by the AO reveals that there are three parts to it. In the first part, the AO has reproduced the precise information he has received from the Investigation Wing of the Revenue. This information is in the form of details of the amount of credit received, the payer, the payee, their respective banks, and the cheque number. This information by itself cannot be said to be tangible material.

20. Coming to the second part, this tells us what the AO did with the information so received. He says: "The information so received has been gone through." One would have expected him to point out what he found when he went through the information. In other words, what in such information led him to form the belief that income escaped assessment. But this is absent. He straightaway records the conclusion that "the abovesaid instruments are in the nature of accommodation entry which the Assessee had taken after paying unaccounted cash to the accommodation entry giver (sic giver)". The AO adds that the said accommodation was "a known entry operator" the source being "the report of the Investigation Wing".

21. The third and last part contains the conclusion drawn by the AO that in view of these facts, "the alleged transaction is not the bonafide one. Therefore, I have reason to believe that an income of Rs. 5,00,000 has escaped assessment in the AY 2004-05 due to the failure on the part of the Assessee to disclose fully and truly all material facts necessary for its assessment... "

22. As rightly pointed out by the ITAT, the 'reasons to believe' are not in fact reasons but only conclusions, one after the other. The expression 'accommodation entry' is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the Assessee on his paying "unaccounted cash" is another conclusion the basis for which is not disclosed. Who is the accommodation entry giver is not mentioned. How he can be said to be "a

known entry operator" is even more mysterious. Clearly the source for all these conclusions, one after the other, is the Investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow therefrom.

23. Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.

24. The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of Section 147 (1) of the Act.

25. At this stage it requires to be noted that since the original assessment was processed under Section 143 (1) of the Act, and not Section 143 (3) of the Act, the proviso to Section 147 will not apply. In other words, even though the reopening in the present case was after the expiry of four years from the end of the relevant AY, it was not necessary for the AO to show that there was any failure to disclose fully or truly all material facts necessary for the assessment.

26. The first part of Section 147 (1) of the Act requires the AO to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The AO being a quasi judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre- condition to the assumption of jurisdiction under Section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment."

"36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.

37. For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law.”

Subsequently, the Hon’ble Delhi High Court in case of RMG Polyvinyl Ltd (supra) has held as under:

“12. Recently, in its decision dated 26th May, 2017 in ITA No. 692/2016 Pr. CIT v. Meenakshi Overseas, this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report.”

13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.”

In light of above discussions and in the entirety of facts and circumstances of the case, the assumption of jurisdiction and initiation of the proceedings under Section 147 of the Act to reopen the assessment proceedings does not satisfy the requirement of law and is hereby set-aside. In the result, ground no. 1 of the assessee’s appeal is allowed.

21. Now, coming to the merits of the addition made by the Assessing officer, we find that the assessee has discharged the initial onus cast on it in terms of identity, creditworthiness and genuineness of the

transaction. Notably, the assessment proceedings u/s 143(3) have been completed in case of the investor company M/s Pelicon Finance & lease for A.Y 2006-07 wherein investment in the assessee's company has been accepted by the Revenue. There cannot be a situation where the same transaction is held to be genuine in hands of Investor Company and disputed in the hands of the Investee company. Further, M/s Pelicon Finance & lease has responded to notice u/s 133(6) and has confirmed the amount invested by way of share capital in the assessee company. Besides, necessary documentation in terms of Board resolution, share application form, bank statements of the investor company, annual financial statements, etc has been submitted by the assessee company before the Assessing officer. Further, we find that there is no mention of either the assessee company or the investor company in the statements so recorded of Surendra Kumar Jain and Virendra Kumar Jain. The statement of the so called mediator P C Agarwal is also not on record who is claimed by the Revenue to have facilitated the transaction. Therefore, we do not find any linkage which can be said to have been established by the Revenue between the assessee's undisclosed income which is routed back in form of share capital. In light of the same, merely relying on the report of the Investigation Wing without any further examination or investigation or disputing the documentation submitted by the assessee company, the addition cannot be sustained in the hands of the assessee company and is hereby directed to be deleted. In the result, ground no. 2 of the assessee's appeal is allowed.

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

23. In ITA No. 567/JP/2018 for A.Y. 2007-08, the assessee has taken following grounds of appeal:-

"1.1 The impugned order u/s 147/143(3) dated 14.03.2014 is bad in law and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.

1.2 The action taken u/s 147 by the Id. AO confirmed by the Id. CIT(A) is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.

2. Rs. 30,00,000/- : The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 30,00,000/- made by the Id. AO on account of alleged accommodation entries received for share application money and also erred in ignoring the various evidence submitted without rebutting and AO also erred in not providing the cross examinations. Hence the addition so made by the AO and confirmed by the Id. CIT(A) is being totally contrary to the provisions of law and fact on the record and hence the addition may kindly be deleted in full.

3. The Id. AO has grossly erred in law as well as on the facts of the case in charging interest U/s 234A, 234B & 234C,. The appellant totally denies its liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full."

24. Both the parties fairly submitted that the facts and circumstances of the case are exactly identical to facts and circumstances of appeal in ITA No. 566/JP/2018 and therefore, our finding and directions contained in ITA No. 566/JP/2018 shall equally *mutatis mutandis* to this appeal as well. In the result, the appeal of the assessee is allowed.

In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 30/01/2019.

Sd/-

Sd/-

(विजय पाल राव)

(विक्रम सिंह यादव)

(Vijay Pal Rao)

(Vikram Singh Yadav)

न्यायिक सदस्य / Judicial Member

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 30/01/2019.

*Ganesh

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

1. अपीलार्थी / The Appellant- M/s Balaji Health Care Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward- 4(3), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 566 & 567/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar