IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C", DELHI

BEFORE SHRI. P. K. BANSAL, ACCOUNTANT MEMBER
AND SHRI K.N. CHARRY , JUDICIAL MEMBER

ITA No.5626/DEL/2012
Assessment Year:2004-05

ITO Ward 12(2) New Delhi	v.	Gravity Systems Pvt. Ltd. 31, Gujranwala Town Part II, GT Karnal Road Delhi
		TAN/PAN:AABCG0277B
(Appellant)		(Respondent)

C.O. No.319/DEL/2016
[Arising out of ITA No.5626/DEL/2012]
Assessment Year:2004-05

Gravity Systems Pvt. Ltd. 31, Gujranwala Town Part II, GT Karnal Road Delhi	v.	ITO Ward 12(2) New Delhi
TAN/PAN:AABCG0277B		
(Cross Objector)		(Respondent)

Department by:	Shri Amrit Lal, D.R.		
Assessee by:	Shri P. C. Yadav, Advocate		
Date of hearing:	16	03	2017
Date of pronouncement:	30	03	2017

O R D E R

PER P. K. BANSAL, A.M:

The appeal filed by the Revenue as well as the cross objection filed by the assessee arise out of the order of the ld. CIT(A)-XV, New Delhi dated 1.8.2012 pertaining to assessment year 2004-05.

2. The Revenue in its appeal has challenged the deletion of addition of Rs.98.50 lakhs made by the Assessing Officer under section 68 of the Income Tax Act, 1961 being unexplained credit. The assessee, on the other hand, in the cross objection filed by it, has taken the following grounds:-

1. The order of assessment is bad in law and as the initiation of reassessment proceedings has been exercised in utter disregard of the provisions of law and/ settled principle of law applicable to proceedings of section 147 of the Income Tax Act 1961.

2. The entire assessment framed by the AO and affirmed by CIT(A) is bad in law as no notice under section 143(2) after the issuance of notice under section 148 has ever been issued before the completion of assessment proceedings by the AO.

3. Without prejudice to the above the proceedings of 147 read with 148 are ab-initio-void, as no notice u/s 148 has ever been served on the assessee before the completion of assessment proceedings and the notice alleged to have been served by affixture has been served in an arbitrary manner and not at the correct address.

4. The Ld CIT (A) has failed to appreciate that the AO has solely relied on the information of investigation wing and has reopened the assessment in a mechanical manner, without any independent application of mind.

5. The CIT(A) has failed to appreciate that for assuming jurisdiction u/s 147 the AO has borrowed the satisfaction of the investigation wing of the department and has not applied his mind independently to the vague material sent by investigation wing of the department.

6. The CIT(A) has failed to appreciate that expression used by the AO in reasons recorded i.e accommodation entry is a very wider term and for assumption of jurisdiction of 147, specific form of the alleged entries should be discernible from the reasons recorded.

3. The cross objection filed by the assessee is late by four days. For condonation of delay, the assessee has filed an application dated 5.12.2016. In the application as well as in the argument taken during the course of hearing, the ld. A.R. of the assessee before us contended that the delay in filing of the appeal has been occurred due to the fault of the Chartered Accountant of the assessee, as the Chartered Accountant of the assessee was busy in statutory audit compliance work, which was 17.10.2016. The cross objection in the instant case should have been filed by 20.10.2016 but was filed on 24.10.2016. Reliance was placed on the decision of the Hon'ble M.P. High Court in the case of Mahaveerprasad Jain vs. CIT, 172 ITR 331 (MP) as well as that of the Hon'ble Supreme Court in the case of Concord Of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi & Ors., 118 ITR 507. He has also drawn our attention towards the decision of the Hon'ble Apex Court in the case of Improvement Trust vs. Ujagar Singh, 6 SCC 786, in which it was held that unless the malafides are writ large, the delay should be condoned.

4. The ld. D.R., on the other hand, has contended that this is not a reasonable cause and the delay should not be condoned.

5. After hearing the rival submissions, we are of the view that for the default of the counsel, the assessee cannot be penalized. It is a case where the assessee has duly explained that he was prevented by sufficient cause to file the cross objection within time due to the default of the Chartered Accountant. We, therefore, condone the delay and admit the cross objection taken by the assessee for hearing.

6. In the cross objection, the assessee has taken legal issues. We, therefore, have decided to dispose of the cross objection first.

7. Ground No.3 in the cross objection taken by the assessee since not pressed stands dismissed as not pressed.

8. Grounds No.1 & 2 relate to the issue that the entire assessment framed by the Assessing Officer is bad in law as no notice under section 143(2) of the Act after issuance of notice under section 148 of the Act has been issued before completing the assessment proceedings by the Assessing Officer.

9. We have heard the rival submissions and carefully considered the same on this issue. We noted that this Tribunal vide order dated 28.11.2016 directed the Departmental Representative to produce the assessment record on the next date of hearing on 31.1.2017, but no such record was produced by the ld. D.R. and therefore the case was adjourned to 31.1.2017 and ultimately it was adjourned for 16.3.2017. When the Bench asked the ld. D.R. to produce the record to prove whether any notice under section 143(2) of the Act has been issued or served on the assessee, the ld. D.R. was fair enough to admit that he has written to the Assessing Officer but the Assessing Officer has stated that the record has been misplaced and is not traceable. We are of the view that once this Tribunal has directed the Revenue to produce the record with regard to the assessment so that it can be verified whether notice under section 143(2) of the Act has been issued and served on the assessee before completing the assessment under section 147/148 of the Act, the Revenue was bound to produce the record. But the Revenue could not produce the record and just explained in the Bar that the record has been misplaced. Under these circumstances, we are bound to take an adverse inference in view of the provisions of section 114 of the Evidence Act to the effect that had the assessment record been produced, the same would have gone against the interest of the

Revenue. Our aforesaid view is duly supported by the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Motor General Finance Ltd., 254 ITR 449 (Delhi). Respectfully following the decision of the Hon'ble jurisdictional High Court, we hold that no notice under section 143(2) of the Act has been issued or served on the assessee before completion of assessment under section 147/148 of the Act. Once this inference is drawn, the contention of the ld. A.R. of the assessee was that non-issuance and service of notice under section 143(2) of the Act before completion of the assessment under section 147/148 of the Act makes the assessment invalid and void ab-initio and in this regard he has placed reliance on the following decisions:-

1. Kuber Tobacco Products vs. DCIT, 117 ITD 273 (SB)
2. CIT vs. Jai Shiv Shankar Traders, 383 ITR 448 (Del)
3. Alpine Electronics vs. Director General Income Tax, 341 ITR 247.

10. The ld. D.R., on the other hand, has contended before us that non-issuance of notice under section 143(2) of the Act before completion of the assessment under section 147/148 of the Act will not make the assessment to be illegal and void ab-initio and in this regard he relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Madhya Bharat Energy Corporation Ltd., 337 ITR 389.

11. After hearing the rival submission and going through the orders of the authorities below as well as the case laws relied on by both the parties, we noted that the issue involved is duly covered in favour of the assessee by the decision of the Hon'ble jurisdictional High Court in the case of Principal CIT vs. Jai Shiv Shankar Traders Pvt. Ltd.,

383 ITR 448 (Del) which is binding on us. In this decision, we noted that the Hon'ble High Court discussed the decision of the Hon'ble Delhi High Court in the case of CIT vs. Madhya Bharat Energy Corporation Ltd. (supra) on which the ld. D.R. has relied on. The Hon'ble Delhi High Court did not agree and distinguished the decision of the Hon'ble Delhi High Court in the impugned case. The facts involved in the case of Principal CIT vs. Jai Shiv Shankar Traders Pvt. Ltd. (supra) are similar to the case of the assessee. In this decision, the Hon'ble jurisdictional High Court has dealt with this issue as under:-

> *"7. The Assessee's further appeal has been allowed by the ITAT by the impugned order. Relying, inter alia, on the decision of the Supreme Court in ACIT v. Hotel Blue Moon (2010) 321 ITR 362 and a plethora of judgments of the High Courts, the ITAT concluded that for completing the assessment under Section 148 of the Act compliance with the procedure under Section 143 (2) was mandatory. It was held that if notice was not issued to the Assessee before completion of the re-assessment, then such reassessment was not sustainable in law.*
>
> *8. When this appeal was first listed before this Court on 29th July, 2015 reliance was placed by Ms Suruchi Aggarwal, learned Senior Standing counsel for the Revenue on the decision of this Court in 'Commissioner of Income Tax v. Madhya Bharat Energy Corporation Ltd. (2011) 337 ITR 389) Del which purported to hold that non-issue of notice under Section 143(2) of the Act on an Assessee prior to completion of the reassessment would not be fatal to the reassessment. She also sought to distinguish the decision in ACIT v. Hotel Blue Moon (supra) on the ground that it pertained to a block assessment.*
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> *9. Dr Rakesh Gupta, learned counsel appearing for the Assessee, at the outset drew the attention of this Court to an order passed by this Court on 17th August, 2011 in Review Petition*

No.441/2011 in ITA No.950/2008 (CIT v. Madhya Bharat Energy Corporation) whereby this Court reviewed its main judgment in the matter rendered on 11th July 2011 on the ground that the said appeal had not been admitted on the question concerning the mandatory compliance with the requirement of issuance of notice under Section 143(2) of the Act. In its review order, this Court noted that at the time of admission of the appeal on 17th February, 2011 after noticing that in the said case that no notice under Section 143(2) had ever been issued, the Court held that no question of law arose on that aspect. The upshot of the above discussion is that the decision of this Court in CIT v. Madhya Bharat Energy Corporation (supra) is not of any assistance to the Revenue as far as the issue in the present case is concerned.

10. Ms Aggarwal nevertheless urged that notwithstanding the above position, the decision of this Court in CIT v. Vision Inc. (2012) 73 DTR 201 (Del) would apply. The said judgment held that since on the facts of that case the Assessee had been properly served with the notice under Section 143(2) of the Act within the statutory time limit prescribed under the proviso thereto, the ITAT should not have set aside the re-assessment in toto. Ms Aggarwal placed reliance on Section 292BB of the Act and urged that the Assessee having not raised any objection about non service of the notice under Section 143(2) of the Act either at any time before the AO or prior to, or during the reassessment proceedings, the Assessee was precluded from raising such an objection in the subsequent stages of the proceedings.

11. Dr Rakesh Gupta for the Assessee on the other hand placed reliance on a large number of decisions of the High Courts apart from the decision of the Supreme Court in ACIT v. Hotel Blue Moon (supra). He submitted that the failure to issue a notice under Section 143(2) of the Act subsequent to the Assessee having informed the AO that the return originally filed should be treated as the return filed pursuant to the notice under Section

148 of the Act, was fatal to the order of re-assessment. 12. The narration of facts as noted above by the Court makes it clear that no notice under Section 143(2) of the Act was issued to the Assessee after 16th December 2010, the date on which the Assessee informed the AO that the return originally filed should be treated as the return filed pursuant to the notice under Section 148 of the Act.

13. In DIT v. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249 (Del), this Court invalidated an reassessment proceedings after noting that the notice under Section 143(2) of the Act was not issued to the Assessee pursuant to the filing of the return. In other words, it was held mandatory to serve the notice under Section 143(2) of the Act only after the return filed by the Assessee is actually scrutinised by the AO.

14. The interplay of Sections 143 (2) and 148 of the Act formed the subject matter of at least two decisions of the Allahabad High Court. In CIT v. Rajeev Sharma (2011) 336 ITR 678 (All.) it was held that a plain reading of Section 148 of the Act reveals that within the statutory period specified therein, it shall be incumbent to send a notice under Section 143(2) of the Act. It was observed:

> *"the provisions contained in sub-Section (2) of Section 143 is mandatory and the legislature in their wisdom by using the word 'reason to believe' had cast a duty on the Assessing Officer to apply mind to the material on record and after being satisfied with regard to escaped liability, shall serve notice specifying particulars of such claim. In view of the above, after receipt of return in response to notice under Section 148, it shall be mandatory for the AO to serve a notice under sub-Section 2 of Section 143 assigning reason therein. In absence of any notice issued under sub-Section 2 of Section 143 after receipt of fresh return submitted by the Assessee in response to notice*

under Section, the entire procedure adopted for escaped assessment, shall not be valid."

15. In a subsequent judgment in CIT v. Salarpur Cold Storage (P.) Ltd. (2014) 50 Taxmann.com 105 (All) it was held as under:

"10. Section 292 BB of the Act was inserted by the Finance Act, 2008 with effect from 1 April 2008. Section 292 BB of the Act provides a deeming fiction. The deeming fiction is to the effect that once the assessee has appeared in any proceeding or cooperated in any enquiry relating to an assessment or reassessment, it shall be deemed that any notice under the provisions of the Act, which is required to be served on the assessee, has been duly served upon him in time in accordance with the provisions of the Act. The assessee is precluded from taking any objection in any proceeding or enquiry that the notice was (i) not served upon him; or (ii) not served upon him in time; or (iii) served upon him in an improper manner. In other words, once the deeming fiction comes into operation, the assessee is precluded from raising a challenge about the service of a notice, service within time or service in an improper manner. The proviso to Section 292 BB of the Act, however, carves out an exception to the effect that the Section shall not apply where the assessee has raised an objection before the completion of the assessment or reassessment. Section 292 BB of the Act cannot obviate the requirement of complying with a jurisdictional condition. For the Assessing Officer to make an order of assessment under Section 143 (3) of the Act, it is necessary to issue a notice under Section 143 (2) of the Act and in the absence of a notice under Section 143 (2) of the Act, the assumption of jurisdiction itself would be invalid."

16. In the same decision in v. Salarpur Cold Storage (P.) Ltd.(supra), the Allahabad High Court noticed that the decision of the

Supreme Court in ACIT v. Hotel Blue Moon (supra) where in relation to block assessment, the Supreme Court held that the requirement to issue notice under Section 143(2) was mandatory. It was not "a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with."

17. The Madras High Court held likewise in Sapthagiri Finance & Investments v. ITO (2013) 90 DTR 289 (Mad). The facts of that case were that a notice under Section 148 of the Act was issued to the Assessee seeking to reopen the assessment for AY 2000-01. However, the Assessee did not file a return and therefore a notice was issued to it under Section 142 (1) of the Act. Pursuant thereto, the Assessee appeared before the AO and stated that the original return filed should be treated as a return filed in response to the notice under Section 148 of the Act. The High Court observed that if thereafter, the AO found that there were problems with the return which required explanation by the Assessee then the AO ought to have followed up with a notice under Section 143(2) of the Act. It was observed that:

> *"Merely because the matter was discussed with the Assessee and the signature is affixed it does not mean the rest of the procedure of notice under Section 143(2) of the Act was complied with or that on placing the objection the Assessee had waived the notice for further processing of the reassessment proceedings. The fact that on the notice issued u/s 143(2) of the Act, the assessee had placed its objection and reiterated its earlier return filed as one filed in response to the notice issued u/s 148 of the Act and the Officer had also noted that the same would be considered for completing of assessment, would show that the AO has the duty of issuing the notice under Section 143(3) to lead on to the passing of the assessment. In the circumstances, with no notice issued u/s 143(3) and there being no waiver, there is no justifiable ground to accept the view of the*

Tribunal that there was a waiver of right of notice to be issued u/s 143(2) of the Act."

18. As already noticed, the decision of this Court in CIT v. Vision Inc. proceeded on a different set of facts. In that case, there was a clear finding of the Court that service of the notice had been effected on the Assessee under Section 143 (2) of the Act. As already further noticed, the legal position regarding Section 292BB has already been made explicit in the aforementioned decisions of the Allahabad High Court. That provision would apply insofar as failure of "service" of notice was concerned and not with regard to failure to "issue" notice. In other words, the failure of the AO, in re-assessment proceedings, to issue notice under Section 143(2) of the Act, prior to finalising the re-assessment order, cannot be condoned by referring to Section 292BB of the Act.

19. The resultant position is that as far as the present case is concerned the failure by the AO to issue a notice to the Assessee under Section 143(2) of the Act subsequent to 16th December 2010 when the Assessee made a statement before the AO to the effect that the original return filed should be treated as a return pursuant to a notice under Section 148 of the Act, is fatal to the order of re-assessment.

20. Consequently, there is no legal infirmity in the impugned order of the ITAT. No substantial question of law arises. The appeal is dismissed."

12. Respectfully following the aforesaid decision, we quash the assessment framed by the Assessing Officer.

13. Grounds No.4, 5 & 6 relate to the issue that the reasons recorded by the Assessing Officer were not bona-fide and are based on the basis of the borrowed satisfaction of the Investigation Wing of the Department.

14. Since we have already quashed the assessment, in our view, there is no need to adjudicate other grounds taken by the assessee in the cross objection, but since both the parties has extensively argued, we have decided to deal with this issue.

15. After hearing both the parties, we noted that in this case the Assessing Officer has reopened the assessment by recording the following reasons to believe:-

> *"As per information received from the office of the DIT (Inv.), New Delhi vide letter F.No./Addl.DIT(Inv.)/Unit-IV/ Beneficiaries/2008-09/392 dated 31.03.2009, the assessee company has taken following accommodation entry totaling to Rs.98,50,000/-:*

Value of entry taken	*From whom taken*
Rs. 23,50,000/-	*M/s Sadguru Finman Pvt. Ltd.*
Rs. 25,00,000/-	*M/s Karot Bagh Trading Ltd.*
Rs. 25,00,000/-	*M/s Deep Sea Drilling Pvt. Ltd.*
Rs. 25,00,000/-	*M/s Adonis Finance Ltd.*

> *The said amount has been credited into assessee's bank account by way of transfer entry. On investigation made by the investigation wing it has been found that assessee is a beneficiary of taking the aforesaid accommodation entries. I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assess company has introduced its own unaccounted money in its bank by way of accommodation entries, therefore, I have reason to believe that the income amounting to at least Rs.98,50,000/- has escaped assessment."*

16. The provisions of section 147 of the Act mandates that the Assessing Officer can assess or reassess any income chargeable to tax escaped assessment in any assessment year subject to the provisions of sections 148 to 153 of the Act if he has reason to believe. He has also been empowered to assess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section if he has assessed any income on the basis of the reasons to believe. The reasons to believe must be bona-fide. It cannot be a reason to suspect. It must be based on the material relevant to the assessee and relevant to the impugned assessment year. The reasons to believe must postulate that there has been escapement of income chargeable to tax. The power under section 147 of the Act has been given to the Assessing Officer. He cannot rely on the belief made by any other persons. In the instant case, we noted that the case of the assessee is duly covered by the decision of the Hon'ble jurisdictional High Court in the case of Principal CIT vs. G & G Pharma India Ltd. in ITA No.545/2015, dated 8.10.2015, in which the Hon'ble High Court under similar circumstances has held 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."

17. The reasons involved in this case of the assessee are also similar to the case of the assessee in the present appeal. The Assessing Officer has simply mentioned in the reasons that the assessee-company has taken accommodation entry totaling to Rs.98.50 lakhs from four entities. The Assessing Officer has not referred to the material on the basis of which he stated that the assessee has taken accommodation entry except referring to the information of the DIT (Investigation). No date on which such accommodation entry has been taken by the assessee is given. The Assessing Officer has not made any reference to the manner in which these entries were provided in the accounts of the assessee, so that it can be said that the Assessing Officer has applied his mind. The Assessing Officer has simply concluded without forming a prima-facie opinion that "it is evident that the assessee has introduced its own unaccounted money in its bank by way of accommodation entries". Similar reasons were recorded by the Hon'ble jurisdictional High Court in the case of Principal CIT vs. G & G Pharma India Ltd. (supra). The reasons recorded are not specific and, therefore, these cannot be regarded to be bona-fide reasons.

18. We have also gone through the decisions relied upon by the ld. D.R. in the case of ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd., 161 Taxman 316 (SC) and Raymond Woollen Mills Ltd., 236 ITR 34 (SC). We noted that these decisions will not assist the assessee. We do not deny that at the time of recording the reasons, the Assessing Officer should have prima-facie belief but that belief must be arisen out of the material. Until and unless the ingredients stipulated under section 147 of the Act are not complied with, the reasons recorded cannot be regarded to be bona-fide. We accordingly on this basis also, following the decision in the case of Principal CIT vs. G & G Pharma India Ltd.

(supra) quash the assessment order. Thus grounds No.1 to 6 of the cross objection taken by the assessee are allowed.

19. Now coming to the ground taken by the Revenue, the only issue involved relates to the deletion of addition of Rs.98.50 lakhs made by the Assessing Officer under section 68 of the Act.

20. After hearing the rival submissions and considering the orders of the authorities below, we noted that the ld. CIT(A) has categorically held that the assessee has discharged his onus to prove all the ingredients as stipulated under section 68 of the Act inasmuch as he has clearly stated that the Assessing Officer has not made any enquiry to examine the contents of the information submitted by the assessee. The assessee has received subscription for share capital from four corporate entities through cheque and these corporate entities are duly registered with ROC and they are active as per the website of the Ministry of Corporate Affairs. They are also having permanent account number and regularly filing their returns. The Assessing Officer without discharging his onus or bringing any material to the contrary, just rejected the evidences filed by the assessee.

21. We noted that the Hon'ble Supreme Court in the case of CIT vs. Orisssa Corporation, 159 ITR 78(SC) has categorically held that for inaction of the Assessing Officer, the assessee cannot be penalized. We noted that the ld. CIT(A) has categorically took a view that the case of the assessee is duly covered by the recent decision of the Hon'ble Delhi High Court in the case of CIT vs. Goel Sons Golden Estate Pvt. Ltd. in ITA No.212/2012, dated 11.4.2012. The relevant findings of the ld. CIT(A) are given as under:-

8.12. In view of the factual position as well as the judicial pronouncement on the subject, discussed above, I am of the considered view that the appellant has discharged the initial onus of establishing the bona-fides of the transactions and the AO was not justified in ignoring various evidences provided to him by the appellant. Nothing adverse has been brought on record by the AO to establish that the amount of share application money of Rs. 98,50,000 received by the appellant from the said parties represents its own undisclosed income.

If there was doubt about the source of investment of the said company, then additions should have been made in the case of investor company and not in the hands of the appellant company. The appellant has relied upon the decision of Hon'ble Supreme Court in CIT Vs Divine Leasing and Finance Ltd. (CC 375/2008) dated 21/01/2008 wherein it was held -

> *"We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the ossessee-Company from alleged bogus shareholders, whose names are given to the AO, then the Department, is free to proceed to re-open their individual assessments in accordance with law."*

Reliance in this regard is also placed on the decision of Hon''ble Delhi High Court in the case of CIT vs. Pondy Metal and Rolling Mill Pvt Ltd (Delhi) (ITA No. 788/2006) dated 19.02.2007, wherein the Hon'ble Court concurred with the findings of the Appellate Tribunal, Delhi Bench 'F' that once the identity of the investor has been manifest and is proved, the investment cannot be said to be the Undisclosed income of the assessee. At best, the amount could be added in the hands of the investor but it certainly could not be treated as undisclosed income of the assessee. The appeal filed against the said decision, was dismissed by the Hon'ble Supreme Court in C.C. 12860/2007 dated 08/01/2008.

8.13. On the similar facts in the recent decision of Hon'ble Delhi High Court in the case of CIT vs Goel Sons Golden Estate Pvt Ltd

(ITA 212/2012) dated 11th April, 2012 have deleted the addition made by holding in Para 3 of their order as under:

> *".....We have examined the said contention and find that the assessee during the course of assessment proceedings has filed confirmation letters from the companies, their PAN Number, copy of bank statements, affidavits and balance sheet. Thereafter the Assessing Officer had asked the assessee to produce the said Directors/ parties. Assessee expressed its inability to produce them. The Assessing Officer did not consequent thereto conduct any inquiry and closed the proceedings. This is a case where the Assessing Officer has failed to conduct necessary inquiry, verification and deal with the matter in depth specially after the affidavit/ confirmation along with the bank statements etc. were filed. In case the Assessing Officer had conducted the said enquiries and investigation probably the challenge made by the Revenue would be justified. In the absence of these inquiries and non-verification of the details at the time of assessment proceedings, the factual findings recorded by the Assessing Officer were incomplete and sparse. The impugned order passed cannot be treated and regarded as perverse. The appeal is dismissed as no substantial question of law arises.....".*

8.14. In the light of the above discussion and in view of the recent decision of jurisdictional High Court in the case of Goel Sons Golden Estate (supra), I am inclined to agree with the arguments and evidences provided by the appellant to substantiate that the transaction regarding Share Application Money received by it was genuine transactions and the same was not an accommodation entry. I also do not find any evidence collected by the AO which could prove otherwise. Even, I find that on the request of the appellant the statements of the persons and evidences which have been used against them, were not been supplied by the AO and thus there is violation of principles of natural justice.

In view of aforesaid discussion, I delete the addition of Rs.98,50,000, made by the AO under Section 68 of the Income Tax Act, 1961."

22. The ld. D.R. even though vehemently relied on the following decisions, but all these decisions are prior to the decision of the Hon'ble Delhi High Court in the case of CIT vs. Goel Sons Golden Estate Pvt. Ltd. (supra):-

1. Kale Khan Mohammand Hanif vs. CIT (1963) 50 ITR 1 (SC).
2. CIT vs. P. Mohanakala (2007) 291 ITR 278 (SC).
3. Indus Valley Promoters Ltd., vs CIT (2008) 305 ITR 202 (Delhi).
4. Bhartesh Jain vs DCIT (Del) 483 CTR 201 dated 07.04.2006.
5. CIT vs Biju Patnaik 160 ITR 674

23. In view of these facts, we do not find any illegality or infirmity in the order of the ld. CIT(A) in deleting the addition of Rs.68.50 lakhs under section 68 of the Act as in our opinion this is not a fit case which warranted our interference.

24. In the result, appeal of the Revenue is dismissed while the cross objection of the assessee is partly allowed.

Order pronounced in the open Court on 30.03.2017

Sd/-	Sd/-
[K. N. CHARRY]	[P. K. BANSAL]
JUDICIAL MEMBER	ACCOUNTANT MEMBER

DATED: 30.03.2017

JJ:1603

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar