

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "E" NEW DELHI**

**BEFORE SHRI J.SUDHAKAR REDDY, A.M.
AND SHRI RAJPAL YADAV, J.M.**

**ITA no.4122/Del/2009
Assessment Year : 2001-02**

ITO, Ward 13(1) vs. M/s N.C. Cables Ltd.
Room no.219, C.R.bldg. N.51, Choudhary bldg.
New Delhi C.P. New Delhi

**C.O.No. 388/Del/2009
(In ITA 4122/Del/2009)
AY: 2001-02**

M/s N.C.Cables Ltd. Vs. ITO, Ward 13(1)
New Delhi New Delhi

(Appellant)

(Respondent)

Assessee by:- Dr.Rakesh Gupta, Adv.
Shri Ashwani Taneja, Adv.
Sh.Rohan Khare, Adv.

Department by:- Sh. J.P.Chandraker, Sr.D.R.

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This appeal is filed by the Revenue and is directed against the order of the Ld.CIT(A)-XVI, New Delhi dt. 30.7.2009 for the AY 2001-02.

2. Facts in brief:- The assessee is a company and is in the business of manufacturing and sale of cables. It originally filed its return of income on 27.9.2001 declaring loss of Rs.73,69,190/-. The assessment was made u/s 143(3) on 28.3.2003, wherein the returned loss was accepted. Subsequently notice u/s 148 of the Act was issued on 25.3.2008 after recording reasons. It is also on record that a notice u/s 148 was issued on an earlier occasion on 26.3.2007 but was dropped for technical reasons. In response to the notice dt. 25.3.2008 the assessee filed a letter dt. 21.4.2008, requesting that the return of income originally filed on 27.9.2001, be treated as a return of

income filed in response to notice u/s 148. The AO completed assessment u/s 143(3) read with s.147 of the Act on 23.12.2008 assessing the total income at Rs.64,00,810/-, inter alia, making an addition on account of share application money of Rs.1 crore and loan of Rs.35 lakhs u/s 68 of the Act and commission paid for these accommodation entry of Rs.2,70,000/-.

3. Aggrieved the assessee carried the matter in appeal challenging both the reopening of assessment as well as the additions on merits. The First Appellate Authority upheld the reopening of the assessment. On the addition of share application money of Rs.1 crore and loan of Rs.35 lakhs u/s 68 of the Act, the Ld.CIT(A) deleted the additions.

3.1. The Ld.CIT(A) held that the assessee had discharged the initial onus that lay on it and that the AO was not justified in ignoring various evidences filed before him by the assessee. On the ground that nothing adverse has been brought on record by the AO to establish that the amount of share application money of Rs.1 crore and the loan of Rs.35 lakhs respectively, received by the assessee from the said parties represents its own undisclosed income, the Ld.CIT(A) deleted the addition.

4. Aggrieved the Revenue has filed this appeal before us on the following grounds.

“(1) On the facts and circumstances of the case as well as in law, the Id. CIT (A) has erred in deleting the addition of Rs.1,35,00,000/- (Rs. One crore on account of share application money and Rs. 35 lakhs on account of unsecured loan) made by the AO u/s 68 of the LT. Act ignoring the adverse evidences including pattern of transactions in the bank statement, the absence of real identity, creditworthiness and genuineness, filing of undated confirmations, non productions of concerned persons and their non-availability at the given addresses and the collusive evasion of enquiries into source of deposit etc. as clearly and elaborately brought out in the Assessment Order.

(2) On the facts and circumstances of the case as well as in law, the Id. CIT (A) has erred in deleting the addition of Rs. 2,70,000/- being commission paid for obtaining accommodation entries for the so called share application money and loans ignoring the adverse evidences including pattern of transactions in the bank statements, the absence of real identity, creditworthiness, filing of undated confirmations, non productions of

concerned persons and their non-availability at the given addresses and genuineness, and the collusive evasion of enquiries into source of deposit etc. as clearly and elaborately brought out in the Assessment Order.

(3) The Id. CIT (A) has, while granting relief to the assessee on the above mentioned two counts, erred in law as well as facts by relying on the decision of the apex court in the case of Lovely Exports (P) Ltd. [216 CTR 195 (SC)]. He has failed to appreciate that the order of apex court can not be read in isolation from the judgments of Delhi High Court in the case of M/s Indus Valley Promoters Pvt. Ltd., 2008 (305) ITR 202 DEL and Punjab & Haryana High Court in the case of M/s Blowell Auto Pvt. Ltd., 2008 (219) CTR 185 P&H (delivered subsequent to this decision of apex court), wherein identical additions has been confirmed.

(4) The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal.”

5. The assessee has filed Cross Objection on the following ground.

“That the Ld.CIT(A)-XVI, New Delhi has grossly erred both in facts and in law in confirming the action of AO in reopening the assessment u/s 148 of the Act without realising that the assessment had been earlier completed u/s 143(3) of the Act and more than 4 years had passed since the assessment.”

6. The Ld.D.R. Mr.J.P.Chandrekar relied upon the order of AO and submitted that the amount in question was received by the assessee from entry operators and this fact was found by the Investigation Wing of the department. He described the modus operandi adopted by the entry operators and took this Bench to the order of the AO and pointed out that cash has been deposited in the account of the creditor company prior to subscribing to the share capital of the company. He referred to each of the companies from which the assessee had received share capital and submitted that the assessee had not discharged its onus of proving the identity, creditworthiness and genuineness of the transaction. He submitted that the assessee failed to furnish substantial evidence regarding the creditworthiness of the alleged investors and the overwhelming circumstantial evidences proves otherwise. He pointed out that the AO directed the assessee to produce the persons along with their books of accounts to verify its claim on the genuineness especially in view of the fact that the said party is a shareholder of the assessee company but the

assessee had failed to produce him. He submitted that the assessee failed to discharge the onus that lay on it. He relied on the following case laws.

- i. CIT vs. Nipun Builders & Developers P.Ltd., 350 ITR 407 (Delhi)
- ii. CIT vs. N.R.Portfolio Ltd. (2013) 214 Taxman 408 (Delhi)
- iii. CIT vs. Nova Promoters & Finlease P.Ltd. (2012) 342 ITR 169 (Del)
- iv. CIT vs. M/s T.S.Kishan & Co.Ltd., 2014-TIOL-1651-HC-Del-IT

7. The Ld.Counsel for the assessee on the other hand relied on the order of the Ld.CIT(Appeals) and submitted that the assessee had filed all required evidences, a list of which is given in the Ld.CIT(A)'s order. He argued that the assessee had allotted shares of Rs.1 crore to 13 companies as shareholders, who are all income tax assesses and that the money has come through banking channels and confirmation letters etc. were filed before the AO. On the total loan received, he submitted that 7 parties gave loan of Rs.5 lakhs each totalling to Rs.35 lakhs and out of this loan received from 3 parties was refunded on 6.6.2003 and a further loan of Rs.5 lakhs was refunded to another party on 1.3.2004 by account payee cheques. The sum and substance of his contention is that the assessee has discharged the onus that lay on it by providing all necessary evidences at its command and the AO has not brought out any contrary evidence to substantiate the addition. He argued that the AO merely relied on certain reports of the Investigation Wing, and has not conducted any investigation on his own, nor could find any evidence or incriminating material against the assessee.

7.1. He relied on the following case laws.

- i. ITA 212/2012 CIT vs. Goel Sons Golden Estate P.Ltd., order dt. 11.4.2012 Delhi High Court
 - ii. CIT vs. Fair Finvest Ltd., 357 ITR 146 (Del.)
 - iii. CIT vs. Gangeshwari Metals Pvt.Ltd. 361 ITR 10 (Del)
- And other judgements which we would refer wherever required.

7.2. On the Cross Objections the Ld.Counsel for the assessee submitted that the satisfaction envisaged under law u/s 151 of the Act was absent in these proceedings and hence the appeal is bad in law.

7.3. For this proposition that the remark of the Ld.CIT(A) “approved” is not satisfaction as envisaged u/s 151 he further relied on the following judgement.

* Amarlal Bajaj vs. ACIT, ITAT Mumbai E Bench in ITA 611/Mum/2004 vide order dt. 24.7.2013 reproted in 333 ITR 237 (Del)

* United Electrical Co. Pvt.Ltd., vs. CIT, 258 ITR 317 (Del)

7.4. He further submitted that there is no failure on the part of the assessee to disclose material facts truly and fully necessary for framing an assessment u/s 143(3) and hence the reopening is bad in law, in view of the Proviso to S.147 of the Act, as the reopening is beyond 4 years and as the original assessment was done u/s 143(3) of the Act.

7.5. He further argued that reasons recorded are vague and no belief can be formed by a reasonable person, on the basis of these reasons, about escapement of income. He relied on certain case laws for this proposition, which we would refer if required.

8. The Ld.D.R. opposed these contentions and relied on the order of Ld.CIT(Appeals). He relied on the following case laws for the proposition that the reopening has to be upheld.

* Money Growth Investment and Consultants Pvt.Ltd. vs. ITO, Delhi High Court in WP(C) No.6707/2011 order dt. 23rd April, 2012.

* A.G.Holdings Pvt.Ltd. vs. ITO (2012) 72 DTR 346 (Del.)

* CIT vs. Focus Exports Pvt.Ltd. ITA 218/2012 order dt. 16th September, 2014.

9. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, on perusal of material on record, orders of authorities below, case laws cited, we hold as follows.

10. We first take up the arguments on reopening of assessment. On the issue of reopening, we find that the reasons recorded for reopening are as under.

“Reasons for issuing notice u/s 148 of the Act in the case of M/s N.C. Cables Limited, for the A.Y. 2001-02-reg .

Information has been received from the Investigation Wing of the Income Tax Department that the above named assessee is a beneficiary of accommodation entries received from certain established entry operators identified by the Wing during the period laundering for the beneficiaries and on the basis of investigation carried out and evidences collected, a report has been forwarded. I have perused the information contained in the report and the evidences gathered. The report provides details of the modus operandi of the 'money laundering scam' and explain how the unaccounted money of the beneficiaries are ploughed back in its books of account in the form of bogus share capital/capital gains etc. after routing the same through the bank account (s) of the entry operators. 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. These entry operators are found to be mostly absconding after the unearthing of the 'Money Laundering Scam' leaving the said money at the disposal of the beneficiaries without any associated cost or liability. In the instant case, the assessee is found to be the beneficiary of accommodation entry from such entry operators as per the following specific details of transaction:-

<i>Entry Operator</i>	<i>Beneficiary's bank</i>	<i>Amount – Rs.</i>	<i>Instrument No. by which entry taken and date</i>	<i>Entry giving bank</i>	<i>Account no. From which entry was given</i>
<i>Mahesh Garg</i>	<i>-</i>	<i>800480</i>	<i>30.11.2000</i>	<i>SBP-DG</i>	<i>4507</i>
<i>Performance Trading & Inv.</i>	<i>-</i>	<i>700420</i>	<i>13.11.2000</i>	<i>SBP-DG</i>	<i>4281</i>
<i>Chintpurni Credits</i>	<i>-</i>	<i>900540</i>	<i>22.11.2000</i>	<i>SBP-DG</i>	<i>50058</i>
<i>Subhash Chander Singhal</i>	<i>-</i>	<i>500300</i>	<i>23.11.2000</i>	<i>SBP-DG</i>	<i>4544</i>
<i>Kuldeep Textiles P.Ltd.</i>	<i>-</i>	<i>500500</i>	<i>21546 24.3.2001</i>	<i>Innovative Wazipur</i>	<i>239</i>
<i>Swetu Stone P.Ltd.</i>	<i>-</i>	<i>500500</i>	<i>23510 24.3.2001</i>	<i>- do -</i>	<i>1200259 – C.A.</i>
<i>Division Trading P.Ltd.</i>	<i>-</i>	<i>500500</i>	<i>33612 24.3.2001</i>	<i>- do -</i>	<i>225</i>

During the course of the proceedings u/s 148 for the same assessment year, which was dropped on the technical ground that proper sanction was not obtained, it was noticed that there are other receipts also from the identified entry operators. Information about those entries was not available in the data received from the Investigation Wing.

Nevertheless they also fall within the ambit of section 68 of the Act. The assessee has received unexplained sums from the entry operators as per the above details as per information available with the undersigned. As explained above the identity, creditworthiness and genuineness of transactions with the persons found to be entry operators 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 AY, the income chargeable to tax to the extent of accommodation entry mentioned above, has escaped assessment within the meaning of S.147 of the Act.

Since four years has been expired from the end of the relevant year, and assessment u/s 143(3) of the Act was made in the case of the assessee for the said AY, the reasons recorded above for the purpose of reopening of assessment is put up for kind satisfaction of the CIT, Delhi V, New Delhi in terms of the Proviso to Section 151 of the Act.

Sd/- (ITO) Ward 13(1).

The ACIT, Range 13, New Delhi

For kind approval of CIT-V, New Delhi

CIT-V, Delhi:

“Approved”

Sd/-”

10.1. A perusal of the above demonstrates that the Ld.CIT(A)-V, Delhi has written “approved” on 25.3.2008. The issue is whether such approval would meet the requirements prescribed u/s 151 of the Act.

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

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 11 Yes 11 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 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 3Ft 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 25 7 has held that "the proviso to sub-section (1) of section 151 of 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-built 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-a-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 judgement 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.D.R. does not pertain to the issue of contravention of provisions of S.151 of the Act. These judgements 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-V, Delhi has not recorded his satisfaction as contemplated u/s 151 of the Act.

11. Coming to the merits of the case we find that the assessee has furnished the following documents in support of transactions entered into by him.

Details of loan creditors are as under:

Details regarding M/s Kuldeep Textiles Pvt. Ltd.

1.	Confirmation of loan of Rs.5,00,000/- - dated 29-01-2003	PB 33 - 34
2.	Acknowledgement of ITR for A.Y. 2001-02	PB 35
3.	Copy of Bank Statement	PB 36
4.	Company Master Details	PB 130

Details regarding M/s Swetu Stone Pvt. Ltd.

1.	Confirmation of loan of Rs.5,00,000/-	PB 7-38
2.	Copy of Bank Statement	PB 39
3.	Acknowledgement of ITR for A.Y. 2001-02	PB 40
4.	Company Master Details	

PB 131

Details regarding M/s Kuberco Sales Private Limited

1.	Confirmation of loan of Rs.5,00,000/-	PB 41-42
2.	Acknowledgement of ITR for A.Y. 2001-02	PB 43
3.	Copy of Bank Statement	PB 44
4.	Company Master Details	PB 132

Details regarding M/s K. R. Fincap Private Limited

1.	Statement of Account	PB46
2.	Confirmation of loan of Rs.5,00,000/-	PB47
3.	Acknowledgement of ITR for A.Y. 2001-02	PB48
4.	Copy of Bank Statement	PB49
5.	Company Master Details	PB 134

Details regarding M/s Right Choice Construction Pvt. Ltd.

1.	Letter dated 16-01-2003 filed to Ld. ITO giving confirmation of loan of Rs.5,00,000/- given to assessee company	PB 50
2.	Confirmation of loan	PB 51
3.	Acknowledgement of ITR for A.Y. 2001-02	PB 52
4.	Copy of Bank Statement	PB 53
5.	Company Master Details	PB 135

Details regarding M/s Touchwood Agencies Pvt. Ltd.

1.	Confirmation of loan of Rs.5,00,000/-	PB 54-55
2.	Acknowledgement of ITR for A.Y. 2001-02	PB 56
3.	Copy of Bank Statement	PB 57
4.	Company Master Details	PB 136

Details regarding M/s Division Trading Private Limited

1.	Confirmation of loan of Rs.5,00,000/- dated 17-01-2003	PB 58
2.	Copy of Bank Statement	PB 59
3.	Acknowledgement of ITR for A.Y. 2001-02	PB 60
4.	Company Master Details	PB 137-138

Details of Shareholder Companies are as follows:

Details regarding M/s Chintpurni Credits and Leasing Pvt. Ltd.

1. Confirmation of regarding share application money of Rs.9,00,000 PB 45
2. Company Master Details PB 133

Details regarding M/s Sekhawati Finance Pvt. Ltd.

1. Share Application Form dated 30-11-2000 applying for 80,000 equity shares
Of Rs.10 each PB 61
2. Extract of Board Resolution PB 62,68
3. Confirmation regarding share application money of Rs.8,00,000/- PB 66
4. Affidavit of director certifying that company had applied and allotted 80,000
equity shares of Rs.10 each of assessee co. at par PB 79
5. Company Master Details PB 139

Details regarding M/s Sparrow Marketing Pvt. Ltd.

1. Share Application Form dated 1-12-2000 applying for 90,000 equity shares
of Rs.10 each PB 63,67
2. Extract of Board Resolution PB 64,68
3. Acknowledgement of ITR for A.Y. 2004-05 PB 65,71
4. Affidavit of director certifying that company had applied and allotted 90,000
equity shares of Rs.10 each of assessee co. at par PB 69-70
5. Company Master Details PB 140

Details regarding M/s Particular Manage Finlease (India) Pvt. Ltd.

1. Share Application Form dated 13-11-2000 applying for 50,000 equity
shares of Rs.10 each PB 72,75
2. Extract of Board Resolution PB 73,76
3. Acknowledgement of ITR for A.Y. 2004-05 PB 74,80
4. Affidavit of director certifying that company had applied and allotted 50,000
equity shares of Rs.10 each of assessee co. at par PB 77-78
5. Company Master Details PB 141, 149

Details regarding M/s Transpan Financial Services Ltd.

1. Share Application Form applying for 50,000 equity shares of Rs.10 each PB 81, 84
2. Extract of Board Resolution PB 82,85
3. Acknowledgement of ITR for A.Y. 2004-05 PB 83, 88
4. Affidavit of director certifying that company had applied and allotted 50,000
equity shares of Rs.10 each of assessee co. at par PB 86-87
5. Company Master Details PB 142

Details regarding M/s Right Choice Construction Pvt. Ltd.

1. Share Application Form dated 01-12-2000 for 90,000 equity shares of Rs10
each PB 89, 92
2. Extract of Board Resolution signed on 01-12-2000 resolving that Co. shall
apply for 90,000 equity shares of Rs.10 each PB 90, 93
3. Acknowledgement of ITR for A.Y. 2004-05 PB 91,96
4. Affidavit of director certifying that company had applied and allotted 90,000
equity shares of Rs. 0 each of assessee co. at par PB 94-95

Details regarding M/s Shree Dinanath Luhariwala Spinning Mills Pvt. Ltd.

1. Share Application Form dated 13-12-2000 for 60,000 equity shares of Rs.10
each PB 97,100
2. Extract of Board Resolution signed on 13-12-2000 resolving that Co. shall
apply for 60,000 equity shares of Rs.10 each PB 98,101
3. Acknowledgement of ITR for A.Y. 2003-04 PB 99, 104
4. Affidavit of director certifying that company had applied and allotted 60,000
equity shares of Rs.10 each of assessee co. at par PB 102-103
5. Company Master Details PB 143

Details regarding M/s New Generation Finvest Pvt. Ltd.

1. Share Application Form dated 30-12-2000 for 90,000 equity shares ofRs.10 each PB 105,108
2. Extract of Board Resolution signed on 13-12-2000 resolving that Co. shall apply for 90,000 equity shares ofRs.10 each PB 106,109
3. Acknowledgement of ITR for A.Y. 2004-05 PB 107,112
4. Affidavit of director certifying that company had applied and allotted 90,000 equity shares ofRs.10 each of assessec co. at par PB 110-111
5. Company Master Details PB 144

Details regarding M/s Performance Trading and Investments Pvt. Ltd.

1. Share Application Form dated 13-11-2000 for 70,000 equity shares ofRs.10 each PB 113,116
2. Extract of Board Resolution signed on 13-11-2000 resolving that Co. shall apply for 70,000 equity shares ofRs.10 each PB 114,117
3. Acknowledgement of ITR for A.Y. 2004-05 PB 112,115,120
4. Affidavit of director certifying that company had applied and allotted 70,000 equity shares ofRs.10 each of assessee co. at par PB 118-119
5. Company Master Details PB 145

Details regarding M/s Rahul Finlease Pvt. Ltd.

1. Share Application Form dated 23-11-2000 for 80,000 equity shares ofRs.10 each PB 121
2. Extract of Board Resolution signed on 23-11-2000 resolving that Co. shall apply for 80,000 equity shares ofRs.10 each PB 122,
3. Acknowledgement of ITR for A.Y. 2004-05 PB 123
4. Affidavit of director certifying that company had applied and allotted 90,000 equity shares ofRs.10 each of assessee co. at par PB 124-125
5. Company Master Details PB 147

Details regarding M/s Royal Credits Pvt. Ltd.

1. Share Application Form dated 22-11-2000 for 80,000 equity shares ofRs.10 each PB 126
2. Extract of Board Resolution signed on 22-11-2000 resolving that Co. shall apply for 80,000 equity shares ofRs.10 each PB 127
3. Affidavit of director certifying that company had applied and allotted 80,000 equity shares of Rs. 0 each of assessee co. at par PB 128-129
4. Company Master Details PB 146

Details regarding M/s Royal Finvest Pvt. Ltd.

1. Company Master Details PB 148

Details regarding M/s Sober Associates Ltd.

1. Company Master Details PB 148

12. A perusal of the above demonstrates that the assessee has furnished before the AO evidences to establish the identity of the persons who either invested in share capital or granted a loan. In fact some of the loans were repaid. On the other hand the AO has not conducted any investigation nor did he have any of the material gathered by the Investigation Wing based on

which the addition can be made. He merely relied on a report of the Investigation Wing.

13. The legal position enunciated by the Jurisdictional High Court is as follows.

a) In the case of CIT vs. Gangeshwari Metal P.Ltd. in ITA no.597/2012 judgement dt. 21.1.2013, the Hon'ble High Court after considering the decisions in the case of Nova Promoters and Finlease Pvt.Ltd. 342 ITR 169 and judgement in the case of CIT vs. Lovely Exports 319 ITR (Sat.5)(S.C.) held as follows.

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

“Investigation made by the Investigation Wing of the department clearly showed that this was nothing but a sham transaction of accommodation entry. The assessee was asked to explain as to why the said amount of Rs.1,11,50,000/- may not be added to its income. In response, the assessee has submitted that there is no such credit in the books of the assessee. Rather, the assessee company has received the share application money for allotment of its share. It was stated that the actual amount received was Rs.55,50,000/- and not Rs.1,11,50,000/- as mentioned in the notice. The assessee has furnished details of such receipts and the contention of the assessee in respect of the amount is found correct. As such the unexplained amount is to be taken at Rs.55,50,000/-. The assessee has further tries to explain the source of this amount of Rs.55,50,000/- by furnishing copies of share application money, balance sheet, etc. of the parties mentioned above and asserted that the question of addition in the income of the assessee does not arise. This explanation of the assessee has been duly considered and found not acceptable. This entry remains unexplained in the hands of the assessee as has been arrived by the Investigation wing of the department. As such entries of Rs.55,50,000/- received by the assessee are treated as an unexplained cash credit in the hands

of the assessee and added to its income. Since I am satisfied that the assessee has furnished inaccurate particulars of its income, penalty proceedings under Section 271(1)(c) are being initiated separately.”

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

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

The case on hand clearly falls in the category where there is lack of enquiry on the part of the A.O. as in the case of Gangeshwari Metals (supra).

b) In the case of Finlease Pvt.Ltd. 342 ITR 169 (supra) in ITA 232/2012 judgement dt. 22.11.2012 at para 6 to 8, it is held as follows.

“6. This Court has considered the submissions of the parties. In this case the discussion by the Commissioner of Income Tax (Appeals) would reveal that the assessee has filed documents including certified copies issued by the ROC in relation to the share application, affidavits fo the directors, form 2 filed with the ROC by such applicants confirmations by the applicant for company’s shares, certificates by auditors etc. Unfortunately, the Assessing Officer chose to base himself merely on the general inference to be drawn from the reading of the investigation report and the statement of Mr.Mahes Garg. To elevate the inference which can be drawn on the basis of reading of such material into judicial conclusions would be improper, more so when the assessee produced material. The least that the Assessing Officer ought to have done was to enquire into the matter by, if necessary, invoking his powers under Section 131 summoning the share applicants or directors. No effort was made in that regard. In the absence of any such finding that the material disclosed was untrustworthy or lacked credibility the Assessing Officer merely concluded on the basis of enquiry report, which collected certain facts and the statements of Mr.Mahesh Garg that the income sought to be added fell within the description of S.68 of the Income Tax Act, 1961.

7. Having regard to the entirety of facts and circumstances, the Court is satisfied that the finding of the Tribunal in this case accords with the ratio of the decision of the Supreme Court in Lovely Exports (supra).

8. *The decision in this case is based on the peculiar facts which attract the ratio of Lovely Exports (supra). Where the assessee adduces evidence in support of the share application monies, it is open to the Assessing Officer to examine it and reject it on tenable grounds. In case he wishes to rely on the report of the investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between the assessee and the alleged hawala operators, such a link was shown to be present in the case of Nova Promoters & Finlease (P) Ltd. (supra) relied upon by the revenue. We are therefore not to be understood to convey that in all cases of share capital added under Section 68, the ratio of Lovely Exports (supra) is attracted, irrespective of the facts, evidence and material.”*

14. Thus a clear distinction has been made out in cases where the AO has conducted certain investigations and in cases where the AO merely rejected the evidences filed by the assessee and made an addition based on presumptions.

15. The Ld.CIT(A) has in his order observed that -

(1) that the AO during the course of original assessment proceedings made direct enquiries with the creditors and share applicants and accepted the same as genuine. Thus the existence cannot be doubted.

(2) confirmations were filed both before the AO and the CIT(A) in support of the genuineness and creditworthiness of the creditors.

(3) The AO has neither discussed in the assessment order nor provided to the assessee, copies of any statement of any person or other material on the basis of which it was held that the said investment companies were in the business of providing accommodation entries.

(4) The AO has made additions by relying upon the information provided by the Investigation Wing which appears to be based on some statement of entry operator which is never brought on record.

(5) The AO has not verified the facts contained in this so called statement, nor the assessee was provided with an opportunity of cross examination. The AO has not done any independent investigation.

(6) During the course of reassessment proceedings the AO has called for information from the banks of the said investment companies u/s 133(6) of the Act and the claims of the assessee were duly verified.

(7) The AO has not given the basis on which he has come to a conclusion that the said investment companies are in fact paper entities, floated for the purpose of arranging accommodation entries.

(8) No details of the investigation done by the Investigation Wing were brought on record.

None of these factual findings of the Ld.CIT(A) were contradicted by the Ld.D.R.

16. The Ld.CIT(A) at page 44 concluded as follows.

“ In the light of the above discussion, I am inclined to agree with the arguments and evidences provided by the appellant to substantiate that the transaction regarding share application money and loan received by it were genuine transactions and the same were not accommodation entries. I also do not find any evidence collected by the AO which could prove otherwise. Accordingly, the AO was not justified in treating the amount of share application money and loan received by the appellant as its undisclosed income.

In view of our aforesaid discussion, I delete the addition of Rs.1,35,00,000/- made by the AO u/s 68 of the Act.

These grounds of appeal accordingly stands allowed.”

16.1. We find no infirmity in this order of the Ld.CIT(A) as on facts there is no enquiry whatsoever by the AO and as the additions are not based on any material or evidence. The other ground i.e. Commission is a consequential addition which is also deleted. Judgements relied by both the parties were based on the peculiar facts of each case and hence we do not discuss them separately. In view of the above discussion we uphold the order of the Ld.CIT(A) and dismiss the grounds of the revenue.

17. In the result Revenue's appeal is dismissed and the C.O. of the assessee is allowed.

Order pronounced in the Open Court on 22nd October, 2014.

Sd/-

(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-

(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 22nd October, 2014

*manga

Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar