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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA.No.4183/Del./2019
Assessment Year 2010-2011

M/s. Sungrow Impex Private Limited, Plot No.21, G/F, DDA Site, Shanker Road, New Rajinder Nagar, New Delhi – 110 005. PAN AAMCS3769D	vs.	The Income Tax Officer, Ward – 24 (3), New Delhi – 110 001.
(Appellant)		(Respondent)

For Assessee :	Shri P.C. Yadav, Advocate
For Revenue :	Shri Prakash Dubey, Sr. D.R.

Date of Hearing :	16.03.2021
Date of Pronouncement :	19.03.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-8, New Delhi, Dated 01.04.2019, for the A.Y. 2010-2011, challenging the reopening of the assessment under section 147/148 of the I.T. Act, 1961, addition of Rs.95 lakhs as share application

money under section 68 of the I.T. Act, 1961 and addition of Rs.1,90,000/- on account of commission paid.

2. We have heard the Learned Representative of both the parties and perused the material available on record.

3. Briefly the facts of the case are that assessee company filed its return of income on 25.09.2010 declaring NIL income, which was processed under section 143(1) of the I.T. Act, 1961. Subsequently, an information was received from CIT, Central-2, Delhi, Dated 15.03.2012. The information stated that Shri Aseem Kumar Gupta, C.A. had provided accommodation entries to several beneficiaries after taking unaccounted cash from the beneficiaries which was routed through different entities by layering of accounts. All these entities were controlled by Shri Aseem Kumar Gupta who has stated on oath during search proceedings as well as during assessment proceedings that cash and other unexplained deposits in the bank accounts controlled by him belong to the beneficiaries and should be

taxed in their hands. In his statement on oath he has specifically provided the names of such entities used to provide accommodation entries and as per information assessee-company has received the following amounts.

Accommodation entry received (Rs.)	Mode	Date	Bank	Entry providing entity.
20,00,000	RTGS	04/08/2009	Corp. Bank, CP	Moderate Credit Corp Ltd.
30,00,000	RTGS	08/08/2009	Corp. Bank, CP	Moderate Credit Corp Ltd.
30,00,000	RTGS	10/08/2009	Corp. Bank, CP	Moderate Credit Corp Ltd.
15,00,000	RTGS	10/08/2009	Jammu & Kashmir Bank Ltd.,	Moderate Credit Corp Ltd.

3.1. The A.O. after going through the ITR of the assessee found that share capital and share premium of the assessee has increased by Rs.95 lacs in assessment year under appeal. The A.O. reopened the assessment under section 147 of the Income Tax Act, 1961 and issued notice under section 148, in response to which, assessee filed the return of income declaring NIL income. The A.O. noted that assessee has received Rs.95 lacs from Modern Credit Corp

Ltd., controlled by Shri Aseem Kumar Gupta. The assessee was, therefore, requested to produce the Director of the Investor company. The assessee filed reply before A.O. explaining therein that the Investor company has sufficient share capital and reserves to make investment in assessee company and amounts received through banking channel and have been reported to Register of Companies also. The assessee has disclosed all the facts in the return of income and Director of the Investor company may be summoned for verification of share application money. The A.O, however, did not accept the contention of assessee and by applying Section 68 of the Income Tax Act, 1961, made addition of Rs.95 lacs. The A.O. also made addition of Rs.1,90,000/- on account of commission paid for arranging the accommodation entry.

3.2. The assessee challenged the reopening of the assessment as well as additions on merits before the Ld. CIT(A). However, appeal of assessee has been dismissed.

4. The Learned Counsel for the Assessee referred to PB-66 which is reasons for reopening of the assessment and submitted that the reasons merely show that statement of Shri Aseem Kumar Gupta was recorded during search in his case in which he has explained that he controlled many companies and provided accommodation entries. The A.O. believed that Investor company has given accommodation entry of Rs.50 lacs. The A.O. further on going through the income tax return found that assessee has received share capital and a premium of Rs.95 lacs from the Investor companies in assessment year under appeal. He has, therefore, submitted that A.O. was recorded wrong and incorrect facts in the reasons recorded for reopening of the assessment. He has referred to PB 1 to 24 which is the written submissions filed before the Ld. CIT(A), in which, the assessee explained that Shri Aseem Kumar Gupta has filed a retraction statement with ACIT, Central Circle-9, vide his letter Dated 25.12.2011, copy of which is filed in which Shri Aseem Kumar Gupta retracted from his earlier statement recorded during the course of search in his case

and explained that his statement has been recorded under due influence and coercion. He has, therefore, withdrawn from his statement with regard to entries provided to the third parties routed through the bank accounts of third parties. Learned Counsel for the Assessee submitted that the A.O. received the information from CIT, Central-2, Delhi on 15.03.2012, but, the A.O. recorded the reasons for reopening of assessment only on 17.03.2017 i.e., after considerable period of 05 years. In the meantime, even before recording the reasons for reopening of the assessment and information provided by the CIT, Central-2, Delhi, Shri Aseem Kumar Gupta has retracted from his statement vide his letter Dated 25.12.2011, therefore, the statement referred to by the A.O. of Shri Aseem Kumar Gupta in the reasons recorded for reopening of assessment is irrelevant and cannot be considered as having any evidentiary value against the assessee so as to initiate the reassessment proceedings against the assessee. He has referred to PB-32 which is letter filed by the assessee before A.O. in respect of notice under section 148 of the Income

Tax Act, 1961 in which assessee has prayed the A.O. to summon the Director of the Investor company under section 131 of the Income Tax Act, but, the A.O. did not summon the creditor to verify the transaction. PB-33 is another letter filed before A.O. in response to notice under section 148 of the Income Tax Act, 1961, in which assessee explained that it has filed copy of the balance sheet, copy of the income tax return, confirmation, share application form, memorandum of association, bank statements master data and PAN details of the Investor before the A.O. It was also explained that Investor company is registered as non-banking Finance company registered with Reserve Bank of India. He has submitted that no tangible material was found during the course of search in the case of Shri Aseem Kumar Gupta as to how he was controlling the Investor company. No tangible material is also referred to in the reasons recorded for reopening of the assessment as to how Shri Aseem Kumar Gupta had control over the Investor company. He has admitted that Addl. CIT has improved the reasons recorded by the A.O. by mentioning that assessee has given cash in

lieu of the cheque taken despite A.O. has mentioned in the reasons the mode of payment by the Investor company to be through RTGS. Learned Counsel for the Assessee, therefore, submitted that A.O. has recorded wrong and incorrect facts in the reasons recorded for reopening of assessment and Addl. CIT cannot improve the reasons recorded by the A.O. Thus, there is total non-application of mind on the part of the A.O. to record reasons for reopening of the assessment. The Pr. CIT has also granted approval under section 151 of the Income Tax Act, 1961 in a mechanical manner on 21.03.2017 [PB 68] in which he has merely mentioned "approved as per proforma". He has submitted that even no such proforma has been prepared by the A.O. or by Addl. CIT and whatever copies have been supplied to the assessee is placed at Pages 66 to 68 of the paper book. He has, therefore, submitted that such approval is bad in law and would show that invalid approval have been granted and as such, reopening of the assessment is bad in law. He has relied upon Judgment of Hon'ble Delhi High Court in the case of United Electrical Company Private limited 258 ITR

317 (Del.), CIT vs., Goyanka Limes 237 Taxman 378 [SC] and CIT vs., NC Cables Ltd., [2017] 98 CCH 18 [Del.] [HC]. The Learned Counsel for the Assessee, therefore, submitted that there is a total non-application of mind by the A.O. while recording the reasons for reopening of assessment and there is also non-application of mind on the part of the Pr. CIT while granting approval to the reasons recorded. He has submitted that there is no reference to the retraction statement of Shri Aseem Kumar Gupta in the impugned order. It would also show that there is a total non-application of mind on the part of the A.O. and non-consideration of the relevant material at the time of forming the belief that income chargeable to tax has escape assessment. Learned Counsel for the Assessee on merits also submitted that Investor company is NBFC and assessee produced all documentary evidences before A.O. which have not been doubted by the A.O. The A.O. did not summon the Director of the Investor company, therefore, no fault could be found with the assessee and as such no addition could be made even on merits against the assessee.

5. On the other hand, the Ld. D.R. relied upon the Orders of the authorities below and submitted that even if A.O. recorded reasons on 17.03.2017 for initiation of reassessment proceedings, it is still within the period of limitation as prescribed under the Law. The Pr. CIT has granted approval as per law even if Addl. CIT has referred the reason to the Pr. CIT for his approval under section 151 of the I.T. Act, 1961. There is no illegality in granting sanction to the reasons filed before Pr. CIT who is the Competent Authority in the matter. It is, therefore, submitted that reopening of the assessment is justified in the matter which is based on information received from CIT, Central-2, Delhi. The Ld. D.R. on merits relied upon the Orders of the authorities below.

6. We have considered the rival submissions. It is well settled Law that the validity of the reassessment proceedings is to be determined with reference to the reasons recorded for reopening of the assessment. Learned Counsel for the Assessee filed copy of the reasons recorded

for reopening of the assessment at pages 66 and 67 of the PB. The same reads as under :

17/3/17	*1. Name & Address of the Assessee*	*M/s. Sungrow Impex P. Ltd., 13/194, Moti Nagar, New Delhi – 15.*
	2. PAN No.	*AAMCS3769D*
	3. Status	*Company*
	4. A.Y.	*2010-2011*

Reasons for issue of Notice U/s. 148 for reopening of assessment u/s 147 of I T Act 1961 for the A.Y. 2010-11 in the case of Sungrow Impex P Ltd.

1. *The* assessee *is a company filed its return of income on 25.09.2010 declaring Nil. The details of the directors of the assessee company obtained from records are hereunder :*

   (a) Mehul Singhal

   (b) Surinder Singh Chawla

   The return has been verified & digitally signed by Ms Mehul Singhal.

2. *Thereafter, the return was processed under 143(1) of the I.T. Act. However, the case was not selected for scrutiny. Subsequent to the processing of the return of income u/s. 143(1), information was received from CIT, Central-II, Delhi vide letter F.no.CIT(C)-II/2011-12/2068 dated 15.03.2012. The information states that Sh Aseem Kumar Gupta CA provided accommodation entries to several beneficiaries. The modus operandi was that he got unaccounted cash ot beneficiaries deposited in several accounts opened in name of proprietary concerns 8& other entities in name of employees or himself. It was then routed through different entities by layering of accounts. All these entities were controlled by him.*

Sh Aseem Gupta has stated on oath (during Search proceedings as well as during assessment proceedings) that cash & other unexplained deposits in the bank accounts controlled by him belong to beneficiaries and should be taxed in their Hands. In his statement on oath

he has specifically provided the names of such entities used to provide accommodation entries.

As per the information the assessee company received the following amounts :

Accommodation entry received (Rs.)	*Mode*	*Date*	*Bank*	*Entry providing entity.*
2000000	*RTGS*	*04/08/2009*	*Corp. Bank, CP*	*Moderate Credit Corp Ltd.*
3000000	*RTGS*	*08/08/2009*	*Corp. Bank, CP*	*Moderate Credit Corp Ltd.*
5000000				

3. *After going through the ITR of the assessee it is seen that it has received Share Capital & Premium of Rs.95 lakhs during the year. This amount is more than the amount reported by Sh Aseem Gupta and therefore this amount includes unaccounted cash of the assessee of Rs.50 lakhs routed through M/s Moderate Credit Corp Ltd (an entity controlled by Shri Aseem Gupta).*

4. *Since Shri Aseem Gupta was involved in providing accommodation entries and in his statement on oath he has admitted using Moderate Credit Corp Ltd to route accommodation entries, therefore the amount received by the assessee in form of advance/loan/share capital/share premium from the entities controlled by Sh Aseem Gupta is nothing but an accommodation entry received by routing its own unaccounted money.*
5. *Considering the above referred credible information, and analysis subsequent to the information, I have reason to believe that an amount at least of Rs.50,00,000 has escaped assessment in case the of M/s Sungrow Impex Pvt. Ltd. for the A.Y 2010-11 within the meaning of Section 147/148 of Income-tax Act, 1961.*
6. *Since more than 4 years of the relevant years have passed and the information received from the investigation wing is that transactions are in the nature of accommodation entries, are non disclosure of material facts pertaining to such transactions which has not been disclosed by the assessee in the return of income*

or during the assessment proceedings of this relevant year. Thus, this specific condition for reopening is hereby fully filled in the instant case as assessee has failed to disclose such material facts on its own earlier. The case is squarely covered under provisions of section 147 of income- tax Act, 1961.

Moreover, as the case pertains to a period beyond four years from the end of relevant assessment years at the time of issue of notice, necessary sanction has to be obtained from Pr. Chief Commissioner of Income Tax or Pr. Commissioner of Income Tax or Commissioner of Income Tax, in view of the amended provision of section 151 w.e.f 01.06.2015.. The necessary sanction in this regard is being obtained separately from Pr. Commissioner of Income Tax-08, Delhi before the issue of notice u/s. 148 for reopening of assessment under section 147 in the case of assessee company.

Sd/- --- ----
Assessing Officer.

6.1. The reasons are primarily based on an information received from CIT, Central-2, Dated 15.03.2012 which stated that Shri Aseem Kumar Gupta has provided accommodation entries and this fact has been admitted by him in his statement recorded on oath during the course of search in lieu of the cash received from the beneficiary company and he controlled the Investor companies. The A.O. as per information believed that assessee has received Rs.50 lacs as accommodation entry from Moderate Credit Corp. Ltd., The A.O, however, has mentioned in the reasons as well as assessment order that the assessee has in fact received Rs.95 lacs from the Investor company in assessment year under appeal which is also found mentioned in the ITR filed by the assessee prior to recording of the reasons. The A.O, therefore, recorded incorrect and wrong facts in the reasons recorded for reopening of the assessment as regards the amount escaped assessment. The assessee has disclosed all the primary facts in the return of income that it has received Rs.95 lacs in assessment year under appeal as share capital money from

the Investor company Moderate Credit Corp. Ltd. No tangible material is also referred in the reasons as to how the A.O. came to know that assessee has received accommodation entry of Rs.50 lacs only. No tangible material is also referred to as to how Shri Aseem Kumar Gupta has controlled the Investor company Moderate Credit Corp. Ltd. The A.O. also wrongly recorded income chargeable to tax in a sum of Rs.50 lacs has escaped assessment, despite A.O. has contradictorily mentioned in the reasons that assessee has received Rs.95 lacs from the Investor company and ultimately in the reassessment order A.O. made addition of Rs.95 lacs. Since the assessee has disclosed Rs.95 lacs as share capital money received from the Investor company in the return of income already filed prior to initiation of reassessment proceedings, therefore, there could not be any non-disclosure of material facts by the assessee to the Revenue Department. Such fact is also wrongly mentioned in the reasons recorded for reopening of the assessment. The assessee referred the reasons to the Addl. CIT who has tried to improve the reasons recorded by

the A.O. by mentioning that assessee has given cash in lieu of the cheque taken despite no such cheque have been taken by the assessee, as according to the reasons recorded, the assessment order and confirmation of the Investor company filed [PB-48], the assessee has received 4 amounts through RTGS from the Investor company in assessment year under appeal. Thus, the A.O. on this ground also recorded wrong facts in the reasons recorded for reopening of the assessment. It may also be noted here that assessee in the written submissions before Ld. CIT(A) has mentioned a specific fact that Shri Aseem Kumar Gupta has retracted from his statement by filing a letter Dated 25.12.2011 before ACIT, Central Circle-9, in which he has withdrawn the statements made with respect to third parties for providing accommodation entries to the beneficiaries. The authorities below have not mentioned any such fact in the impugned order as well as in the reasons recorded for reopening of the assessment. The entire case built-up by the A.O. was based on statement of Shri Aseem Kumar Gupta recorded by the Income Tax Department during search in

his case in which he has mentioned that he was controlling various companies and provided accommodation entries to various beneficiaries including the assessee. The CIT, Central-2 has provided information to the A.O. with respect to escapement of income of Rs.50 lacs only vide his letter Dated 15.03.2012. Prior to that Shri Aseem Kumar Gupta has already retracted from his statement and A.O. has recorded the reasons for reopening of the assessment on 17.03.2017. Therefore, there is a non-consideration of material fact by the A.O. while recording the reasons for reopening of assessment because the A.O. did not refer to the retraction statement of Shri Aseem Kumar Gupta in the reasons. Therefore, statement recorded on oath of Shri Aseem Kumar Gupta would have no evidentiary value against the assessee because he himself has retracted from his statement recorded on oath. Therefore, on the day of initiation of reassessment proceedings by recording reasons on 17.03.2017 the A.O. was not having any such statement of Shri Aseem Kumar Gupta available with him so as to believe that he controlled various companies to provide

accommodation entries to the assessee and others. Thus, there is no tangible material available with the A.O. on the date of recording of the reasons for reopening of the assessment and whatever reasons were recorded are found to be wrong, incorrect and non-existing. Thus, there is a total non-application of mind on the part of the A.O. while recording the reasons for reopening of the assessment. It may also be noted here that assessee since beginning have been explaining that Investor is a NBFC Company and registered with Reserve Bank of India. Therefore, there is no question of it being controlled by any accommodation provider like Shri Aseem Kumar Gupta for which also no evidence has been brought on record while recording the reasons for reopening of the assessment.

6.2. The ITAT, Delhi C-Bench, Delhi in the case of Shri Karan Khurana, Delhi vs., ITO, Ward-48(2), New Delhi in ITA.No.1783/Del./2019 vide Order Dated 17.03.2021 considering an identical issue of wrong, incorrect and non-existing reasons recorded for reopening of the assessment and was considered to be bad in Law because the A.O. did

not apply his mind to such information and quashed the reopening of the assessment by following various decisions of the Hon'ble Delhi High Court and Others and the Orders of the Tribunal. The findings of the Tribunal in Paras-12 to 21 are reproduced as under :

"12. Issue No. 2:

Whether AO recorded wrong, incorrect and non-existing reasons in the reasons recorded for reopening of the assessment and, as such, did not apply his mind?

12.1. Ld. Counsel for assessee submitted that AO has recorded wrong, incorrect and non-existing reasons in the reasons recorded for reopening of the assessment. AO has mentioned incorrect amount of Rs. 58,40,171/- in HSB Bank account at Noida. The AO, however, later on made a request to the Bank u/s 133(6) of the Act and called for the bank statement and found that actual amount deposited was of Rs. 30,74,006/-. The AO without applying his mind to the information received from Investigation Wing recorded wrong and incorrect facts in the reasons for reopening of the

assessment. The AO also recorded wrong facts in the reasons that no assessment has been completed u/s 143(3) of the Act prior to the reasons because in the reasons itself AO has mentioned that earlier also reassessment order has been passed u/s 147/148 read with section 143(3) and income was determined at Rs. 1,37,43,790/-. He has further submitted that AO has also recorded incorrectly the provisions of law for obtaining the sanction from the Pr. CIT by mentioning proviso to section 151(1) of the Act which does not exist in the Income Tax Act from 01.06.2015 after the amendment through Finance Act, 2015. He has, therefore, submitted that AO has recorded wrong, incorrect and non-existing facts in the reasons recorded for reopening of the assessment and has not applied his mind for forming the belief that income chargeable to tax has escaped assessment. In support of his contention he has relied upon following decisions:

- *Pr. CIT vs. Meenakshi Overseas Pvt. Ltd. 395 ITR 677 (Del.)*
- *Pr. CIT vs. RMG Polyvinyl (I) Ltd. 396 ITR 5 (Del.)*

- *Pr. CIT vs. G&G Pharma India Ltd. 384 ITR 147 (Del.)*
- *Signature Hotels P. Ltd. Vs. ITO 338 ITR 51 (Del.)*

13. Ld. Counsel for assessee submitted that it is, therefore, clear that reopening is based on incorrect facts. It is well settled law that if wrong facts and wrong reasons are recorded for reopening of the assessment, such assessment is bad in law. In support of his contention he has relied upon order of the ITAT Delhi Bench in the case of M/s Ganesh Ganga Investments P. Ltd. Vs. ITO in ITA No. 1579/Del/2019 dated 07.11.2019 only in paras 8.5 to 9 are reproduced as under :

> *"8.5. The statement of Shri Himanshu Verma is also filed on record which did not find mention if M/s. Shubh Propbuild Pvt. Ltd., as mentioned in the reasons belong to Shri Himanshu Verma. There is no investor exist in the name of M/s. Management Services Pvt. Ltd., and no addition in respect of the same company have been made by the A.O. The A.O, therefore, recorded incorrect facts in the reasons for*

reopening of the assessment. Thus the same cannot be approved under the Law. It is well settled Law if wrong facts and wrong reasons are recorded for reopening of the assessment, reopening of the assessment would be invalid and bad in Law. We rely upon Judgment of Hon'ble Punjab & Haryana High Court in the case of Atlas Cycle Industries 180 ITR 319 (P&H). It is well settled Law that note already filed with return disclosing nature of capital receipt and no other tangible material found, therefore, reopening of the assessment under section 148 was quashed. We rely upon Judgment of Hon'ble Delhi High Court in the case of CIT vs., Atul Kumar Swami [2014] 362 ITR 693 (Del.) and Judgment of Hon'ble Allahabad High Court in the case of Kanpur Texel P. Ltd., 406 ITR 353 (Alld.). Similarly, in the case of CIT vs., Vardhaman Industries [2014] 363 ITR 625 (Raj.), the Hon'ble Rajasthan High Court has held that "reasons must be based on new and tangible materials. Notice

based on documents already on record, 148 not valid." In the instant case under appeal, the A.O. has reproduced the information received from Investigation Wing and reproduced the same in the reasons recorded under section 148 of the I.T. Act. This information shows that assessee has received the amount of credit from 06 parties, but, one of the party i.e., M/s. Management Services Pvt. Ltd., do not exist and that M/s. Shubh Propbuild Pvt. Ltd., do not belong to Shri Himanshu Verma. It, therefore, appears that A.O. has not gone through the details of the information and has not even applied his mind and merely concluded that he has reason to believe that income chargeable to tax has escaped assessment. In the reasons A.O. has recorded that assessee has received accommodation entry of Rs.2.45 crores, but, ultimately made an addition of Rs.11.05 crores without bringing any material against the assessee. The reasons to believe are, therefore, not in fact reasons, but, only conclusion of

the A.O. In the case of Meenakshi Overseas Pvt. Ltd., (supra), the A.O. in the reasons has even mentioned that he has gone through the information received which is lacking in the present case. The A.O. being a quasi-judicial authority is expected to arrive at subjective satisfaction independently on his own. The A.O. however, merely repeated the report of the Investigation Wing in the reasons and formed his belief that income chargeable to tax has escaped assessment without arriving at his satisfaction. Thus, there is no independent application of mind by the A.O. to the report of Investigation Wing to form the basis for recording the reasons. The reasons recorded by the A.O. are also incorrect as noted above. The reasons failed to demonstrate the link between the alleged tangible material and the formation of reasons to believe that income chargeable to tax has escaped assessment. The decisions relied upon by the Learned Counsel for the Assessee in the cases of Pr. Commissioner of Income

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

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

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

9. In the result, appeal of Assessee allowed."

14. In support of the same proposition, he has also relied upon order of the ITAT Delhi Bench in the case of M/s Key Components (P) Ltd. vs. ITO ITA No. 366/Del/2016 dated 12.02.2019 in which the reassessment proceedings have been quashed because the reopening was based on incorrect facts. The findings of Tribunal in para 6.3 to 7 are reproduced as under:

"6.3 Considering the above discussion, it is clear that there is a total non-application of mind on the part of the AO while recording the reasons for reopening of the assessment. He has recorded incorrect amount which escaped assessment. His conclusion was merely based on observations and information received from DIT(Inv.), New Delhi, which is not brought on record and his conclusion is merely

based on doubts because he was not sure whether transaction in question is genuine or not. Therefore, the decisions relied upon by the Ld. Counsel for the assessee squarely apply to the facts and circumstances of the case. The decisions relied upon by the Ld. DR would not support the case of the Revenue. Since, there is a total lack of mind while recording the reasons for reopening of the assessment, therefore, assumption of jurisdiction under section 147/148 of the I.T. Act, 1961, is bad and illegal. The AO was not justified in assuming jurisdiction under section 147/148 of the I.T. Act, 1961. We, therefore, hold that reopening of the assessment in the matter is bad in law and illegal, as such, same cannot be sustained in law. We, accordingly, set aside the orders of the authorities below and quash the reopening of the assessment. Resultantly, all additions stand deleted."

14.1 Ld. Counsel for assessee in support of the above contention also relied upon following decisions:

1. *Shamshad Khan vs. ACIT 395 ITR 265 (Del.)*
2. *Pr. CIT vs. M/s SNG Developers Ltd. 404 ITR 312 (Del.).*
3. *CIT vs. Atlas Cycle Industries 180 ITR 319(P&H)*
4. *Siemens Information System Ltd. vs. ACIT 293 ITR 548 (Bom.).*

15. On the other hand, Ld. DR relied upon the orders of the authorities below and submitted that since the assessee did not disclose bank account so AO applied his mind to the information received from Investigation Wing. Exact amount cannot be determined at the time of initiation of reassessment proceedings. Prima facie opinion to be formed at the stage of initiation of reassessment proceedings and that sufficiency of the reasons is not relevant for reopening of the assessment and relied upon judgment of the Supreme Court in the case of Raymond Woolen Mills Ltd. vs. ITO 236 ITR 34.

16. We have considered the rival submission. Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Atlas Cycle Industries 180 ITR 319 held as under:

> *"Held, (i) that the Tribunal was right in cancelling the reassessment as both the grounds on which the reassessment notice was issued were not found to exist, and, therefore, the Income-tax Officer did not get jurisdiction to make the reassessment."*

17. Hon'ble Delhi High Court in the case of Pr. CIT Vs. SNG Developers Ltd., [2018] 404 ITR 312 (Del.) held as under:

> *"Held, dismissing the appeal, that the reasons recorded by the Assessing Officer for reopening the assessment under section 147, issuing a notice under section 148 did not meet the statutory conditions. As already held by the Appellate Tribunal, there was a repetition of at least five accommodation entries and the total amount constituting the so-called accommodation entries would therefore, not work out*

to Rs.95,65,510. It was unacceptable that the Assessing Officer persisted with his "belief" that the amount had escaped assessment not only at the stage of rejecting the assessee's objections but also in the reassessment proceedings, where he proceeded to add the entire amount to the income of the assessee. Therefore there was non-application of mind on the part of the Assessing Officer. The Appellate Tribunal was justified in confirming the order of the Commissioner (Appeals) and holding that the reopening of the assessment was bad in law."

18. Hon'ble Delhi High Court in the case of Shamshad Khan Vs. ACIT [2017] 395 ITR 265 (Del.) held as under:

"Held, allowing the petition, that the form for recording the reasons for initiating the proceedings under section 148 of the Act for obtaining approval of the Commissioner itself proceeded on the erroneous basis that the quantum of income which had escaped assessment was Rs.28,75,000 whereas the assessee

had filed returns showing income of merely Rs.20,56,145 and it was on this basis that the Additional Commissioner and the Commissioner granted their approval for reopening the assessment. Even though the assessee highlighted this fundamental error at the initiation of the case by stating that his income was mentioned as Rs.20,56,145 instead of Rs.69,71,191, this was summarily rejected stating that it was a clerical mistake and that the latter figure would be treated as his income. If the correct income i.e. Rs.69,71,191 was put before the Commissioner at the time of seeking his approval, he might have taken a different view. There was nothing on record to show that the clerical mistake of substituting Rs.20,56,145 for Rs.69,71,191 was ever brought to the notice of the Commissioner either before or after approval or sanction under section 151(1) of the Act. The initiation of the case for reopening of the assessment was erroneous and without application of mind especially since the Assessing Officer had not examined the return filed,

which would have revealed that the assessee had filed regular returns, had sufficient opening balance in his account and the withdrawals therefrom substantiated the donation made. Therefore, the reopening of the assessment was unsustainable in law and the notice issued under section 147 of the Act was to be quashed."

19. Hon'ble Bombay High Court in the case of Siemens Information Systems Ltd. Vs. ACIT & Others [2007] 293 ITR 548 (Bom.) held as under:

"The petitioner had several EOU/STP units engaged in the business of export of software. In response to the notice for reopening the assessment for the assessment year 1999-2000, the petitioner, objecting to the issuance of the notice, stated that the reasons furnished by the authority had quoted the provisions of section 10A as amended by the Finance Act, 2000, with effect from the assessment year 2001-02 and as such could not have been made applicable to the assessment year 1999-2000 and the notice had been issued under the

mistaken belief about the correct position of law. However, opportunity to show cause was given to the petitioner as to why the loss claimed should not be disallowed to be carried forward. On a writ petition :

Held, *allowing the petition, (i) that it would be clear from the reasons given that the authority proceeded on the presumption that the law applicable was the law after the amendment and not the law in respect of which the petitioner had filed the return for the year 1999-2000. This by itself clearly demonstrated that there was total non-application of mind on the part of the authority and consequently, the notice based on that reason would amount to non-application of mind.*

(ii) That the income derived by the assessee from an industrial undertaking to which section 10A applies could not be included in the total income of the assessee. Therefore, the petitioner was right in filing the return by excluding the income in terms of section 10A."

19.1. The crux of the above judgments and the judgment of the Tribunal relied on the above had been that in case, incorrect, wrong and non-existing reasons are recorded by the AO for reopening of the assessment and that AO failed to verify the information received from Investigation Wing, the reopening of the assessment would be unjustified and is liable to be quashed.

19.2. In the present case, the AO recorded wrong facts on many count in the reasons recorded for reopening of the assessment i.e. AO recorded incorrect amount of Rs. 58,40,171/- credited in HSBC account, Noida despite he has admitted in the assessment order that it was Rs. 30,74,006/-. The AO in the reasons also recorded incorrect fact that no assessment has been completed in this case u/s 143(3) but in the reason itself AO recorded that earlier reassessment has been done u/s 147/148 read with section 143(3) of the Act. The AO also incorrectly recorded that sanction for reopening of assessment is required under proviso to section 151(1) of the Act despite such proviso does not exist in the statute as it was amended in 2015. The AO, therefore, recorded wrong,

incorrect and non-existing reasons for reopening of the assessment. It makes clear that there is a total non-application of mind on the part of the AO while recording the reasons for reopening of the assessment. The AO has recorded incorrect amount which escaped assessment. The reasons failed to demonstrate the live link between the alleged tangible material and the formation of belief that income chargeable to tax has escaped assessment. The decisions relied upon Ld. Counsel for assessee in the cases of Pr. CIT Vs. Meenakshi Overseas (P) Ltd. 395 ITR 677 (Del.), Pr. CIT Vs. RMG Polyvinyl (I) Ltd., 396 ITR 5 (Del.), Pr. CIT vs. G&G Pharma India Ltd. [2016] 384 ITR 147 (Del.) and Signature Hotels P. Ltd. Vs. ITO (supra) squarely apply to the facts and circumstances of the case. Considering the facts and circumstances of the case, in the light of the above discussion, and decisions referred to in the order, we are of the view that reopening of the assessment is invalid and bad in law and that sanction/approval granted is also without any application of mind. Therefore, the reopening of the assessment cannot be sustained in law. We, accordingly, set

aside the orders of the authorities below and quash the reopening of the assessment. Resultantly all the additions stand deleted.

20. Since, we have quashed the reopening of the assessment, therefore, there is no need to decide the remaining grounds which are left with academic discussion only.

21. In the result, the appeal of assessee is allowed."

6.3. Considering the totality of the facts and circumstances of the case as discussed above in the light of Order of the Tribunal in the case of Shri Karan Khurana (supra), we are of the view that A.O. has recorded wrong, incorrect and non-existing reasons while reopening of the assessment and was not having any tangible material with him to form a belief that income chargeable to tax has escaped assessment. There is no live link established between the so-called material or the escapement of income so as to validly initiate reassessment proceedings against

the assessee. Thus, there is a total non-application of mind on the part of the A.O. to refer the reasons for reopening of assessment. Thus, such reopening of the assessment is invalid and bad in Law and is liable to be quashed. We, accordingly, set aside the orders of the authorities below and quash the reopening of assessment in the matter. Resultantly, all additions stands deleted.

6.4. It may also be noted here that the A.O. after recording the reasons for reopening of the assessment has referred the matter to the Addl. CIT for approval of the Pr. CIT under section 151 of the Income Tax Act, 1961. The Addl. CIT has referred the matter to Pr. CIT who has approved the reopening of the assessment in the matter vide Order Dated 21.03.2017 [PB 68] in which the Pr. CIT has mentioned "approved as per proforma". However, no such proforma is also placed on record. It would show that the Pr. CIT has not gone into the assessment record of the assessee or the return of income before approving the reasons recorded for reopening of assessment because the

assessee has already disclosed Rs.95 lacs received from the Investor company in 04 transactions in assessment year under appeal, but, the A.O. in the reasons recorded has mentioned that assessee has received an amount of Rs.50 lacs only in 02 transactions from the Investor Company. The Pr. CIT merely approved the reasons without saying anything. The Hon'ble Delhi High Court in the case of Pr. CIT vs., N.C. Cables Ltd., (supra) held in Para-11 as under :

> *"11. Section 151 of the Act clearly stipulates that the CIT (A), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT (A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the*

safeguard of an approval by a higher ranking officer. For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed."

6.5. The Hon'ble Madhya Pradesh High Court in the case of CIT vs., S. Goyanka Lime & Chemicals Ltd., [2015] 231 Taxman 73 [MP] [HC] held that *"mechanical way of recording satisfaction by Joint Commissioner which records sanction for issuing notice under section 147 of the I.T. Act, 1961, is clearly unsustainable"*. The Departmental SLP has been dismissed by the Hon'ble Supreme Court reported in 237 Taxman 378 [SC]. Considering the above facts, it is clear that Pr.CIT has recorded his satisfaction for reopening of the assessment in a most mechanical manner without considering even the assessment records or the return of income filed by assessee and his satisfaction appears to be in a ritualistic and formal rather than meaningful. Therefore, such approval under section 151 of the I.T. Act, 1961, is totally without application of mind and as such the satisfaction cannot be said to be valid in the eyes of Law.

The reassessment order, thus, passed is also invalid and bad in Law. In view of the above, we set aside the Orders of the authorities below on this ground and quash the reopening of the assessment. All additions stand deleted. In view of the above, since we have already quashed the reopening of the assessment, therefore, we do not propose to decide the additions on merits which is left with academic discussion only. In view of the above, appeal of the assessee is allowed.

7. In the result appeal of assessee allowed.

Order pronounced in the open Court.

Sd/-	Sd/-
(N.K. BILLAIYA)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 19th March, 2021
VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.