IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "G", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI L.P. SAHU, ACCOUNTANT MEMBER

	I.T.A. No. 2915/DEL/2017	
	A.Y. : 2010-11	
SURYA FINANCIAL SERVICES LTD. C/O SH. KAPIL GOEL, ADV. F-26/124, SECTOR-7, ROHINI, DELHI – 110 085 (PAN: AABCS1505Q)	VS.	PR. CIT-8, ROOM NO. 397, C.R. BUILDING, I.P. ESTATE, NEW DELHI
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Kapil Goel, Adv.

Department by : Sh S.S. Rana, CIT(DR)

ORDER

PER H.S. SIDHU : JM

This appeal has been filed by the assessee against impugned order dated 17/3/2017, passed by Ld. Pr. CIT- 8, New Delhi under section 263 of the Income Tax Act, 1961 (hereinafter referred as the Act), for the assessment year 2010-11. In the grounds of appeal, the assessee has raised the following grounds:-

"On assumption of jurisdiction

1. That on the facts and in the circumstances of the case and in law, since entire revision proceeding revolves around seized documents annexure A-13 (Page 38) and A-13(Page 15), which is the foundation of show cause notice dated 13.01.2017, which document is purportedly seized from S.K. Jain Group (search dated 14.09.2010 refer para 1 of the. impugned order), the year under consideration (AY 2010-11) falls u/s 153C, being six years preceding to AY 2013-14 (in AY 2013 - 14 as per paragraph 1 of the impugned order, the information was received with seized material by the AD). Therefore, reopening itself U/S 148 was bad since inception as section 153C covered the present period, so revision order passed u/s 263 on basis of invalid order u/s 148 is bad in law.

2. That on the facts and in the circumstances of the case and in law, as evident from show cause notice dated 13 01 2017 only reference is made annexure A-13 (Page - 38), A - 13 (Page- 15) being seized material gathered in the search of S.K. Jain Group, when compared with reasons recorded and supplied to the assessee (dated 17.10.2013), it will be clear that reasons never contained any reference to stated seized documents, which is itself sufficient to knock off, the revision proceedings as it is settled law that reasons cannot be improved and modified. Any deficiency in the reasons cannot be corrected CIT u/s. 263.

3. That on the facts and in the circumstances of the case and in law, Ld. CIT erred in initiating proceedings u/s. 263 which is invalid because there was no application of mind by AO while recording the reasons for initiating the proceedings u/s. 148 as enclosed herewith, therefore, once reasons recorded are invalid, consequential all proceedings, including order passed u/s. 147 under the revision become nullity rendering revision proceedings and revision order u/s. 263 invalid and unsustainable in law.

4. That on the facts and in the circumstances of the case and in law, Ld. CIT erred in passing impugned order u/s 263 on basis of reasons and grounds which are not forming part of Show Cause notice dated 13.01.2017, which is clearly proscribed and prohibited (refer paragraph 7.2, 8, 9, 11, 14;, 14.1, 15 of the impugned order, which are outside the purview of show cause notice dated 13.01.2017).

4.1. That on the facts and in the circumstances of the case and in law, Ld. CfT erred in passing impugned order u/s 263 without considering asseessee's reply dated 24.01.2017 and 02.02.2017, thus rendering the entire exercise a nullity.

5. That on the facts and in the circumstances of the case and in law, Ld. CIT erred in passing revision order u/s. 263

by simply setting aside the matter without himself making the due enquiries, which vitiates the entire exercise, as present case at best can be a case of inadequate enquiry but definitely not a case of no enquiry.

6. That on the facts and in the circumstances of the case and in law, Ld. CIT erred in passing revision order u/s. 263, subsequent to reopening proceedings U/S 148, on basis of seized material of SK. Jain Group, without confronting the assessee with the statement of SK Jain, much less cross examination of SK. Jain, on the purported seized material which is sufficient to knock off impugned revision proceedings being conducted in violation of Principle of Natural Justice (Audi Alteram Partem).

7. That on the facts and in the circumstances of the case and in law, Ld. CIT erred in passing revision order U/S 263, in blssful ignorance of fact that nil orders have been passed in the cases of the companies from whom Share Capital has been obtained.

8. That the appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the appeal."

2. The brief facts of the case are that original return of income in this case was filed on 14.9.2010 at the returned loss of Rs. 22,722/-. The notice u/s. 148 of the Income Tax Act, 1961 (hereinafter referred as the

Act) was issued on 18.10.2013 after recording the reasons. In response to the above statutory notice the assessee filed its reply vide its letter dated 29.4.2014 submitting that the original return filed may please be treated as return filed in response to the notice u/s. 148 of the Act and also requested to provide reasons recorded, which were duly provided to it. Thereafter a notice u/s. 142(1) of the Act was issued to the assessee. In response to the above statutory notice, the A.R. of the Assessee appeared from time to time and filed details as called fo During the year under consideration the assessee company has c aimed a loss of Rs. 22,722/- being Rs. 325/- as financial expense and Rs. 22,848/- as administrative expenses. Since the assessee during the year under consideration has not engaged in any business activity not it has started any business project/work, therefore, in accordance to the provisions of section 37 of the I.T. Act, the assessee is not entitled to claim expenditure on account of business activity. Therefore, the sum amount of Rs. 23,173/- is disallowed and added back to the total taxable income of the assessee and accordingly the AO assessed the income of the assessee at Rs. 450/- vide his order dated 30.06.2014 passed u/s. 147/143(3) of the I.T. Act, 1961.

3. Later on, Ld. Pr. CIT in his revisionary jurisdiction under section 263 from the examination of records before him, noted that though the assessment was reopened under section 148 on the allegation of accommodation entry taken from S.K. Jain group of concerns who were subjected to search on 14/9/2010 by the Investigation Wing, however,

the Assessing Officer had not examined the seized material in the form of cash book and books containing the details of cheques issued by such concerns seized from the premises of S.K. Jain during the course of search, which indicated accommodation entry pertaining to assessee also. He further observed that an appraisal report along with scanned copy of seized material sent by the Investigation Wing to all the Assessing Officers through their respective CITs, have neither been looked upon by the Assessing Officer nor has been examined by him during the course of reassessment proceedings. Accordingly, he issued a show cause notice under section 263, the contents of which have been incorporated by him at pages 2 and 3 of the impugned order wherein he has specifically brought out that the Assessing Officer has failed to consider the relevant seized material pertaining to the assessee-company, which was evident from 'Annexure A-13' back page 38 of the seized material, wherein there is a categorical mention of an amount of Rs.25 lacs was taken by the through cheque No.369817 dt. 18.3.2010 of Rs. 5 lacs; cheque no. 378628 dated 18.3.2010 of Rs. 10 lacs and cheque no. 029630 dated 18.3.2010 of Rs. 10 lacs 244595, dated 29/1/2009; and there was also a corresponding entry in the cash book on 18/3/2010 seized as per Annexure A-13/Page-15 shows that cash of Rs. 25 lacs was given by the same Goyal Sahab to SK Jain Group.

3.1 The Ld. Pr. CIT further observed that the relevant copies of the seized material relating to the assessee, were not only given to the assessee along with the show cause notice but was also confronted during the course of proceedings under section 263 of the Act. Assessee's AR in his submissions has stated that the AO on the basis of the information / documents available on record had made independent and proper enquiry. The AO directed the Assessee to furnish the desired information and the assessee had furnished all information that has been called for by him during the course of reassessment proceedings. Further the AO had made independent and proper enquiry and verification directly from the share applicants. Moreover, the AO had issued summons for personal appearance of the share applicants and had recorded their statement on oath. It was further stated that it would be incorrect to hold that the AO did not consider a particular seized material on record during the course of reassessment proceedings and any revision proceedings under section 263 in such case is unsustainable. In support, various judicial decisions were also referred and relied upon, which has been incorporated at page 4 (para 2) of the impugned order.

3.2 The Ld. Pr. CIT after considering the entire gamut of facts, material on record as well as the submissions made by the assessee, first of all noted that, many incriminating documents were found during the course of investigation and search & seizure action in the case of S.K. Jain group which was seized during the course of search by the Investigation Wing on 14/9/2010. He further noted that these seized papers clearly reveal

various accommodation entries provided by such companies to various beneficiaries. The appraisal report was forwarded by the Investigation Wing in the month of March, 2013 to the then CIT-III in hard copy and various other seized materials running into 1000 pages were scanned and soft copies of the relevant seized materials were sent to the Commissioners and then to the Assessing Officers. The relevant extract of certain seized documents has also been scanned by him including the one marked as "Annexure A-13 (back page 38)" pertaining to the accommodation entry relating to the assessee, which has been noted by him from the seized documents scanned at pages 7 & 8 of the impugned order. The relevant observation with regard to these seized material by the Pr. CIT, for the sake of ready reference, is reproduced hereunder:-

> "It is important to note that the assessee is also shown as beneficiary as evident from the scanned copy of the seized material namely Annexure number A-13 backpage-38 show ng that 03 cheque number 369817 dated 18.3.2010 for Rs. 5 Lakhs were issued by Zenith from Axis Bank in favour of Surya Financial Services Ltd, cheque no. 378628 dated 18.3.2010 for Rs. 10 lacs was issued by Shalini Holding From Axis Bank and cheque no. 029630 dated 18.3.2010 for Rs. 10 lacs by Apoorva from Axis Bank in favour of the assessee company. In other words, on 18.3.2010 total cheques of Rs. 25 lacs were issued by three companies as mentioned above in favour of the assessee company. All the three cheques

have been credited in the account of the assessee, therefore, authenticity of the seized pages cannot be doubted. On perusal of the cash book as on 18.3.2010 which has been scanned as page no. 15 of Annexure A-13 and reproduced as above, it was seen that cash of Rs. 25 lacs has been received from same Goyal Sahab on 18.3.2010 itself. This prima facie shows that the entry of Rs. 25 lacs was received against the payment of cash of Rs. 25 lakhs."

3.3 Ld. Pr. CIT further observed that similarly, in the Appraisal Report the year wise details of accommodation entries provided by SK Jain Group to various beneficiary companies was tabulated for the Charge of CIT-8 as mentioned at page no. 9 to 16 of the impugned order, which shows that the AO made the table on the basis of reopening the assessment as it clear from the reasons recorded for the issue of notice under section 148 of the Income Tax Act. As can be seen from the entry number 240 against the name of Surya Financial Services Private Limited amount of Rs. 25 is mentioned. In this case, even though the AO has considered the appraisal report, he did not examine any of the relevant seized material. Since, the entries in the seized material showed that the assessee was also one of the beneficiary of the accommodation entries give by the concerns of SK Jain and others, it cannot be stated that such seized material belonged to the assessee and therefore, there was no need to proceed under section 153C of the Income Tax Act. Ld. Pr. CIT further observed that in this case the AO merely tried to verify the

existence and the creditworthiness of the parties investing in the shares of the assessee company. They failed to make enquiries regarding the genuineness of the transaction – whether the cheque was issued in lieu of cash as was appearing in the seized material. It was further noted by the Ld. Pr. CIT that there is nothing on the record to show that the AO has ever confronted the assessee on such seized documents. Had the AO examined the seized material, there should have been some nothings either in the order sheet or in the questionnaire issued to the assessee by the AO or in the submission of the assessee before the AO. In this case, the seized material clearly indicate the cheques issued against the receipt of cash through some intermediaries and the details of cheque number, bank name, date, amount and the name of the issuing party clearly matches with the cheques credited in the bank account of the assessee.

3.4 On the aforesaid reasons and background, the Ld. Pr. CIT held that the Assessing Officer did not examine the relevant seized material despite the fact that entries in the seized material showed that assessee was also one of the beneficiaries of the accommodation entries given by the concerns of S.K. Jain group. The Assessing Officer was mainly trying to verify the existence of the parties, rather than to make enquiries regarding the genuineness of the transactions whether cheque was issued in lieu of cash or not as was appearing in the seized material. Lastly, he held that from the perusal of the case records of the assessee for the relevant assessment year, there is nothing on record to show that the

Assessing Officer has ever confronted the assessee on such seized documents and had the Assessing Officer examined the seized material, he should have made some noting either in the order sheet or in the questionnaire issued to the assessee or any kind of reference would have been made in the submissions made by the assessee before the Assessing Officer. Therefore, the decisions and the case laws relied upon by the assessee would not be applicable that the Assessing Officer had formed an opinion on the relevant seized material. Accordingly, he set aside the re-assessment order on the ground that the Assessing Officer has not made any proper verification/enquiries and, therefore, the said assessment order is deemed to be erroneous and insofar as prejudicial to the interest of the Revenue in terms of amended provisions inserted in section 263 by way of Explanation 2. Thus, the order of the Assessing Officer was set aside with the direction to examine the seized material and confront the assessee and if the Assessing Officer find that there is any nexus between the cash deposits and the cheques issued by the group companies of SK Jain, then the same may be taxed accordingly.

4. Before us the ld. counsel for the assessee, Shri Kapil Goel, Adv. has stated that since entire revision proceeding revolves around seized documents annexure A-13 (Page 38) and A-13(Page 15), which is the foundation of show cause notice dated 13.01.2017, which document is purportedly seized from S.K. Jain Group (search dated 14.09.2010 refer para 1 of the impugned order), the year under consideration (AY 2010-11) falls u/s 153C of the Act, being six years preceding to AY 2013-14 (in

AY 2013 - 14 as per paragraph 1 of the impugned order, the information was received with seized material by the AO). Therefore, reopening itself u/s 148 of the Act was bad since inception as section 153C of the Act covered the present period, so revision order passed u/s 263 on basis of invalid order u/s 148 of the Act is bad in law. He further stated that it is evident from show cause notice dated 13.01.2017 only reference is made annexure A-13 (Page - 38), A - 13 (Page- 15) being seized material gathered in the search of S.K. Jain Group, when compared with reasons recorded and supplied to the assessee (dated 17.10.2013), it will be clear that reasons never contained any reference to stated seized documents, which is itself sufficient to knock off, the revision proceedings as it is settled law that reasons cannot be improved and modified. Any deficiency in the reasons cannot be corrected by the Ld. CIT u/s. 263 of the Act. It was the further contention of he assessee's counsel that initiation of proceedings u/s. 263 of the Act is invalid because there was no application of mind by AO while recording the reasons for initiating the proceedings u/s. 148 of the Act, therefore, once reasons recorded are invalid, consequential all proceedings, including order passed u/s. 147 of the Act under the revision become nullity rendering revision proceedings and revision order u/s. 263 of the Act invalid and unsustainable in law. He further stated that the impugned order u/s 263 of the Act on basis of reasons and grounds which are not forming part of Show Cause notice dated 13.01.2017, which is clearly proscribed and prohibited (refer paragraph 7.2, 8, 9, 11, 14;, 14.1, 15 of the impugned order, which are

outside the purview of show cause notice dated 13.01.2017. He further stated that impugned order u/s 263 of the Act was passed without considering asseessee's reply dated 24.01.2017 and 02.02.2017, thus rendering the entire exercise a nullity. He further stated that Ld. CIT erred in passing revision order u/s. 263 of the Act by simply setting aside the matter without himself making the due enquiries, which vitiates the entire exercise, as present case at best can be a case of inadequate enquiry but definitely not a case of no enquiry. It was the further contention that revision order u/s. 263 of the Act is subsequent to reopening proceedings u/s. 148 of the Act, on basi of seized material of SK. Jain Group, without confronting the assessee with the statement of SK. Jain, much less cross examination of SK. Jain, on the purported seized material which is sufficient to knock off impugned revision proceedings being conducted in violation of Principle of Natural Justice (Audi Alteram Partem). He further stated that in the present case Ld. CIT under section 263 of the Act has simply set aside the matter to the AO without himself making the due and requisite and minimal inquiry. In support of his aforesaid contentions, Ld. Counsel of the assessee has relied upon the following case laws:-

i) Hon'ble Supreme Court of India decision in the case of Kwality Steel Reported at 395 ITR 1.

ii) Hon'ble Delhi High Court decisions in the case of Vinita Chaurasia reported at 394 ITR 758 and Raidco Khaitan reported at 83 taxmann.com 375

iii) *Hon'ble Supreme Court of India decision in the case of Andaman Timber Industries 281 CTR 241 and order dated 24.7.2001 in Civil Appeal No. 3685/1999 in the case of Sohna Builders vs. UOI*

iv) *Hon'ble Delhi High Court decision in the case of Best Infrastructure Ltd. 397 ITR 82 and Sabh Infrastructure Ltd reported in 398 ITR 198; G&G Pharma reported 384 ITR 147; Meenakshi Overseas 395 ITR 677; RMG Polyvinyl 396 ITR 5; Sarthak Securities 329 ITR 110 Signature Hotels 338 ITR 51 and SFIL 325 ITR 285.*

4.1 On the basis of the aforesaid discussions and precedents relied by the Ld. Counsel of the assessee, he requested to quash the impugned order passed under section 263 of the Act.

5. On the other hand, the Ld. CIT(DR), after explaining the entire facts and material on record, which has been discussed by the Pr. CIT in the impugned order, submitted that here in this case there is absolutely no dispute that the AO has not made any enquiry regarding the accommodation entry pertaining to the assessee specifically which was found during the course of search and investigation in SK Jain Group as highlighted by the Pr. CIT. Once adequate or proper enquiry has not been done, then in terms of Explanation 2 inserted in section 263 of the Act by the Finance Act, 2015, w.e.f. 1.6.2015, the assessement order is deemed to be erroneous in so far as it is prejudicial to the interest of Revenue. He further stated that the case of the assessee is squarely covered by the decision of the ITAT, 'G' Bench, passed in ITA No.

2158/Del/2017 (AY 2009-10) in the case of Surya Jyoti Software Pvt. Ltd. vd. Pr. CIT, because in both these cases the order u/s. 263 of the Act has been passed by the Ld. Pr. CIT-8, New Delhi; information was received from Investigation Wing that the assessee has received accommodation entries from Sh. SK Jain; assessments were reopened u/s. 147 of the Income Tax Act, 1961 on the basis of above information and assessment completed without making any addition on account of accommodation entry taken and the Ld. Pr. CIT's order u/s. 263 of the Act on account of the fact that the AO had not taken into consideration the material seized during search in the case of Sh. SK Jain He further stated that the present case is also covered by the decision of the Hon'ble Supreme Court of India in the case of Deniel Merchants Pvt. Ltd. vs. ITO (Appeal No. 2396/2017) dated 29.11.2017, wherein the Hon'ble Supreme Court of India has dismissed the SLPs in cases where AO did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had, after setting aside the order of the AO, simply directed the AO to carry thorough and detailed inquiry. Apart from that, he relied upon the following judgements:-

1. Malabar Industrial Co. Ltd. Vs CIT [2000] 109 243 ITR 83 (SC).

2. Rajmandir Estates (P.) Ltd. Vs PCIT [2016] 386 ITR 162

3. Rajmandir Estates (P.) Ltd. Vs PCIT [2017] 245 Taxman 127 (SC)

4. Shree Maniunathesware Packing Products & Camphor Works Vs CIT [1998] 96 231 ITR 53 (SC).

5.1 Regarding the issue of notice u/s. 143(2) of the Act, he relied upon the following case laws:-

CIT vs. Madhya Bharat Energy Corporation Ltd. (337 ITR 399) Delhi.

5.2 Regarding challenging the validity of reopening under section 147 by the assessee, on the ground that the proceedings should have been initiated under section 153C of the Act, he submitted that the Pr. CIT has dealt the issue in his ord r and so far as the contention that information from the third party or material recovered from other persons cannot be treated as tangible material for reopening the assessment, he relied upon the following judgments:-

1. *Yoqendrakumar Gupta Vs 1TO [2014] 227 Taxman 374 (SC)*

2. *Ankit Financial Services Ltd. Vs DCIT [2017]78 taxmann.com 58 (Guiarat)*

3. *PCIT Vs Paramount Communication (P.) Ltd. [2017-TIOL-253-SC-IT]*

4. *PCIT Vs Paramount Communication (P.) Ltd. [2017] 392 ITR 444 (Delhi)*

Thus, he strongly relied upon the order of the Ld. Pr. CIT.

6. We have heard the rival submissions, perused the relevant finding and observations appearing in the impugned order as well as the material referred to before us. We find that Ld. Pr. CIT in his revisionary jurisdiction under section 263 of the Act from the examination of records before him, noted that though the assessment was reopened under section 148 of the Act on the allegation of accommodation entry taken from S.K. Jain group of concerns who were subjected to search on 14/9/2010 by the Investigation Wing, however the Assessing Officer had not examined the seized material in the form of cash book and books containing the details of cheques issued by such concerns seized from the premises of S.K. Jain during the course of search, which indicated accommodation entry pertaining to assessee also. We further find that an appraisal report along with scanned copy of seized material sent by the Investigation Wing to all the Assessing Officers through their respective CITs, have neither been looked upon by the Assessing Officer nor has been examined by him during the course of reassessment proceedings. Accordingly, Ld. Pr. CIT issued a show cause notice under section 263 of the Act, the contents of which have been incorporated by him at pages 2 and 3 of the impugned order, wherein he has specifically brought out that the Assessing Officer has failed to consider the relevant seized material pertaining to the assessee-company, which was evident from 'Annexure A-13 back page 38 of the seized material, wherein there is a categorical

mention of an amount of Rs.25 lacs was taken by the through cheque No.369817 dt. 18.3.2010 of Rs. 5 lacs; cheque no. 378628 dated 18.3.2010 of Rs. 10 lacs and cheque no. 029630 dated 18.3.2010 of Rs. 10 lacs 244595, dated 29/1/2009; and there was also a corresponding entry in the cash book on 18/3/2010 seized as per Annexure A-13/Page-15 shows that cash of Rs. 25 lacs was given by the same Goyal Sahab to SK Jain Group. We note that the relevant copies of the seized material relating to the assessee, were not only given to the assessee along with the show cause notice but was also confronted during the course of proceedings under section 263 of the Act. Assessee's AR in his submissions has stated that the AO on the basis of the information / documents available on record had made independent and proper enquiry. The AO directed the Assessee to furnish the desired information and the assessee had furnished all information that has been called for by him during the course of reassessment proceedings. Further the AO had made independent and proper enquiry and verification directly from the share applicants. Moreover, the AO had issued summons for personal appearance of the share applicants and had recorded their statement on oath. It was further stated that it would be incorrect to hold that the AO did not consider a particular seized material on record during the course of reassessment proceedings and any revision proceedings under section 263 in such case is unsustainable. In support, various judicial decisions were also referred and relied upon, which has been incorporated at page 4 (para 2) of the impugned order. We find that Ld. Pr. CIT after

considering the entire gamut of facts, material on record as well as the submissions made by the assessee, first of all noted that, many incriminating documents were found during the course of investigation and search & seizure action in the case of S.K. Jain group which was seized during the course of search by the Investigation Wing on 14/9/2010. He further noted that these seized papers clearly reveal various accommodation entries provided by such companies to various beneficiaries. The appraisal report was forwarded by the Investigation Wing in the month of March, 2013 to the then CIT-I I in hard copy and various other seized materials running into 1000 pages were scanned and soft copies of the relevant seized materials were sent to the Commissioners and then to the Assessing Officers. The relevant extract of certain seized documents has also been scanned by him including the one marked as "Annexure A-13 (back page 38)" pertaining to the accommodation entry relating to the assessee, which has been noted by him from the seized documents scanned at pages 7 & 8 of the impugned order. The relevant observation with regard to these seized material by the Pr. CIT, for the sake of ready reference, is reproduced hereunder:-

> "It is important to note that the assessee is also shown as beneficiary as evident from the scanned copy of the seized material namely Annexure number A-13 backpage-38 showing that 03 cheque number 369817 dated 18.3.2010 for Rs. 5 Lakhs were issued by Zenith from Axis Bank in favour of

Surya Financial Services Ltd, cheque no. 378628 dated 18.3.2010 for Rs. 10 lacs was issued by Shalini Holding From Axis Bank and cheque no. 029630 dated 18.3.2010 for Rs. 10 lacs by Apoorva from Axis Bank in favour of the assessee company. In other words, on 18.3.2010 total cheques of Rs. 25 lacs were issued by three companies as mentioned above in favour of the assessee company. All the three cheques have been credited in the account of the assessee, therefore, authenticity of the seized pages cannot be doubted. On perusal of the cash book as on 18.3.2010 which has been scanned as page no. 15 of Annexure A-13 and reproduced as above, it was seen that cash of Rs. 25 lacs has been received from same Goyal Sahab on 18.3.2010 itself. This prima facie shows that the entry of Rs. 25 lacs was received against the payment of cash of Rs. 25 lakhs."

6.1 We further note that similarly, in the Appraisal Report the year wise details of accommodation entries provided by SK Jain Group to various beneficiary companies was tabulated for the Charge of CIT-8 as mentioned at page no. 9 to 16 of the impugned order, which shows that the AO made the table on the basis of reopening the assessment as it clear from the reasons recorded for the issue of notice under section 148 of the Income Tax Act. As can be seen from the entry number 240 against the name of Surya Financial Services Private Limited amount of Rs. 25 is mentioned. In this case, even though the AO has considered the appraisal

report, he did not examine any of the relevant seized material. Since, the entries in the seized material showed that the assessee was also one of the beneficiary of the accommodation entries give by the concerns of SK Jain and others, it cannot be stated that such seized material belonged to the assessee and therefore, there was no need to proceed under section 153C of the Income Tax Act. It was further observed that in this case the AO merely tried to verify the existence and the creditworthiness of the parties investing in the shares of the assessee company. They failed to make enquiries regarding the genuineness of the transaction – whether the cheque was issued in lieu of cash as was appearing in the seized material. It was further noted that there is nothing on the record to show that the AO has ever confronted the assessee on such seized documents. Had the AO examined the seized material, there should have been some nothings either in the order sheet or in the questionnaire issued to the assessee by the AO or in the submission of the assessee before the AO. In this case, the seized material clearly indicate the cheques issued against the receipt of cash through some intermediaries and the details of cheque number, bank name, date, amount and the name of the issuing party clearly matches with the cheques credited in the bank account of the assessee. Keeping in views of the facts and circumstances, we are of the considered opinion that Assessing Officer did not examine the relevant seized material despite the fact that entries in the seized material showed that assessee was also one of the beneficiaries of the accommodation entries given by the concerns of S.K. Jain group. The Assessing Officer

was mainly trying to verify the existence of the parties, rather than to make enquiries regarding the genuineness of the transactions whether cheque was issued in lieu of cash or not as was appearing in the seized material. From the perusal of the case records of the assessee for the relevant assessment year, there is nothing on record to show that the Assessing Officer has ever confronted the assessee on such seized documents and had the Assessing Officer examined the seized material, he should have made some noting either in the order sheet or in the questionnaire issued to the assessee or any kind of reference would have been made in the submissions made by the assessee before the Assessing Officer. Therefore, the decisions and the case laws relied upon by the assessee's counsel would not be applicable that the Assessing Officer had formed an opinion on the relevant seized material. Accordingly, Ld. Pr. CIT has rightly set aside the re-assessment order on the ground that the Assessing Officer has not made any proper verification/enquiries and, therefore, the said assessment order is deemed to be erroneous and insofar as p ejudicial to the interest of the Revenue in terms of amended provisions inserted in section 263 of the Act by way of Explanation 2. Thus, the order of the Assessing Officer was set aside with the direction to examine the seized material and confront the assessee and if the Assessing Officer find that there is any nexus between the cash deposits and the cheques issued by the group companies of SK Jain, then the same may be taxed accordingly.

6.2 Now coming to the one of the main contention raised by the ld. counsel of the assessee that the proceedings under section 147 of the Act was itself bad in law and therefore, proceedings u/s 263 of the Act could not have been invoked. The reasons given for this proposition is that, here in this case, material on the basis of which proceedings for reopening the assessment has been sought to be initiated u/s 147 of the Act has been found from the search conducted at the premises of third party and if material found from the premises of the searched person is being utilized, then in such a situation the law provides that proceedings should have been initiated under section 153C of the Act, which has not been done and, therefore, the entire proceedings under section 147 of the Act gets vitiated and is bad in law. In support of this proposition Ld. Counsel, has relied upon certain decisions, firstly on the point that validity of reassessment or assessment order can be challenged in the revisionary proceeding under section 263; and secondly, if any material has been found pertaining to the assessee in the case of person searched or covered u/s 153A of the Act, then only recourse was to initiate proceedings under section 153C of the Act and not under section 147 of the Act. At the outset, we do not find any quarrel to the proposition that the validity of assessment or reassessment cannot be challenged in the revisionary proceedings u/s 263, however, on the facts of the present case, the ratio laid down in such judgments would not be applicable at all, because here in this

case no document or material belonging to the assessee was found in the course of search proceedings in the case of S.K. Jain group, *albeit* assessee's name appears as one of the beneficiaries of accommodation entries in the books of account maintained by one of the concern of S.K. Jain group. The entries in the books of account of S.K. Jain group cannot be reckoned as any material or document belonging to the assessee so as to constitute document or asset seized or requisitioned in the case of person searched in terms of scope of section 153C of the Act. If certain documents or asset or books of account belonging to the assessee would have been found during the course of search proceedings of S.K. Jain and his group concerns, then perhaps it would have been held that the provisions of section 153C of the Act would have been invoked. But here in this case what has been found, is the regular entries in the books of account of the concerns of S.K. Jain group, in which name of the assessee is appearing. Such entries in the cash books depicting the details of cheques issued in favour of the assessee as well as cash deposit through intermediates on various dates cannot be reckoned as document or books of account of the assessee. This fact has been noted by the Pr. CIT in the impugned order, wherein the entries pertains to the assessee for a sum of Rs.25 lacs. Thus, the contention raised by the ld. counsel on this point is out rightly rejected that the

proceedings under section 153C of the Act should have been initiated instead of under section147 of the Act.

6.3 As regards the contention that material or information found during the course of search in the case of S.K. Jain group cannot be held to be a tangible material pertaining to the assessee, we are unable to accept such a contention for the reason that, *firstly,* there was a categorical information and material coming on record, that assessee was one of the beneficiaries of accommodation entries provided by one of the group concern of S.K. Jain and not only that, a specific amount (of Rs. 25 lacs) has been mentioned which *prima-facie* pertained to the assessee. This definitely constitutes a tangible and definite material having live-link nexus with the income chargeable to tax escaping assessment. The judgments relied upon by the ld. CIT D.R. on this point, specifically the judgment of Hon'ble Delhi High Court in the case of ***PCIT Vs Paramount Communication (P.) Ltd. (supra)*** is squarely applicable, as in that case also the information regarding bogus purchase by the assessee was received vide DRI from CCE which was passed on to Revenue authorities and was held to be tangible material outside record to initiate valid re-assessment proceedings. Here in this case, as reiterated several times there was a definite information and material found *qua* the assessee which at least needed verification and examination and hence, in our opinion

such a material and information does constitute a tangible and relevant material sufficient enough to form 'reason to believe' that income chargeable to tax has escaped assessment. Apart from that, it is seen from the records that the assessee had raised similar objections after the receipt of "reasons recorded" before the Assessing Officer during the course of re-assessment proceedings, which have been amply dealt with and discussed by the Assessing Officer inn detail vide his separate order, copy of which has been placed in the paper book. Against the said order, assessee has not sought for any remedy nor has it challenged this issue in appeal after the passing of the assessment order. In any case, we have already held Assessing Officer has rightly acquired jurisdiction under section 147 of the Act based on the information/material referred to in the "reasons recorded". Accordingly this contention raised by the ld. Counsel of the assessee is also rejec ed

6.4 Lastly on merits, as discussed in the foregoing paragraphs, the Pr. CIT has amply demonstrated in his impugned order that this issue was neither enquired into nor was verified by the Assessing Officer once the information and the material in hard copy and in form of CD was made available to him. AO should have verified the genuineness of the transaction and also should have carried out adequate enquiry to come to a logical conclusion that either there is no accommodation entry and the contents found qua the assessee being one of the beneficiary of the accommodation entry in the books of account of the concerns of S.K. Jain group are false or bogus; or assessee had amply demonstrated and

substantiated before the AO regarding the genuineness of the transaction of the accommodation entry. In absence of such a mandate which was cast upon the AO, we are of the opinion that the assessment order is not only erroneous but also prejudicial to the interest of revenue, as this matter definitely requires proper enquiry and verification by the AO.

6.5 In view of above, there is absolutely no dispute that the AO has not made any enquiry regarding the accommodation entry pertaining to the assessee specifically which was found during the course of search and investigation in SK Jain Group as highlighted by the Pr. CIT. Once adequate or proper enquiry has not been done, then in terms of Explanation 2 inserted in section 263 of the Act by the Finance Act, 2015, w.e.f. 1.6.2015, the assessement order is deemed to be erroneous in so far as it is prejudicial to the interest of Revenue. Hence, the present case is squarely covered by the decision of the ITAT, 'G' Bench, passed in ITA No. 2158/Del/2017 (AY 2009-10) in the case of Surya Jyoti Software Pvt. Ltd. vd. Pr. CIT, because in both these cases the order u/s. 263 of the Act has been passed by the Ld Pr. CIT-8, New Delhi; information was received from Investigation Wing that the assessee has received accommodation entries from Sh. SK Jain; assessments were reopened u/s. 147 of the Income Tax Act, 1961 on the basis of above information and assessment completed without making any addition on account of accommodation entry taken and the Ld. Pr. CIT's order u/s. 263 of the Act on account of the fact that the AO had not taken into consideration the material seized during search in the case of Sh. SK Jain. We further find that the present is also covered by the decision of the Hon'ble Supreme Court of India in the case of Deniel Merchants Pvt. Ltd. vs. ITO (Appeal No. 2396/2017) dated 29.11.2017, wherein the Hon'ble Supreme Court of India has dismissed the SLPs in cases where AO did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had,

after setting aside the order of the AO, simply directed the AO to carry thorough and detailed inquiry.

6.6 In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, we hold that the Ld. Pr. CIT has rightly exercised his jurisdiction under section 263 of the Act in setting aside the order of the Assessing Officer being erroneous in so far it is prejudicial to the interest of the Revenue. Accordingly, we confirm the order of the Ld. Pr. CIT and dismiss the grounds raised by the assessee before us.

7. In the result, appeal of the assessee is dismissed.

Order pronounced on 08-01-2018.

Sd/- Sd/-

[L.P. SAHU] [H.S. SIDHU]
ACCOUNTANT MEMBER JUDICIAL MEMBER

Date 08/01/2018

"SRBHATNAGAR"

Copy forwarded to:

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

TRUE COPY By Order,

Assistant Registrar,
ITAT, Delhi Benches