

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 4991/Del./2014
Assessment Year:2005-06**

Randeep Investment Pvt. Ltd., C/o O.P. Sapra & Associates, advocates, C-763, New Friends Colony, New Delhi. (PAN-AACCR0988D) (Appellant)	vs.	Income-tax Officer, Ward 15(2), New Delhi. (Respondent)
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**ITA No. 4853/Del/2014
Assessment Year:2005-06**

Income-tax Officer, Ward 15(2), New Delhi. (Appellant)	vs.	Randeep Investment Pvt. Ltd., C/o O.P. Sapra & Associates, advocates, C-763, New Friends Colony, New Delhi. (Respondent)
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Assessee by	Shri Sandeep Sapra, Advocate
Revenue by	Shri Atiq Ahmed, Sr. DR

Date of Hearing	19.06.2018
Date of Pronouncement	06.07.2018

ORDER

Per L.P. Sahu, A.M.:

These cross-appeals at the instance of assessee and the Revenue are directed against the order dated 20.06.2014 of the Ld. CIT(A)-XVIII, New Delhi for Assessment Year 2005-06. Both the parties have raised following grounds in their respective appeals :

Grounds raised in assessee's appeal :

1) That the Ld. CIT(A) has erred on facts and under the law in holding that reopening of the assessment u/s 147/148 of I.T. Act was justified. The provisions of section 147/148 I.T. Act are not applicable to the facts of Appellant's case *inter alia* because:

a) There is no nexus between the reasons recorded and the alleged escapement of income.

b) Copy of communication/ statement dated 05-02-2011 of Sh. Suresh Kumar Gupta received from DIT (Investigation) allegedly recorded during the course of survey in some other case behind the back of the Appellant having not been provided to the Appellant, could not be made the basis for recording the reasons/reopening of the assessment

c) The AO had not applied his own mind independently after the receipt of the aforesaid alleged communication from DIT (Investigation), Unit VI (3), New Delhi as mentioned in the assessment order.

2) That without prejudice to ground No. 1 above, the Ld. CIT(A) has erred on facts and under the law in sustaining the addition of Rs.30,50,000/- out of total addition of Rs.92,50,000/- u/s 68 of I.T. Act on account of share capital received from the following parties:

- M/s Omni Farms Pvt. Ltd.	Rs. 11,50,000
- M/s Chandra Prabhu Finvest Pvt. Ltd.	Rs. 8,50,000
- M/s Viagra Trading Company Pvt. Ltd.	Rs. 6,50,000
- M/s Arun Finvest Pvt. Ltd.	<u>Rs. 4,00,000</u>
Total	<u>Rs. 30,50,000</u>

At any rate, the addition as sustained by the Ld. CIT(A) is very excessive.

3) That the Ld. CIT(A) has erred on facts and under the law in sustaining the addition of Rs.30,500/- out of total addition of Rs.92,500/- on account of commission/premium allegedly paid @ 1% to entry operators allegedly out of Appellant's undisclosed income for receiving Rs.30,50,000/- by way of bogus accommodation entry in the form of share capital.

At any rate, the addition as sustained by the Ld. CIT(A) is very excessive.

4) *That the interest as levied u/s 234 is illegal and at any rate, without prejudice very excessive.*

Grounds raised in Revenue's appeal :

- 1) *On the facts & in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.62,62,000/- (including commission of Rs.62,000/-) made by the AO u/s 68 of the Income Tax Act holding that the appellants have been able to prove the identity, creditworthiness and genuineness of the transaction ignoring the fact that as per the information received from the Investigation Wing of the department the said entities are doing no business except to provide accommodation entries on commission basis.*
- 2) *On the facts & in the circumstances of the case, the Ld. CIT(A) has erred in deleting the above addition ignoring the statement of the entry operators, whereby they have categorically admitted to have accepted cash of an equivalent amount before issuing cheques for allotment of shares.*
- 3) *On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the above addition ignoring the fact that the assessee has not been able to justify the payment of high premium for shares, when the company is running in loss.*

2. Briefly stated, the facts leading to the present cases are that the assessee filed its return of income on 29.11.2005 declaring loss of Rs.77,127/-, which was processed u/s 143(1) of the Act. Subsequently, an information was received from ITO(Inv.), Unit-VI(3), N. Delhi, indicating that a survey u/s 133 A of the Act was conducted on 20.11.2007 in the case of one Shri Suresh Kumar Gupta and during the course of survey and post survey enquiries, statement of Shri Suresh Kumar Gupta was recorded wherein he admitted to be involved in providing bogus accommodation entries. The assessee was also one of such beneficiaries. Therefore, proceedings u/s 147 of the Act were initiated and notice u/s 148 of the Act dated 29.03.2012 was issued. In

compliance thereto the assessee vide letter dated 24.04.2012 stated that the original return of income filed may be treated to have been filed in response to notice u/s 148 of the Act. The assessee also raised objections on reopening of assessment which stood rejected vide letter dated 19.12.2012. On being asked to furnish the details of share application money received, with reference to the above information, the assessee filed the requisite details before the Assessing Officer. The Assessing Officer, however, on examination of the details of share application money found that the assessee had received accommodation entries in the garb of share application from the following companies controlled by aforesaid accommodation entry provider :

S. No.	Name	Total Amount
1	Omni Farms P. Ltd.	11,50,000
2	Vasudeva Farms P Ltd.	16,50,000
3	Chander Prabhu Finvest P Ltd	8,50,000
4	Griasho Co. P Ltd.	15,50,000
5	S.J. Security P Ltd	15,00,000
6	Viagra Trading Co. P Ltd.	6,50,000
		73,50,000

The Assessing Officer, therefore, observed that in view of the admission of Shri Suresh Kumar Gupta in his statement affirmed that the amount received by the assessee company from these parties is nothing else but the bogus accommodation entries received from these entities in lieu of cash provided to them out of undisclosed sources. The Assessing Officer, accordingly, made an addition of Rs.73,50,000/- u/s. 68 of the IT Act and of Rs.73,500/- u/s. 69C of the Act, being the expenditure incurred on receiving said accommodation entries.

2.1 The Assessing Officer further observed that the assessee had also shown receipt of share application money from M/s. Arun Finvest Pvt. Ltd. of Rs.4,00,000/- and FNS Consulting Pvt. Ltd. of Rs.15,00,000/-, which too were treated as bogus accommodation entries received from these two companies, which were being controlled by another entry operation group involving Shri Mukesh Gupta, whose statements recorded by Investigation Wing on the same line, are also reproduced in the assessment order. Accordingly, the Assessing Officer also added these receipts of Rs.19,00,000/- u/s 68 being the bogus accommodation entries received by assessee and of Rs 1900/- as expenditure incurred on receiving such entries u/s. 69C of the Act.

3. The assessee assailed the assessment order in appeal before the Id. CIT(A), where the assessee, apart from filing a detailed written submissions, also filed additional evidences with request to admit the same under rule 46A. The assessee challenged the impugned additions both on legal ground, ie., validity of reopening and also on merits of additions. The Id. CIT(A) forwarded the submissions of the assessee and the additional evidences to the Assessing Officer and sought remand report, which was furnished vide letter dated 25.04.2014, as reproduced in the impugned order. Copy of remand report was given to the assessee, who, in counter, further filed detailed submissions before the Id. CIT(A), as reproduced in the impugned order. The Id. CIT(A), however, rejected the legal plea of assessee challenging the reopening proceedings, but gave partial relief to the assessee amounting to Rs.62,00,000/- out of addition made u/s. 68 in respect to the transactions with four companies, who responded to the notices u/s. 133(6) and sustained the addition of Rs.30,50,000/- with respect to transactions made with

remaining four companies, who did not respond to such notices u/s. 133(6) of the Act. Similarly, the addition made u/s. 69C was restricted to Rs.30,500/- treating it to be commission @ 1% paid by assessee on sustained addition of Rs.30,50,000/- u/s. 68 of the Act. Aggrieved by rejection of legal ground and sustenance of additions, the assessee has challenged the impugned order by way of this appeal whereas the deletion of addition, noted above, has led the Revenue to come up in cross appeal before the Tribunal.

4. Since the common question of law and facts are involved in both these appeal, the same were heard together and are being disposed of by this consolidated order. For the sake of convenience and brevity, we first take up the appeal of the assessee.

5. With reference to ground No 1, which assails the reopening of assessment u/s. 147/148, the ld. AR of the assessee submitted a written submissions stating as under :

1) *Copies of reasons recorded before issuance of notice u/s 148 are placed at **pages 22-24** of the paper book. From the reasons, it is evident that they have been recorded on the basis of vague information received from the Investigation Wing of the Department that Assessee has received accommodation entries of Rs.72,00,000 from various companies and entities controlled by Sh. S.K. Gupta in lieu of cash. The said reasons for initiating the proceedings u/s 147/148 of I.T. Act are legally untenable inter alia because:*

(i) *Reasons have been recorded by the AO on borrowed satisfaction i.e. on the information received from the Investigation Wing of I.T. Department. In other words, reasons have been recorded without making any independent enquiries as is evident from the last para of the reasons recorded which are reproduced below:*

“In view of the report received from Investigation Unit, and in view of the facts narrated above it is clear that the assessee has not

disclosed fully and truly all material facts necessary for its assessment for the assessment year. I have therefore, reason to believe that the sum of Rs.72,00,000/- chargeable to tax has escaped assessment. Thus, the same is to be brought to tax under section 147/148 of the I.T. Act, 1961."

- (ii) *Reasons recorded indicate that the AO has acted on mere surmises and suspicion for making fishing and roving enquires. The requirement of law is "reason to believe" and not "reason to suspect".*
- (iii) *AO has not applied his mind so as to come to an independent satisfaction that he has reason to believe that income has escaped assessment. This is evident from the reasons recorded (copy placed at **pages 22-24**) read with the assessment order (**see para 3 pages 1 & 2**) as demonstrated below:*

<i>Name of the Co.</i>	<i>As per reasons recorded, bogus entries received by the Assessee (Rs.)</i>	<i>Actual amount of share capital received. and addition made as per the assessment order (Rs.)</i>
<i>Omni Farms P. Ltd.</i>	<i>6,50,000</i>	<i>11,50,000</i>
<i>Vasudeva Farms P Ltd.</i>	<i>15,00,000</i>	<i>16,50,000</i>
<i>Chander Prabhu Finv st P Ltd.</i>	<i>8,50,000</i>	<i>8,50,000</i>
<i>Griasho Co. P Ltd</i>	<i>15,50,000</i>	<i>15,50,000</i>
<i>S.J. Security P Ltd.</i>	<i>20,00,000</i>	<i>15,00,000</i>
<i>Viagra Trading Co. P Ltd.</i>	<i>6,50,000</i>	<i>6,50,000</i>

From the above, it is clear that the AO neither applied his mind nor verified the information received from the Investigation Wing by making independent enquiries before recording the reasons as is evident from the following discrepancies:

<i>Name of the Co.</i>	<i>As per reasons recorded, bogus entries received by the Assessee (Rs.)</i>	<i>Actual amount of share capital received and addition made as per the assessment order (Rs.)</i>	<i>Difference (Rs.)</i>
<i>Omni Farms P. Ltd.</i>	<i>6,50,000</i>	<i>11,50,000</i>	<i>5,00,000</i>
<i>Vasudeva Farms P Ltd.</i>	<i>15,00,000</i>	<i>16,50,000</i>	<i>1,50,000</i>
<i>S.J. Security P Ltd.</i>	<i>20,00,000</i>	<i>15,00,000</i>	<i>(5,00,000)</i>

In view of the above discrepancies, the reopening of assessment u/s 147/148 is bad in law. In this connection, reliance is placed on ITAT Delhi Bench order dated 14/08/2014 (ITA No. 4281/Del/2010) in the case of ITO vs. Comero Leasing & Financial P. Ltd., copy placed at pages 6-15 of the Synopsis which had relied upon 357 ITR 24 CIT vs. Suren International P Ltd. (Jurisdictional Delhi H.C.).

(iv) Moreover, information received from the Investigation Wing cannot be said to be tangible material per-se without a further enquiry having been undertaken by the AO. In other words, reasons have been recorded on borrowed satisfaction which fails to demonstrate a live link between the tangible material and formation of belief that income has escaped assessment. Therefore, on such facts, reopening of assessment u/s 147/148 is bad in law. In this connection, reliance is placed on various case laws attached as Annexure - A placed at pages 16-17 of the Synopsis.

In view of the above, reopening of assessment u/s 147/148 is bad in law and therefore, the impugned assessment order passed u/s 147/143(3) of I.T. Act deserves to be annulled/quashed."

5.1 With reference to ground No. 2, the ld. Counsel for the assessee submitted as under :

Ground No. 2: *is against the addition of Rs.30,50,000 sustained by the Ld. CIT(A) on account of share capital received from the following parties:*

- M/s Omni Farms Pvt. Ltd.	Rs. 11,50,000
- M/s Chandra Prabhu Finvest Pvt. Ltd.	Rs. 8,50,000
- M/s Viagra Trading Company Pvt. Ltd.	Rs. 6,50,000
- M/s Arun Finvest Pvt. Ltd.	<u>Rs. 4,00,000</u>
Total	<u>Rs. 30,50,000</u>

Submissions/documents relied upon:

1. Assessee Co. raised fresh share capital of Rs.3,23,38,000 out of which AO made addition of share capital of Rs.92,50,000/- raised from 8 share

subscribers/Cos. It is relevant to point out here that the entire share subscription money was received by account payee cheques and all the share subscriber Cos were income tax assesseees having PAN Numbers. To prove the identity, genuineness and creditworthiness of such share subscriber Cos, following documentary evidence were filed before the AO and also CIT(A), copies placed at pages 58 – 443 of the paper book:

- (i) Copy of Share Application Forms*
 - (ii) Copy of Board Resolutions authorizing Investment in the assessee company.*
 - (iii) Copy of Confirmation.*
 - (iv) Copy of the Bank Statement of the share subscriber Cos*
 - (v) Copy of Income Tax Return.*
 - (vi) Copy of the Balance Sheet*
 - (vii) Copy of Memorandum of Association.*
 - (viii) Form No. 18 evidencing the current registered office of the company.*
 - (ix) Company Master Data from ROC site evidencing current registered office of the company and the status of annual filing.*
 - (x) List of Current Directors with addresses as per MCA records*
 - (xi) Annual Return as per Form 23AC.*
- 2. The shares to the above mentioned share subscriber Cos were allotted on 31/03/2005 as is evident from Form No. 2 as filed with ROC, New Delhi alongwith list of allottees, copies placed at pages 447-450 of the paper book.*
- 3. During the course of assessment proceedings, AO issued notices u/s 133(6) dated 06/03/2013 to all the 8 share subscribers/Cos., copies placed at pages 111, 176, 242, 295, 360, 427, 436 and 444 of paper book. In response to such notices, replies were received from 4 Cos. namely M/s Vasudeva Farms P Ltd., M/s Griasho Co. P Ltd., M/s S.J. Security P Ltd. and M/s FNS Consulting P Ltd., copies placed at pages 177-183, 296-302, 361-370 and 445-446 of paper book. However, no replies were received from the balance 4 Cos. namely Omni Farms Pvt. Ltd., Chandra Prabhu Finvest Pvt. Ltd., Viagra Trading Co. Pvt. Ltd and Arun Finvest Pvt. Ltd., though the notices were duly served on them.*
- 4. AO made addition of Rs.92,50,000/- (wrongly mentioned by AO as Rs.90,50,000 in the assessment order) on account of fresh share capital raised from all 8 Cos. without controverting or disproving the documentary*

evidence as filed before him on the basis of information/reports received from the Investigation Wing.

5. *The Ld. CIT(A) deleted addition of Rs.62,00,000/- on account of share capital received from 4 share subscribers who had filed replies in response to notice u/s 133(6), a fact also admitted by the AO in the remand report dated 25/04/2014, copy placed at pages 454-457. However, addition of Rs. 30,50,000/- with regard to 4 share subscribers was confirmed by Ld CIT(A), who had not filed replies in response to notices u/s 133(6) though such notices had duly been served on them. Documentary evidence with regard to four Cos. whose share capital has been confirmed by the Ld. CIT(A) is placed in the paper book as under:*
 - (i) *Omni Farms Pvt. Ltd. at pages 58 – 110.*
 - (ii) *Chandra Prabhu Finvest Pvt. Ltd. at pages 184 – 241.*
 - (iii) *Viagra Trading Company Pvt. Ltd. at pages 371 – 426*
 - (iv) *Arun Finvest Pvt. Ltd. at pages 428 – 435.*
6. *The findings of the Ld. CIT(A) at page 38 of the appellate order for confirming the addition of Rs.30,50,000/- that the assessee had not been able to prove the identity, genuineness and creditworthiness of the 4 share subscribers by relying on the Hon'ble Delhi High Court judgment dated 28/11/2015 in the case of CIT vs. MAF Academy ITA No. 341/2012 is completely misplaced and legally untenable because the assessee had discharged the initial onus of proving the identity, genuineness and creditworthiness of the share subscriber Cos which lay on him by filing documentary evidence which had neither been controverted nor disproved by the AO.*
7. *No adverse inference could be drawn against the Assessee, if notices u/s 133(6) were duly served on the above mentioned 4 share subscriber Cos. but no reply was received from them inter alia because:*
 - (i) *Moreover, it is evident from the notices issued u/s 133(6) to the aforesaid 4 share subscribers Cos, copies placed at pages 111, 242, 427 and 436 of paper book that the AO had sought the same documents i.e. copy of ITR, balance sheet, P & L A/c, bank statement, confirmation etc. which had already been filed by the Assessee, copies placed at pages 58-110, 184-241, 371-426 and 428-435 of paper book.*

- (ii) *It is not the case of the AO that notices have come back unserved or share subscriber Cos were not available at the address given by the Assessee. In fact, service of notice proves the identity of the share subscriber Cos.*
- (iii) *The fact that no reply had been received was not confronted by the AO to the Assessee during the course of assessment proceedings.*
- (iv) *In this connection, reliance is placed on the case laws attached as Annexure B, copy placed at pages 40-41 of the Synopsis.*
- (v) *Moreover, no documentary evidence has been brought on record by the AO to prove that Assessee Co. had given cash in lieu of share subscription money received during the year under consideration.*
- (vi) *In view of the above, the identity, genuineness and creditworthiness of all the 4 share subscribers stood proved. In this connection, reliance is placed on the case laws attached as Annexure C placed at pages 61-62 of the Synopsis.*

In view of the above facts, circumstances and the legal position of the case, the addition of Rs.30,50,000/- u/s 68 of I.T. Act deserves to be deleted. At any rate, the addition as made is excessive.

Ground No. 3: is against the addition of Rs.30,500/- sustained by the Ld. CIT(A) on account of commission/premium allegedly paid @1% to entry operators out of Assessee's undisclosed income for receiving bogus accommodation entry in the form of share capital of Rs.30,50,000/-.

As this ground is interconnected with Ground No. 2 above, therefore, Assessee relies on the submissions/case laws made with regard to Ground No. 2 which are not being repeated here for the sake of brevity.

In view of the above facts, circumstances and the legal position of the case, the addition of Rs.30,500/- deserves to be deleted. At any rate, the addition as made is excessive."

6. The learned DR, on the other hand, relying on the order of Assessing Officer, submitted that the ld. CIT(A) was justified in sustaining the addition u/s. 68 and in rejecting the legal plea of the assessee challenging the validity

of reopening proceedings. He, however, in support of Revenue's appeal submitted that the Id. CIT(A) has fallen in error while giving partial relief to the assessee by deleting the addition in part out of that made by Assessing Officer u/s. 68 and 69C of the IT Act. The additions made were supported by the statements of Entry Operators recorded during the course of survey made by Investigation Wings. It was also submitted that some of the notices issued u/s. 133(6) in the remand proceedings, were not responded to by some of the alleged share subscribers and as such, the assessee failed to discharge the onus that upon him by virtue of section 68 of the IT Act. He, therefore, urged for restoration of assessment order.

7. Per contra, further contentions of the assessee in Revenue's appeal, as made in the written synopsis, speak as under :

Ground No. 1 & 2: *is against the deletion of addition of Rs.62,00,000 on account of share capital raised from 4 share subscribers and Rs.62,000/- on account of commission/premium allegedly paid @1% to entry operators out of Assessee's undisclosed income for receiving bogus accommodation entry in the form of share capital of Rs.62,00,000/-.*

1. *Assessee relies on the submissions/case laws made with regard to Ground No. 2 & 3 of Assessee's appeal which are not being repeated here for the sake of brevity and the documentary evidence as filed as mentioned vide para 1 at page 3 of these Synopsis with regard to the following 4 share subscribers:*

- (i) Vasudeva Farms Pvt. Ltd. – Rs.16,50,000 at pages 112-183.*
- (ii) Griasho Co. Pvt. Ltd. – Rs.15,50,000 at pages 242-302.*
- (iii) SJ Securities Pvt. Ltd. – Rs.15,00,000 at pages 303-370.*
- (iv) FNS Consulting Pvt. Ltd. – Rs.15,00,000 at pages 437-446.*

2. *During the course of assessment proceedings, AO issued notices u/s 133(6) dated 06/03/2013 to all the 8 share subscribers/Cos., copies placed at pages 111, 176, 242, 295, 360, 427, 436 and 444 of paper book. In*

response to such notices u/s 133(6), the above 4 share subscribers/Cos. confirmed their share subscriptions, copies of their replies are placed at pages pages 177-183, 296-302, 361-370 and 445-446 of paper book. This fact has also been admitted by the AO in his remand report, copy placed at pages 454-457 of the paper book.

- 3. Moreover, no documentary evidence has been brought on record by the Dept. to prove that Assessee Co. had given cash in lieu of share subscription money received during the year under consideration.*

Ground No. 3: is against the deletion of addition of Rs 62,00,000 made on account of share capital raised during the year under consideration from four share subscribers by ignoring the fact that the Assessee has not been able to justify payment of high premium for shares.

- 1. The above ground of the Revenue that Assessee has not been able to justify high premium paid for shares by the share subscribers is wholly misplaced as the same does not emanate either from the assessment order or CIT(A) order. Such issue was not raised by the authorities below and therefore, the ground is untenable and deserves to be dismissed.*
- 2. Without prejudice to above, even otherwise, no adverse inference could be drawn against the Assessee on account of premium charged for shares as the identity genuineness and creditworthiness of the shares subscribers stood proved.*
- 3. In this connection, Assessee relies on the Jurisdictional Delhi High Court judgment dated 03/07/2017 in the case of Pr. CIT vs. A.R. Leasing Pvt. Ltd, copy placed at pages 122-124 of this Synopsis in which it was held as under:*

“The CIT (A) has in para 9.1 of his order noted that the Assessee had placed before the AO the following documents of the investing companies: Memorandum of Association, Articles of Association, certificates of incorporation, bank accounts indicating the source of payment, copy of confirmations, Income Tax particulars, audited balance sheets, Profit and Loss Account etc. However, the AO disregarded the above documents and came to the conclusion that transaction of receiving money as share

capital was not a genuine one primarily because the premium charged by the Assessee was much higher than the prevalent market trend. As rightly observed by the CIT (A) unless the AO had brought on record some material to show that confirmation and other evidence placed by the Assessee was not genuine, he could not have simply discarded the documents produced by the Assessee.

The Court too finds that there is no discussion of the above documents by the AO. In the circumstances, the conclusion reached by the CIT(A) that the addition under Section 68 of the Act was not justified appears to be unexceptionable”.

Consequently, the appeal of the Revenue deserves to be dismissed”.

8. We have considered the rival submissions of both the parties and have gone through the entire material available on record. As against the legal contentions of the assessee made by way of ground No. 1 in Assessee's appeal, the contention on behalf of the Revenue has been that the information received from the Investigation Wing of Income Tax Dept. was sufficient for the AO to initiate proceedings u/s 147/148 of I.T. Act and also relied on the findings as recorded by the Ld. CIT(A).

9. Copy of reasons recorded is placed in the paper book from which it is evident that reasons have been recorded on the basis of information received from the Investigation Wing of the Income Tax Department, New Delhi that the Assessee has taken accommodation entries from the following persons:

Date of Entry in the Books	From	To	Bank	Cheque/RTGS	Cheque Date	Amount	Through
21.02.2005	Giriasho Co. P. Ltd.	Randeep Investment P Ltd.	OBC	210788	16 FEB,05	5,00,000	Deepak Jain
21.02.2005	Giriasho Co. P. Ltd.	Randeep Investment P Ltd.	OBC	210789	17 FEB,05	5,50,000	Deepak Jain
22.02.2005	Giriasho Co.	Randeep	OBC	210791	19 FEB,05	5,00,000	Deepak

	P. Ltd.	Investment P Ltd.					Jain
25.02.2005	S.J. Scurity Pvt. Ltd.	Randeep Investment P Ltd.	HDFC	271376	23FEB,05	5,00,000	Deepak Jain
12.03.2005	Vashudeva Farms Pvt. Ltd	Randeep Investment P Ltd.	SIB	766990	10 Mar,05	5,00,000	Deepak Jain
12.03.2005	S.J. Scurity Pvt. Ltd.	Randeep Investment P Ltd.	HDFC	271395	10 Mar,05	5,00,000	Deepak Jain
12.03.2005	S.J. Scurity Pvt. Ltd.	Randeep Investment P Ltd.	HDFC	271396	14Mar,05	5,00,000	Deepak Jain
14.03.2005	S.J. Scurity Pvt. Ltd.	Randeep Investment P Ltd.	HDFC	1667	12 Mar 05	5,00,000	Deepak Jain
16.03.2005	Vashudeva Farms Pvt. Ltd	Randeep Investment P Ltd.	SIB	766991	14 Mar,05	5,00,000	Deepak Jain
16.03.2005	Vashudeva Farms Pvt. Ltd	Randeep Investment P Ltd.	SIB	766992	23 Feb,05	5,00,000	Deepak Jain
31.03.2005	Chanderprabhu Finvest P. Ltd.	Randeep Investment P Ltd.	SIB	806660	31 Mar,05	8,50,000	Deepak Jain
31.03.2005	Viagra Trading Co. P. Ltd.	Randeep Investment P Ltd.	SIB	772507	31 Mar,05	1,50,000	Deepak Jain
31.03.2005	Omni Farms P. Ltd.	Randeep Investment P Ltd.	SIB	772584	31 Mar,05	6,50,000	Deepak Jain
31.03.2005	Viagra Trading Co. P. Ltd.	Randeep Investment P Ltd.	SIB	772506	31 Mar,05	5,00,000	Deepak Jain

As per the AO, Assessee received accommodation entries aggregating to Rs.72,00,000 from 6 parties as referred above, the summary of which is again given as under:

Name	Amount (Rs.)
Giriasho	15,50,000
S.J. SEC	20,00,000
Vashudeva	15,00,000
Chanderprabhu	8,50,000
Viagra	6,50,000
Omni	6,50,000
Total	72,00,000

However, as per assessment order, assessee received share application money from the above mentioned 6 parties aggregating to Rs.73,50,000 as per details below:

Name of the Co.	Amount (Rs.)
Omni Farms P. Ltd.	11,50,000
Vasudeva Farms P Ltd.	16,50,000
Chander Prabhu Finvest P Ltd.	8,50,000
Griasho Co. P Ltd.	15,50,000
S.J. Security P Ltd.	15 00,000
Viagra Trading Co. P Ltd.	6,50,000
Total	73,50 000

From the above, it is evident that reasons have been recorded by the AO solely on the basis of information received from the Investigation Wing of the department without making any independent enquiries with regard to share application money received from the above 6 parties. On comparison of the reasons recorded before issuance of notice u/s 148 with the assessment order, the following discrepancies are apparent in respect of the following 3 parties:

Name of the Co.	As per reasons recorded, bogus entries received by the Assessee (Rs.)	Actual amount of share capital received and addition made as per the assessment order (Rs.)	Difference (Rs.)
Omni Farms P. Ltd.	6,50,000	11,50,000	5,00,000
Vasudeva Farms P Ltd.	15,00,000	16,50,000	1,50,000
S.J. Security P Ltd.	20,00,000	15,00,000	(5,00,000)

In view of the above, it is clear that AO did not apply his mind and recorded the reasons purely on borrowed satisfaction without making any enquiries on his own and therefore the reasons as recorded are bad in law as held by ITAT Delhi Bench vide its order dated 14/08/2014 (ITA No. 4281/Del/2010) in the

case of ITO vs. Comero Leasing & Financial Pvt. Ltd. which was rendered after relying on Jurisdictional High Court judgment in the case of CIT vs. Suren International Pvt. Ltd. reported in 357 ITR 24, relevant portion of such ITAT judgment is reproduced below:

"From the above, we find that at paragraph Nos.1, 2 & 3, the Assessing Officer has discussed the facts in general i.e., the investigation carried on by the Director of Income Tax (Investigation) and the finding of such investigation, the modus operandi, how the entry operator worked. The facts relating to assessee's case begin in ITA-4281 & 4949/D/2010 from paragraph 4. If we peruse the chart given by the Assessing Officer in the reasons recorded by which he formed an opinion that there was escapement of income of Rs.53 lakhs, we find that several items have been considered twice. Item No.2 & 3, 4 & 5 6 & 7, 8 & 9 and 10 & 11 are same. Thus, out of the total twelve items, five items have been considered twice by the Assessing Officer which is an apparent case of non-application of mind. We find that the identical case was considered by Hon'ble Jurisdictional High Court in the case of Suren International P.Ltd. (supra), wherein, at page 32 of the Report, their Lordships held as under:-

"13. We have heard counsel for the parties at length.

14. The learned counsel for the appellant contended that even though there is no specific allegation that the assessee had failed to disclose all the material facts but the same can be gleaned from the reasons itself. We are unable to accept this contention. In the first instance, we do not find the reasons as recorded by the Assessing Officer to be reasons in law, at all. A bare perusal of the table of alleged accommodation entries included in the reasons as recorded, discloses that the same entries have been repeated six times. This is clearly indicative of the callous manner in which the reasons for initiating reassessment proceedings are recorded and we are unable to countenance that any belief based on such statements can ever be arrived at. The reasons have been recorded without any application of mind and thus no belief that income has escaped assessment can be stated to have been formed based on such reasons as recorded."

8. The facts in the assessee's case are identical. In this case also, the Assessing Officer, except preparing the table of alleged accommodation entries from the details claimed to have been received from the Investigation Wing, has not at all applied his mind. From a bare perusal of the table of the alleged accommodation entries, it is evident that the same entries have been repeated five times. This is the clear indication of non-application of mind by the Assessing Officer.

Therefore, the above decision of Hon'ble Jurisdictional High Court would be squarely applicable to the facts of the assessee's case".

Respectfully following the Jurisdictional Delhi High Court order, we quash/cancel the assessment order passed u/s 147/143(3) of I.T. Act dated 28/03/2013 as the initiation of proceedings u/s 147/148 is bad in law. Accordingly, ground No. 1 of the Assessee's appeal deserves to be allowed thereby quashing the re-assessment made u/s. 147/148.

10. In view of our above findings, though we need not to enter into the merits of additions, but since both the parties have made extensive arguments on merits of the case, based on various case laws, we deem it proper to decide the appeals on merits also.

11. By way of ground No. 2, the assessee has challenged the sustenance of addition of Rs.30,50,000 on account of share application money u/s 68 of I.T. Act. As culled out from the records, we find that the Assessee has raised fresh share application money amounting to Rs.3,23,38,000 during the year under consideration out of which AO made addition of Rs.92,50,000 u/s 68 of I.T. Act (wrongly mentioned by AO as Rs.90,50,000) on account of share application money received from the following 8 Companies, as mentioned in the assessment order itself. On the cost of repetition, the details of such companies are reproduced as under :

S.No.	Share applicant Cos.	Amount
1.	Vasudeva Farms Pvt. Ltd.	Rs.16,50,000
2.	Giriasho Co. Pvt. Ltd.	Rs.15,50,000
3.	SJ Securities Pvt. Ltd.	Rs.15,00,000
4.	FNS Consulting Pvt. Ltd	Rs.15,00,000
5.	Omni Farms Pvt. Ltd.	Rs.11,50,000
6.	Chandra Prabhu Finvest Pvt. Ltd.	Rs. 8,50,000
7.	Viagra Trading Company Pvt. Ltd.	Rs. 6,50,000
8.	Arun Finvest Pvt. Ltd.	Rs. 4,00,000
	Total	Rs. 92,50,000

12. It is also born out on record that in order to prove the identity, creditworthiness of the share applicants and genuineness of the transactions, the assessee had filed plenty of documents during the course of assessment proceedings which are also placed by the Assessee in the paper book. It is, however, surprising that the Assessing Officer has not referred to even a single document in the assessment order. The documents available before the Assessing Officer either in the assessment proceedings or in remand proceedings were as under :

- (i) Copy of Share Application Forms
- (ii) Copy of Board Resolutions authorizing Investment in the assessee company.
- (iii) Copy of Confirmation.
- (iv) Copy of the Bank Statement of the share subscriber Cos.
- (v) Copy of Income Tax Return.
- (vi) Copy of the Balance Sheet
- (vii) Copy of Memorandum of Association.
- (viii) Form No. 18 evidencing the current registered office of the company.
- (ix) Company Master Data from ROC site evidencing current registered office of the company and the status of annual filing.
- (x) List of Current Directors with addresses as per MCA records
- (xi) Annual Return as per Form 23AC.

Copy of Form No. 2 as filed with ROC, New Delhi alongwith list of allottees is also placed in the paper book to prove that shares were allotted as on 31/03/2005 to all the share subscriber Companies from whom share application money was received during the year under consideration.

13. During the course of assessment proceedings, AO issued notices u/s 133(6) dated 06/03/2013 to all the above 8 share subscriber Companies, copies are placed in the paper book. In response to such notices u/s 133(6), replies alongwith documentary evidences as received from the following 4 Companies confirming the investment having been made by them in the Assessee Co by subscribing to the share capital have also been placed on record, a fact also confirmed by the CIT(A) vide para 7 of the impugned order:

- (i) Vasudeva Farms Pvt. Ltd. – Rs.16,50,000
- (ii) Griasho Co. Pvt. Ltd. – Rs.15,50,000
- (iii) SJ Securities Pvt. Ltd. – Rs.15,00,000
- (iv) FNS Consulting Pvt. Ltd. – Rs.15,00,000

The CIT(A) deleted the above addition aggregating to Rs.62,00,000 as the documentary evidence as filed by the Assessee to prove the share application money received during the year under consideration was duly confirmed by the above mentioned share subscriber Companies. However, the CIT(A) confirmed the addition aggregating to Rs.30,50,000/- as no replies were received from the following 4 Companies though the notices u/s 133(6) were duly served on them as also confirmed by the CIT(A) vide para 7 of the impugned order:

- (i) Omni Farms Pvt. Ltd., - Rs.11,50,000
- (ii) Chandra Prabhu Finvest Pvt. Ltd., - Rs.8,50,000
- (iii) Viagra Trading Co. Pvt. Ltd – Rs.6,50,000
- (iv) Arun Finvest Pvt. Ltd., - Rs.4,00,000

On the perusal of the assessment order and the order of Id. CIT(A), we find that it is not the case of the Revenue that notices issued u/s 133(6) to the above mentioned 4 parties came back unserved or such parties were not available at the address given by the Assessee. Service of notice u/s 133(6), in

fact proved the identity of such parties. Moreover, the fact that notices u/s 133(6) were served on the 4 share subscribers Companies, though no reply had been received from them, was not confronted to the Assessee and therefore, from this angle also, no adverse inference could be drawn against the assessee particularly when the documentary evidences viz. share application form, confirmations, bank statements, balance sheets, ITRs, PANs and their ROC returns etc. as filed by the assessee had not been controverted or disproved by the authorities below. In view of this matter it is hard to infer that it was assessee's own undisclosed money which was received from the alleged share subscribers in the garb of share application money, as no documentary evidence goes to suggest such an adverse inferences to be drawn against the assessee. In the decision of Hon'ble Supreme Court, CIT vs. Orissa Corporation P. Ltd., 159 ITR 78, it has been held as under :

"The assessee produced before the Income- tax Officer letters of confirmation, the discharged Hundis and particulars of the different creditors general index numbers were with the Income-tax Department. Attempts had been made to bring those creditors therefore the Income-tax Officer by issue of notices under [Section 131](#) of the Act, but the said notices were returned with the endorsement 'left'. The Income-tax Officer, therefore, treated the entire amount of R. 1,50,000 as unproved cash credit and added the same to the income of the assessee".

Further, at page 84, it was held as under:

"In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index number was in the file of the Revenue. The Revenue, apart from issuing notices under [section 131](#) at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had

discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises”.

In CIT vs. Makhni and Tyagi (P) Ltd. 267 ITR 433 (Del) it was held by Hon’ble Jurisdictional High Court as under:

“If the AO felt that their examination was absolutely necessary then he could have enforced their attendance as pointed out by Allahabad High Court in Nathu Ram Premchand v. CIT (1963) 49 ITR 561 (All) and E.M.C. (Works) (P) Ltd. v. ITO (1963) 49 ITR 650 (All).

This Court is of the opinion that when documentary evidence was placed on record to prove the identity of all the shareholders including their PAN/GIR numbers and filing of other documentary evidence in the form of ration card, etc. which had neither been controverted nor disapproved by the AO, then no interference is called for”.

In Nathu Ram Prem Chand Vs. CIT 49 ITR 561 (All), it was held as under:

“No inference can be drawn against the assessee merely because the assessee had taken a dasti summons for production of a witness and had not produced him. It is the duty of the Income-tax Officer to enforce the attendance of the witness if his evidence is material, in exercise of his powers under section 37(1) of the Income-tax Act, read with Order XVI, rule 10, of the Civil Procedure Code.”

The Co-ordinate Bench of Tribunal in ITA No. 1834/Del/2015 for AY 2004-05 in the case of Espirit Finco Pvt. Ltd., has observed as under:

The fact remains that the notices have been served upon these parties. Thus, in a case where 4 out of 6 concerns admittedly reply the two who though do not reply but their evidences remain unassailed per se cannot be the reason for sustaining the addition in the facts and circumstances of the present case. In the facts where all details are available notice u/s 133(6) have been served, four have replied thus, if the department still had any further doubts about their existence or genuineness then their presence

should have been enforced as the whereabouts of these two concerns were known to the department as notices were served upon these parties at the address given is a fact on record. In the afore-mentioned peculiar facts and circumstances, the request of the Revenue to direct yet another remand does not make any sense. It is seen that when the evidences on record are considered qua the stated business of the assessee, I find that the addition on merits cannot be sustained”.

The relevant observations of Hon'ble Jurisdictional High Court in the case of CIT vs. Rakam Money Matters Pvt. Ltd. are reproduced below:

“It is not in dispute that extensive material was produced by the Assessee in the present case to prove the identity, genuineness and creditworthiness of the companies who had subscribed to its shares. Among the materials produced were the Income Tax Returns and the PAN card details of the eight companies. Even if the Directors of these companies did not respond to the summons issued by the AO, it was not impossible for the AO to make proper enquiries to ascertain the genuineness of these entities and satisfy himself of their creditworthiness. As pointed out by the CIT(A), the AO failed to make any effort in that direction. He did not take to the logical end the half-hearted attempt at getting the Directors to appear before him. He did not even seek the assistance of the AOs of the concerned companies whose ITRs and PAN card copies had been produced”.

The observations of Hon'ble Bombay High Court in the case of Pr. CIT vs. Kesha Appliances Pvt. Ltd., are as under:

“We also observe that the assessee has furnished all the necessary details of the aforesaid six companies along with PAN but none of the lower authorities have confirmed the same from the AO's having jurisdiction over the six aforesaid companies. Thus the assessee cannot be penalized merely on the ground that the six companies as discussed above failed to reply to the notices issued to them under section 133(6) of the Act”.

Following findings reached by ITAT Delhi Bench vide order dated 23/02/2018 (ITA No. 5955/Del/2014) in the case of Umbrella Project Pvt. Ltd. vs. ITO, support the case of assessee as under:

“De horse the non-receipt of the reply, even for the sake of argument we assume that the AO has not received the reply, still the fact remains that 133(6) notice were served on these four shareholders. On going through the assessment order we note that it is not the case of the AO that notices have come back unserved or these shareholders were not available at the address given by the assessee. If that be so, we are of the view that no adverse inference can be drawn against the assessee merely because reply has not been received by the AO in response to notice issued under Section 133(6). The AO having issue the notice and such notice having been served on the person concerned, the AO has to take the process to the logical end. He cannot draw adverse inference merely because reply has not been received. Submission of the reply in an independent enquiry being carried out by the AO by issue of notice under Section 133(6) from the person concerned directly is not in the hands of the assessee. The AO may be justified in certain circumstances when notice is not served or when an adverse reply is received in response to notice issued by him under Section 133(6), but merely nonreceipt of reply can be a justification for drawing adverse inference. Our this view is supported by the judgment of the Hon’ble Supreme Court in the case of CIT vs. Orissa Corporation 159 ITR 78 where a similar issue has come up”.

14. The Ld. AR also relied on the following case laws in which it has been held that unless and until the documentary evidences as filed by the assessee to prove the identity, genuineness and creditworthiness is not controverted or disproved by the AO by bringing some material on record, the onus which lay on the assessee stood discharged and the addition made u/s 68 of the I T Act could not be sustained:

- (i). 319 ITR (Statutes) 5 (Supreme Court) while dismissing the S. L. P. as filed by the Revenue in the above mentioned case of Lovely Exports P. Ltd.
- (ii). 361 ITR 220 CIT vs. Kamdhenu Steels and Alloys Ltd. (Jurisdictional Delhi HC) against which SLP filed by the Revenue has not been admitted by the Hon’ble Supreme Court vide its judgment dated 17/09/2012

- (iii). Pr. CIT vs. A.R. Leasing Pvt. Ltd. (Jurisdictional Delhi HC) ITAT Delhi order in the case of Airads Ltd. vs. ACIT.
- (iv). ITAT Delhi Bench order in the case of ACIT vs. M/s TRN Engergy Pvt. Ltd.
- (v). ITAT Delhi Bench order in the case of Central Circle vs. M/s Ravnet Solutions Pvt. Ltd.
- (vi). ITAT Delhi Bench order in the case of Central Circle vs. M/s Shyam Indus Power Solutions Pvt. Ltd.
- (vii). ITAT Delhi Bench order in the case of ITO vs M/s Nishit Fincap Pvt. Ltd.
- (viii). ITAT Delhi Bench order in the case of CIT vs. M/s Pinku Landfin Pvt. Ltd.

In view of the above discussion, plethora of decision relied on by the assessee and having gone through the documentary evidences placed on record, we find that all the share application money have been received by account payee cheques; that it no case is made out by the Revenue that cash was deposited by the share subscriber companies before issuing cheques on account of share application money; that the AO has not brought any material on record to either controvert or disprove the documentary evidences as filed by the Assessee; that no adverse inference can be drawn against the assessee, even if replies were not received from the share subscribers Companies though the notices u/s 133(6) were duly served on them; that it is not the case of the AO that notices had come back unserved or share subscriber Companies were not available at the address given by the assessee Co.; that the decisions relied upon by the Ld. AR are squarely applicable to the facts of assessee's case and go to support the case of the assessee; and that, therefore, we have no hesitation to conclude that the assessee Company produced sufficient documentary evidence including the confirmations, bank statements, balance sheets, ROC records, ITRs & PAN indicating Ward/Circle of the share applicants where they were assessed to income tax and hence, the onus which

lay on the assessee to prove the identity, genuineness and creditworthiness of the share subscriber Companies stood duly discharged. Accordingly, ground No. 2 of appeal of the assessee deserves to be allowed.

15. As far as ground No. 3 regarding addition sustained u/s. 69C on account of commission/premium allegedly paid @ 1% to entry operators out of assessee's undisclosed income for receiving bogus accommodation entries in the form of share capital of Rs.30,50,000, is concerned, in view of deletion of connected addition of Rs.30,50,000/- on account of share application money, the addition made u/s. 69C of the Act cannot be sustained. Accordingly, ground No. 3 of assessee's appeal also deserves to be allowed.

16. Adverting to Revenue's appeal, we observe that firstly, as per our above findings, once the assessment order stands quashed being void ab initio on legal aspect of the case, the appeal of the Revenue does not survive. Secondly, we further observe that the facts with regard to fresh share application money received during the year under consideration have already been discussed above while disposing of Ground No. 2 of Assessee's appeal. Admittedly, fresh share application money of Rs.62,00,000 was raised from 4 Companies, namely Vasudeva Farms Pvt. Ltd. , Griasho Co. Pvt. Ltd. , S.J Securities Pvt. Ltd. and FNS Consulting Pvt. Ltd. To prove the identity, genuineness and creditworthiness of such parties, their confirmations, bank statements, balance sheets, ROC records, ITRs & PAN indicating Ward/Circle where they were assessed to income tax were filed. Moreover, notices u/s 133(6) were issued to the above share subscriber Companies and replies supported by documentary evidence were received, confirming their investments having made by them in the Assessee Company in the form of share application money. Accordingly, in our opinion, the ld. CIT(A) was justified in deleting this

addition of Rs.62,00,000/-. In view of our discussion made on the documentary evidences in appeal of the assessee and keeping in view that similar evidences were also filed by the assessee with respect to these share applicants, our conclusions reached in appeal of the assessee on merit of addition shall apply mutatis mutandis in appeal of the Revenue also. Accordingly, the relevant ground raised by the Revenue does not hold good. The Revenue has raised one more ground in its appeal that the Assessee has not been able to justify high premium paid for shares is found not legally tenable as such issue does not emanate out of the orders of the authorities below, as none of the authorities below have raised any such objection in their orders. Moreover, Jurisdictional Delhi H.C. in the case of Pr. CIT vs. AR Leasing Pvt. Ltd. (copy placed on record) has held that the addition on account of high premium paid for shares cannot be sustained unless and until some material was brought on record by the AO to show that confirmation and other evidences placed by the Assessee were not genuine. No such material is available on record before us. Accordingly, the impugned order of Id. CIT(A) does not suffer from any infirmity while deleting the addition of Rs.62,00,000/-. Thus, the appeal of the Revenue is found devoid of merits and is liable to fail.

17. In the result, the appeal of the assessee is allowed and that of the Revenue is dismissed.

Order pronounced in the open court on 6th July, 2018.

Sd/-
(H.S. Sidhu)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 6th July, 2018

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