

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Income Tax Appeal No. 220/2017

M/s Prime Chem Oil Limited, 123, MIA, Alwar

----Appellant

Versus

The Assistant Commissioner Of Income Tax, Circle-1, Alwar

----Respondent

Connected With

D.B. Income Tax Appeal No. 221/2017

M/s Prime Chem Oil Limited, 123, MIA., Alwar

----Appellant

Versus

The Assistant Commissioner Of Income Tax, Circle-1, Alwar

----Respondent

For Appellant(s)	:	Mr. Gunjan Pathak with Ms. Ishita Rawat
For Respondent(s)	:	Ms. Parinitoo Jain with Ms. Shiva Goyal

**HON'BLE MR. JUSTICE K.S.JHAVERI
HON'BLE MR. JUSTICE INDERJEET SINGH**

Judgment

17/04/2018

1. In both these appeals common question of law and facts are involved hence they are decided by this common judgment.
2. By way of these appeals, the appellant has assailed the judgment and order of the tribunal whereby tribunal has partly allowed the appeal of the department.
3. This court while admitting the appeals framed following substantial question of law:-

Appeal No.220/2017 admitted on 10.10.2017

"Whether in the facts in the circumstances of the case, the Id. Tribunal was justified in holding that the proceedings for reassessment under Section 148/147 of the Income Tax Act, 1961 were initiated by the Id. Assessing Officer on non-existing facts because ultimately the Assessee has been able to explain that the income which was believed to have escaped assessment was explainable but some other additions were made under the assessment order?"

Appeal No.221/2017 admitted on 12.9.2017

"i) Whether in the facts and in the circumstances of the case, the Id. Tribunal was justified in holding that the proceedings for reassessment under Section 148/147 of the Income Tax Act, 1961 were initiated by the Id. Assessing Officer on non-existing facts because ultimately the Assessee has been able to explain that the income which was believed to have escaped assessment was explainable but some other additions were made under the assessment order?

ii) Whether the Id. Tribunal was correct in law in not following the precedent of Hon'ble jurisdictional High Court in case of Shri Ram Singh reported at 306 ITR 343 (Raj.) whereby the self same issue was been decided in favour of the assessee?

iii) Whether under the facts and circumstances of the case and in law, the Id. ITAT was correct in relying upon the judgment of Hon'ble Bombay High Court in the case of Jet Airways (2010) 195 Taxmann 117 (Bom) when the Assessment Year involved in present case is that of 1999-2000 and 2000-01?

iv) Whether the Id. ITAT is justified and correct in law confirming an adhoc addition of Rs. 4,02,646/- in respect of unsecured loans without any basis whatsoever, only on account of detailed discussions in context of share subscription whereas the appellant had submitted a duly certified audit report which is an admissible evidence as held by the Hon'ble Delhi High Court in case of Additional Commissioner vs/ Jai Engg. Works Ltd. 113 ITR

389 (1978)?”

4. The facts are taken from ITA No.220/2017, the case of the assessee is that it has filed its return of income declaring loss of Rs.56,82,440/- and the same was processed u/s 143(1) of the Income Tax Act, 1961. Subsequently, the AO received information from DIT Investigation, Varanasi that the assessee's company has received bogus entries of Rs.13,60,000/- on 16.12.1998 from M/s. Moon Holding & Credit Ltd., and Rs.3,00,000/- on 15.3.1999 from Subh in Fin Caps Ltd., New Delhi respectively. On the basis of said information, the assessment proceedings were reopened u/s 148 of the Act and notice was issued to the assessee on 19.3.2005. The reasons for reopening the assessment proceedings were shared with the assessee and after disposing off the assessee's objections, the reassessment order was passed u/s 143(3) read with section 148 of the Act wherein certain additions were made to the returned income.

5. The Assessing Officer has decided against the present appellant and on appeal, the CIT(A) has reversed the finding of Assessing Officer and decided in favour of the assessee which has been reversed by the tribunal.

6. Counsel for the appellant Mr. Gunjan Pathak has taken us to the order of the tribunal wherein it has been held as under:-

3. The Id DR submitted two broad contentions before us. Firstly, he contended that the Id CIT(A) has clearly erred in holding that the Assessing officer has no jurisdiction on any other issues which come to his notice subsequently in the course of proceedings u/s 147 of IT Act other than the issues mentioned in the reasons recorded u/s 148 and in support, he relied upon

the express provisions of section 147 read with Explanation 3 of the Act. Per contra, the Id AR relied upon the decision of the Hon'ble Rajasthan High Court in case of Sri Ram Singh 306 ITR 343. Secondly, the Id DR contended that the initial onus cast on the assessee to prove the identity, creditworthiness and genuineness of the transaction in respect of subscription to the share capital has not been discharged and in support, he relied upon the decision of Hon'ble Supreme Court in case of Navodaya Castles 230 Taxmann 268 (SC). Further, he relied on the order of the Assessing officer. Per contra, the Id AR took us through the findings of the Id CIT(A) and relied on the same.

7. We now refer to the decision of the Hon'ble Rajasthan High Court in case of Sri Ram Singh (306 ITR 343) which has been relied upon by the Id AR and followed by the Id CIT(A). In that case, the issue for consideration before the Hon'ble High Court was "whether in the facts and in the circumstances of the case, the Tribunal was justified in holding that the proceedings for reassessment under section 148/147 of the IT Act were initiated by the AO on non-existing facts because ultimately, the assessee has been able to explain that the income which was believed to have escaped assessment was explainable but some other additions were made under the assessment order?" In that case, the Id Counsel for the assessee submitted that if while exercising powers under section 147, the AO comes to a conclusion, that the income, with respect to which he has entertained "reason to believe" to have escaped assessment, did not escape, or that it was not liable to tax, then merely because he had initiated proceedings, would not confer on him the continued jurisdiction, to assess the other incomes, which have come to his notice subsequently, in the course of proceedings, to have escaped assessment. In that background, the Hon'ble High Court has held as under:

"24. Reverting back to language of section 147, this much is clear, that the sine qua non for conferment of jurisdiction on the AO, to initiate proceedings under that section is, that he should have "reason to believe" that "any income chargeable to tax has escaped assessment for any assessment year" and that, being that situation, being available, i.e., the AO having entertained a "reason to believe", obviously on

valid grounds, he acquires the jurisdiction to assess or reassess "such income", which obviously means, the income, which was chargeable to tax, and had escaped assessment for any assessment year, according to his "reason to believe", and while so assessing or reassessing, he can also, in addition, assess or reassess "any other income chargeable to tax which has escaped assessment and which may come to his notice subsequently in the course of proceedings under section 147".

25. The precise question, thus requiring to be considered is, as to whether, the conjunctive word used, being "and", used between the expression "such income" and "also any other income chargeable to tax, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under section 147" is required to be given its due, or is required to be ignored, or is required to be interpreted as "or". Obviously because, if it is to be interpreted as "or", then the language would read as under:

"147. If the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income or also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

" 26. But then if it were to be so read, the word "also" becomes redundant, and to make sense of the sentence, the section would be required to be read by ignoring the words "also", as well, in which event, the section would read as under: "147. If the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income or any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year

concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

" 27. It is established principle of interpretation of statutes, that the Parliament is presumed to be not extravagant, in using the words, and therefore, every word used in the section, is required to be given its due meaning.

28. If considered on that principle, leaving apart for the moment, the aspect of interpretation of the word "and" as "or", the existence of the word "also" is of a great significance, being of conjunctive nature, and leaves no manner of doubt in our opinion, that it is only when, in proceedings under section 147 the AO, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment. and which has come to his notice subsequently, in the course of proceedings under section 147.

29. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the AO were to come to conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147."

8. It is noted that the above judgment in case of Shri Ram Singh's case (supra) has been rendered by the Hon'ble Rajasthan High Court prior to the insertion of Explanation 3 to section 147 of the Act by the Finance (No. 2) Act, 2009, with effect from April 1, 1989.

However, the Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or to render the substance and

core nugatory. Section 147 has the effect that the Assessing Officer has to assess or reassess the income ('such income') which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepts the contention of the assessee and holds that the income for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income, and if he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee. [Para 16] Section 147(1), as it stands, postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may assess or reassess such income 'and also' any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. The words 'and also' are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by the Parliament. This view has been supported by the background which led to the insertion of the Explanation 3 to section 147. The Parliament must be regarded as being aware of the interpretation placed on the words 'and also', by the Rajasthan High Court in CIT v. Shri Ram Singh [2008] 306 ITR 343. The Parliament has not taken away the basis of that decision. While it is open to the Parliament, having regard to the plenitude of its legislative powers to do so, the provisions of section 147(1), as they stood after the amendment of 1-4-1989, continue to hold the field.

14. It would therefore be relevant to firstly examine the issue in respect of two bogus entries of Rs. 13,60,000/- received on 16.12.1998 from M/s Moon Holding & Credit Ltd., and Rs. 3,00,000/- received on 15.03.1999 from Subh In Fin Caps Ltd., New Delhi which forms the subject matter of notice under section 148 of the Act. If the said issue survives, the AO would have jurisdiction over the other issues and the said other additions made by the Assessing officer would thus arise for examination.

23. We have given a careful consideration to the above factual matrix and are of the view that the assessee company, being a private limited company which has received the amount towards the share subscription again from two other private limited companies has failed to discharge the initial onus placed on it. Mere fact that the money has been received through banking channel is not sufficient enough to discharge the burden. The confirmations, on the letterheads of the assessee company without specifying any date of confirmation, identification by way name and designation of the person signing those confirmations on behalf of the investee companies, have been filed during the appellate proceedings, however the letters issued by the Assessing officer to these two investee companies have been returned undelivered and even the new addresses submitted are incomplete which raises a serious question mark on the confirmations so filed as the same is not wholesome, credible and verifiable. As we have stated in case of Bright Metals (supra), the AO has to examine the evidence so produced not superficially but in depth having regard to the human probabilities and normal course of human conduct. It is only when the explanation and the material offered by the assessee at this stage passes this muster that the initial onus placed on it would shift leaving it to the Assessing Officer. Further, personal attendance of the Directors of the investee companies were called for by the Assessing officer during the remand proceedings, however they couldn't appear before the Assessing officer for reasons best known to the assessee company. The identity of the subscriber companies and genuineness of the transaction cannot be established even if one were to accept so called confirmations on face value. The assessee company has to submit some thing more tangible to demonstrate the existence, operations and conduct of these investee companies. No documents have been submitted by the assessee company in this regard. Thus, the identity and genuineness of the whole transaction has not been established in the instant case. Further, as we have stated in case of Bright Metals case, it would be incorrect to state that the onus on the assessee stands discharged in all cases merely on account of the fact that payment is made through banking channels. Whether investee companies have their own profit making apparatus and were involved in any tangible business activity or

were they merely rotated money, which was coming through the bank accounts, which means deposits by way of cash and issue of cheques. These are the facts which the assessee has to submit for examination by the AO but not done in the instant case. The creditworthiness and genuineness of the transaction is therefore not proved by showing merely issue and receipt of demand drafts when circumstances requires that there should be some more evidence of positive nature to show that the subscribers have made genuine investment. In the present case, the Assessing Officer clearly harbours doubts about the legitimacy of share subscription in the books of the assessee company and has gone about issuing letters seeking confirmation and calling for the personal attendance of the directors of the investee companies. Whilst it does appear that at the time of assessment proceedings, the assessee's premises were locked due to some Court proceedings and the assessee couldn't submit appropriate documentation, however the assessee was given sufficient opportunity during the appellate proceedings by the Id CIT(A) and by the AO during the remand proceedings, however, genuine doubts as to the identity, creditworthiness and genuineness of transaction continue to persist in the minds of the Assessing officer. In the entirety of facts and circumstances of the case and in light of legal proposition discussed above, the explanation about the nature and source of such sum found credited in its books of accounts has not been found satisfactory and the initial burden on the assessee cannot be said to have been discharged in the instant case. We accordingly set aside the order passed by the Id CIT(A) and confirmed the order passed by the Assessing officer.

32. The Id CIT(A) has given a finding that the assessee company has produced the books of accounts during the course of remand proceedings but the Id. AO has not verified the contents of the books of account and no specific defects had been pointed out by the AO in his remand report on all the additions. It is also noted that adhoc additions have been made by the Assessing officer (except for an amount of Rs.4,02,646/- in respect of unsecured loans) which cannot be sustained in the eye of law. In light of the same, we hereby direct the deletion of all these additions made by the AO in respect of additional issues no. 2 to 4 as discussed above. In respect of addition of Rs 4,02,646

which represent increase in the amount of unsecured loans, the initial onus cast on the assessee has not been discharged and in light of the detailed discussions (supra) in context of share subscription, the same is hereby confirmed.

7. He also taken us to the order of the AO which reads as under:-

As per the information received from DDIT (Inv.), Varanasi, some bogus entries of demand drafts/bank accounts were found during course of a search conducted by DDIT (Inv.) Varanasi. On perusal of list of such bogus entries/D.Ds reveals that the above named assessee has obtained D.D. of Rs. 10.00 Lakhs dated 29.05.1999 in its favour from Subh in Fin Caps Ltd. & M/s Vatsa Health Care Ltd. Further, on the basis of above information, assessee was requested to furnish evidence u/s 133(6) regarding this entry vide this office letter dated 17.03.2005. However, the assessee was unable to provide the same thereafter, on the basis of the above information received from DDI (Inv.), Varanasi proceedings U/s 148 of the I.T. Act were initiated after recording reasons by the AO notices u/s 148 dated. 16.3.2005 were sent through Registered post on the address of business premises as well as on the address of Sh. Ashok Goyal, Director, but both the Registered letter came back undelivered. Then fresh notice u/s 148 dt. 29.3.2005 was served through affixture on 30.3.2005 at the business premises (123, MIA, Alwar). In response to the notice u/s 148, the assessee filed written reply on 8.4.2005 stating that return originally filed may be treated in response to notice u/s 148 of the IT Act.

On 11.11.2005, the A/R produced written submission stating that the assessee Company has not received DD of Rs.10.00 Lac in F.Y. 1999-2000. However, share capital of Rs.10.00 Lac is received by the assessee in F.Y. 1996-97. In response to his contention he has produced copy of account of m/s Subh In Fin Caps Ltd. For F.Y. 1996-97. The A/R has again requested vide aforesaid letter

to drop the proceedings U/s 148 of the I.T. Act for A.Y.2000-01. The case was again adjourned to 24.11.2005. On 24.11.2005 an application for adjournment was received and on the request of A/R, the case was adjourned to 06.12.2005. On 06.12.2005 the A/R appeared and filed an affidavit of Sh. Ashok Goyal, Director stating that the assessee Company has received Rs.10.00 Lac from SubhIn Fin Cap during F.Y. 1996-97.

8. He also taken us to the order of CIT(A) which reads as under:-

4.3 I have considered the facts of the case, submission made by AR and cases relied upon, it is found that first notice u/s. 148 was issued on 16.03.2005 after recording the reasons by the AO which was sent through registered AD but the same was came back undelivered. Then again notice u/s. 148 dated 29.03.2005 was issued and served through affixure on 30.03.2005 at the business premises of the appellant after recording reasons. The AO had information that the assessee got DD from M/S Subh In Fin Caps Ltd during the year. Therefore, she had reason to believe that the appellant has concealed the income and furnished inaccurate particulars. Whatever case laws mentioned by the Id. AR are not for reopening the assessment but are for whether any addition can be made on account of bogus share capital. Therefore, reopening the case is justified as there was no scrutiny assessment in this case and also no information of the share capital received through DD were available on record. The Hon'ble SC in case of Central Provinces Managanese Ore Co. Ltd vs. ITO [1991] 191 ITR 662 has held as under:

"For initiation of action under section 147(a) (as the provision stood at relevant time) fulfillment of two requisite conditions in that regard is essential. At that stage, the final outcome of the proceedings is not relevant. In other words, at the initiation state, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only

question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively proved the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction (see ITO v Selected Dalurband Coal Co. P. Ltd [1996] 217 ITR 597 (SC)); Raymond Woollen Mills Ltd. V. ITO [1999] 236 ITR 34 (SC).

In another case Hon'ble SC in case ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd (2007) 291 ITR 500 has held that at the stage issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed the requisite belief. Whether material would conclusively prove escapement of income is not the concern at that stage. This is so because the formation of the belief is within the realm of the subjective satisfaction of the Assessing Officer".

The first ground of appeal is dismissed.

5.2 During the course of appellate proceeding the Id. AR submitted that assessee has received 10.00 Lac during the financial year 1999-2000 he also submitted that assessee has produced books of account and shareholder register on 07.03.2011 and during the financial year 1999-2000 only shares has been allotted after debiting the share application money account. So addition of Rs.10.00 Lac is illegal and deserve to be deleted.

During the course of appellant proceeding Id. AR submitted that assessee has filed confirmation of share capital of Rs.31.50 Lac as well as he produced the books of shareholders are corporate assessee. So there is no doubt of existence of shareholder. The Id ACIT given remand report & the detail chart along with distinction No. Of shares, hence looking to the judgment of Hon'ble supreme court mentioned in ground no. 1 the addition of Rs.31.50 Lac is illegal and deserve to be deleted. He also further submitted that Hon'ble Rajasthan High Court held in case of CIT v/s Shree Ram Singh 306 ITR 343 held: the tribunal was justified in holding, that the

proceedings for reassessment under sec. 148/147 were initiated by the AO, on non-existing facts, because ultimately the assessee has been able to explain the income, which was believed to have been escaped assessment was explainable. It is further held, that the AO was justified initiating the proceeding u/s 147/148, but then, once he came to the conclusion that the income with respect to which he had entertained "reason to believe" to have escaped assessment was found to have been explained, his jurisdiction came to a stop at that and he did not continued to possess. Jurisdiction to put to tax, any other income, which subsequently came to his notice, in the course of proceedings, which were found by him to have escaped assessment.

5.3 I have considered the facts of case and submission made by Id. AR and I found that assessee has produced books of account on 07.03.2011 at the time of remand report not at the time of original assessment. The appellant replied vide letter dated 23.02.2006 to the AO that the premises of the company is locked/sealed by PNB/RFC/RIICO and IDBI due to be company proceedings. It also clear from the servie of notice u/s148 that there was a no person on registered office and premises was found closed. The appellant had submitted an affidavit dated 03.12.2005 before the AO that Rs.10 lac were received in AY 1997-98 not in AY 2000-01 but AO referred the copy of bank account maintained by the Subh in Fin Caps Ltd. With Vijya Bank, 12 Khambha Road, New Delhi account No. 05943 which shows that out of Rs. 10,01,000/- was withdrawn on 29.05.1999 and DD got prepared but on verification of the copy of account it was copy of bank account of M/s Vesta Healthcare Ltd. The name of the bank is not clear. It revealed that on 29.05.1999 there is a debit entry of Rs.1,01,000/- vide cheques No.199794217 whereas the DDIT, Allahabad had informed the AO DD No. 3637 dated 29.05.1999 from current account 5943 maintained with Vijya Bank 17, Barkhabha Road New Delhi and Vijya Bank Karol Bag Branch New Delhi for Rs. 10 lac in the name of Subh In Fin Caps Ltd (Vesta

Healthcare Ltd.). The appellant had submitted an affidavit during the course of assessment proceedings that 10 lac rupees against the share capital were received by the appellant in FY 1996-97 from M/s Subh In Fin Caps Ltd (Vesta Healthcare Ltd.) through Dds. The Id. AO had not commented in assessment order on the affidavit filed and also at the time of the remand report. The present AO has not given any findings on it. The affidavit filed by the assessee had shifted the onus on the revenue to rebut the fact of the affidavit which has not been done by the AO. The Banker of the appellant i.e. PNB Bank. MIA Alwar vide letter dated 26.10.2005 had informed to ACIT, Circle-1, Alwar that such payments of Rs. 10 Lac had not been traced out and the bank had also given a copy of account of appellant for the relevant assessment year. On verification of the share capital in the balance sheet it is found that share capital in previous year was Rs.7,05,24,000/- and in current year i.e. AY 2000-01 it was 7,36,74,000/- it means there is an addition in share capital at Rs.31.5 lacs during the year. The appellant has produced the books of accounts at the time of remand report along with details of share allotted during the FY 1999-2000 relevant to AY 2000-01 which reveals that 55,000 shares were allotted to Sambhuka Agro Pvt. Ltd and 2,60,000 share to Ganesh Benzo Plast Ltd. The both the parties are not figuring in the list given by the DDIT (Inv.), Varanashi. The Id. AO also referred the case on CIT Vs. Ram Kishan Leela 295 ITR 525 (2006) (Raj.) and argued that once the reassessment are pending, the entire assessment is open and is not confined the scope of reasons recorded by the AO before assuming the jurisdiction whereas the appellant relied upon CIT vs. Sri Ram Singh 306 ITR 343 (2008) (Raj.) where Hon'ble Raj. HC has held that when the proceedings for reassessment u/s. 147 were initiated by the AO and found non existing facts in hearing because ultimately the assessee has been able to explain the income, which was believed to have been escaped assessment was explainable, is jurisdiction comes to stop at the point of explanation of reason to believe. The jurisdiction of the AO did not continue to possess to tax any other income which subsequently comes to the notice of the AO. The case law referred by the AO are

for two notices u/s. 148 were issued and Hon'ble court has held that second notice u/s 148 is invalid. The issue in case referred by the AO are totally different. Therefore, the addition made by the AO is found without any basis as share capital of Rs. 10 lacs from Subh In Fin Caps Ltd (Vesta, Healthcare Ltd) was received by the appellant in AY 1997-98 not in AY 2000-01. The 31.5 lac share capital was received from M/s Sambhuka Agro Pvt. Ltd. And M/s Ganesh Benzo Plast Ltd. Through Dds for which confirmation have been filed by the appellant at the time of assessment as well as at the time of remand report. Therefore, addition of Rs. 31.5 lacs on account of unexplained investment in subscribed and paid up capital u/s. 69 is deleted. This ground of appeal is allowed. The assessee gets relied accordingly.

9. He further contended that CIT(A) after taking into consideration the facts on record has followed the decision of Bombay High Court and jurisdiction court and relied upon the following decisions:-

9.1 In Commissioner of Income Tax-II vs. Mohmed Juned Dadani (2013) 355 ITR 172 (Guj.), it has been held as under:-

24. Sans explanation (3), Section 147 of the Act, however, by no stretch of imagination, can be construed as to provide that if the reason on which the assessment is reopened fails, the Assessing Officer still can proceed to assess some other income which according to him had escaped assessment and which came to his light during the course of the assessment. For assuming jurisdiction to frame an assessment under Section 147 of the Act what is essential is a valid reopening of a previously closed assessment. If the very foundation of the reopening is knocked out, any further proceeding in respect to such assessment naturally would not survive.

28. Explanation 3 to Section [147](#) of the Act thus does not in any manner, even purport

to expand the powers of the Assessing Officer under Section [147](#) of the Act. In any case, an explanation cannot expand the scope and sweep of the main body of the statutory provision. In case of S. Sundaram Pillai Vs. V.R. Pattabiraman reported in [MANU/SC/0387/1985](#) : AIR 1985 SC 582 the Supreme Court observed that, an explanation added to a statutory provision is not a substantive provision but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. It was observed as under:

52. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve.

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful.

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) It cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

31. As already noted, except for the Punjab and Haryana High Court in case of Majinder Singh Kang Vs. Commissioner of Income-Tax and anr (supra) all courts have uniformly taken a view that Explanation 3 to Section [147](#) of the Act does not change the situation insofar as the present controversy

is concerned. Leading decision of Bombay High Court in case of CIT. vs. Jet Airways (I) Ltd. has been followed by different High Courts. In case of CIT. vs. Jet Airways (I) Ltd., the High Court, in its elaborate decision considering the statutory provisions, different judicial pronouncements and the explanatory memorandum for introduction of Explanation 3 to Section [147](#) of the Act, ruled in favour of the assessee.

33. Punjab and Haryana High Court in case of Majinder Singh Kang Vs. Commissioner of Income-Tax and anr (supra) ofcourse has sounded a different note. We may, however, notice that the explanatory memorandum to Explanation 3 to Section [147](#) of the Act was not brought to the notice of the High Court in the said decision. The High Court gave considerable importance on such Explanation 3 to Section [147](#) of the Act and the language used therein. In the result, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue. All tax appeals are dismissed.

9.2 In Assistant Commissioner of Income Tax vs. Major Deepak Mehta (2012) 344 ITR 641, it has been held as under:-

35. In the case on hand, the main object and purpose of Section [147](#) read with Section [148](#) is that if there is any escaped assessment and the AO has reason to form the opinion a notice must be given to the assessee to file returns or to show that there was no escaped income and under Section [152\(2\)](#) the proceedings may be dropped. In that context, explanation provides that along with the proceedings for the escaped income which had formed reason to believe and the assessee has been properly intimated to show his case, proceedings of the other incomes may also be examined along with the said income.

36. We are in respectful agreement with the view taken by the Bombay High Court in Jet Airways (supra) and the High Court of Delhi in Ranbaxy Laboratories Limited (supra).

9.3 In CIT vs. Jet Airways (I) Ltd. (2011) 331 ITR 236, it has been held as under:-

12. The effect of Section [147](#) as it now stands after the amendment of 2009 can, therefore, be summarised as follows: (i) The Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year; (ii) Upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the Assessing Officer has to serve on the assessee a notice under Sub-section (1) of Section [148](#), (iii) The Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section; and (iv) Though the notice under Section [148\(2\)](#) does not include a particular issue with respect to which income has escaped assessment, he may nonetheless, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course, of the proceedings under the section.

19. The second line of precedent is reflected in a judgment of the Rajasthan High Court in Commissioner of Income Tax v. Shri Ram Singh (2008) 306 ITR 343 (Raj). The Rajasthan High Court construed the words used by Parliament in Section [147](#) particularly the words that the Assessing Officer 'may assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings' under Section [147](#). The Rajasthan High Court held as follows.

.... it is only when, in proceedings under Section [147](#) the Assessing Officer, assesses or reassesses any income chargeable to tax which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice

subsequently, in the course of proceedings under Section [147](#).

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under Section [147](#), the Assessing Officer were to come to the conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under Section [147](#).

20. Parliament, when it enacted the Explanation (3) to Section [147](#) by the Finance (No. 2). Act, 2009 clearly had before it both the lines of precedent on the subject. The precedent dealt with two separate questions. When it effected the amendment by bringing in Explanation 3 to Section [147](#), Parliament stepped in to correct what it regarded as an interpretational error in the view which was taken by certain courts that the Assessing Officer has to restrict the assessment or reassessment proceedings only to the issues in respect of which reasons were recorded for reopening the assessment. The corrective exercise embarked upon by Parliament in the form of Explanation 3 consequently provides that the Assessing Officer may assess or reassess the income in respect of any issue which comes to his notice subsequently in the course of the proceedings though the reasons for such issue were not included in the notice under Section [148\(2\)](#). The decisions of the Kerala High Court in Travancore Cements Limited (Supra) and of the Punjab & Haryana High Court in Vipin Khanna (supra) would, therefore, no longer hold the field. However, insofar as the second line of authority is concerned, which is reflected in the judgment of the Rajasthan High Court in Shri Ram Singh (supra), Explanation 3 as inserted by Parliament would not take away the basis of that decision. The view which was taken by the Rajasthan High Court was also taken in another judgment of the Punjab & Haryana

High Court in Commissioner of Income Tax v. Atlas cycle Industries [MANU/PH/0278/1989](#) : (1989) 180 ITR 319. The decision in Atlas Cycle Industries held that the Assessing Officer did not have jurisdiction to proceed with the reassessment, once he found that the two grounds mentioned in the notice under Section [148](#) were incorrect or non-existent. The decisions of the Punjab & Haryana High Court in Atlas Cycle Industries (supra) and of the Rajasthan High Court in Shri Ram Singh (supra) would not be affected by the amendment brought in by the insertion of Explanation 3 to Section [147](#).-

21. Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued under Section [148](#) setting out the reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance Act (No 2) of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of Section [147](#). An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section [147](#) has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under Section [148](#), he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under

Section [148](#) would be necessary, the legality of which would be tested in the event of a challenge by the assessee.

9.4 In CIT vs. Adhunik Niryat Ispat Ltd. (2011) 63 DTR 212, it has been held as under:-

3. Since the grounds for reopening the reassessment do not exist any longer and no additions were ultimately made on that account, the additions in respect of other items which were not part of "reasons to believe" cannot be made. This issue has been decided by the High Court of judicature at Bombay in CIT v. Jet Airways (I) Ltd. vide judgment dt. 12-4-2010 in IT Appeal Nos. 1714 of 2009 and 1526 of 2008. Recently, this Bench has also delivered the judgment in case of Ranbaxy vs. CIT decided on 3rd June, 2011 agreeing with the aforesaid view taken by High Court of judicature at Bombay. We thus find that no substantial question of law arises in this appeal. Dismissed.

9.5 In Oriental Bank of Commerce vs. Additional Commissioner of Income Tax (2014) 109 DTR 1 (Del), it has been held as under:-

As regards the deduction claimed under Section [36\(1\)\(viiia\)](#) of the said Act to the tune of Rs.126,81,944/-, the learned counsel for the petitioner has correctly pointed out that the same has been accepted by the Assessing Officer insofar as the assessment year 2005-06 is concerned. This would be evident from paragraph 3.3.2 of the reassessment order which has been extracted in paragraph 4 above. The disallowance of Rs.453,96,44,854/- in the reassessment order does not pertain to assessment year 2005-06 but to an earlier year which was not the subject-matter of reassessment. This is clearly impermissible in law. This is apart from the fact that reassessment for an earlier year was in any event time-barred and would also amount to a 'change of opinion which is also not permitted

in law as is evident from the decision of the Supreme Court in Kelvinator of India Ltd. (supra).

9.6 In Ranbaxy Laboratories Ltd. vs. CIT (2011) 336 ITR 136, it has been held as under:-

18. We are in complete agreement with the reasoning of the Division Bench of Bombay High Court in the case of Jaganmohan Rao (supra). We may also note that the heading of Section [147](#) is "income escaping assessment" and that of Section [148](#) "issue of notice where income escaped assessment". Sections [148](#) is supplementary and complimentary to Section [147](#). Sub-section (2) of Section [148](#) mandates reasons for issuance of notice by the Assessing Officer and Sub-section (1) thereof mandates service of notice to the Assessee before the Assessing Officer proceeds to assess, reassess or recompute escaped income. Section [147](#) mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per explanation (3) if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under Section [147](#) regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under Section [148](#).

9.7 In Commissioner of Income Tax vs. Shri Ram Singh (2008)

306 ITR 343, it has been held as under:-

28. If considered on that principle, leaving apart for the moment, the aspect of interpretation of the word "and" as "or", the existence of the word "also" is of a great significance, being of conjunctive nature, and leaves no manner of doubt in our opinion, that it is only when, in proceedings under Section [147](#) the Assessing Officer, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under Section [147](#).

29. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under Section [147](#), the Assessing Officer were to come to conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under Section [147](#).

30. It is a different story that for such other income, the Assessing Officer may have recourse to such other remedies, as may be available to him under law, but then, once it is found, that the income, regarding which he had "reason to believe" to have escaped assessment, is not found to have escaped assessment, the Assessing Officer is required to withhold his hands, at that only.

32. The result of the aforesaid discussion is, that the question framed, in the order dated 23.5.2006, is required to be, and is, answered in the manner, that the Tribunal was not justified in holding, that the proceedings for reassessment under Section [148/147](#) were

initiated by the Assessing Officer, on non-existing facts, because ultimately the assessee has been able to explain the income, which was believed to have been escaped assessment, was explainable. It is further held, that the Assessing Officer was justified in initiating the proceedings under Section [147/148](#), but then, once he came to the conclusion, that the income, with respect to which he had entertained "reason to believe" to have escaped assessment, was found to have been explained, his jurisdiction came to a stop at that, and he did not continue to possess jurisdiction, to put to tax, any other income, which subsequently came to his notice, in the course of the proceedings, which were found by him, to have escaped assessment.

9.8 In Additional Commissioner of Income Tax vs. Jay Engineering Works Ltd. (1978) 113 ITR 389, it has been held as under:-

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8. The Tribunal has stated that, though, ordinarily, the adjustments relating to expenses should have been made by the assessee in the accounts of the year to which the adjustments relate and not in a subsequent year, it is often inevitable that such adjustments relating to earlier years have to be made in subsequent years. This is specially so, when the business, as of the assessee, is of giant proportions and the branches are farflung. The Tribunal has also very properly relied upon the auditors' reports to draw the proper inference from the same. Since the evidence in Income Tax proceedings need not consist necessarily of evidence admissible under the Evidence Act but may consist of other material which has a probative value, the Tribunal was justified in taking such material into account. It cannot, Therefore, be said that the decision of the Tribunal was not based on any evidence. On the contrary, it was based on evidence meaning thereby that it was based on relevant material which can be considering the Income Tax proceedings.

9.9 In Commissioner of Sales Tax, UP vs. Bijli Cotton Mills, Hathras AIR 1964 SC 1594, it has been held as under:-

10. But in that case, in the view of the High Court the amendment made by amending statute of 1962 which came into force after the reference was made by the Income-tax Tribunal had no retrospective operation, and the question referred by the Tribunal had to be answered by the High Court in the light of the relevant law applicable at the date of the transaction. The observation relied upon has to be read in the context of the finding of the High Court as to the character of the amending legislation. The observation therefore does not assist the contention that even in cases where the relevant statute has been amended with retroactive operation, so as to apply to the transaction which forms the subject-matter of the reference, and the High Court or this Court is bound in recording its opinion on the question referred to ignore the amended law. If what counsel contends is true, the answer given by the High Court or by this Court would have no value whatever in cases where by retroactive amendment of the law, the old law has been superseded and is substituted by a new statutory provision. Undoubtedly the Tribunal called upon to decide a taxing dispute must apply the relevant law applicable to a particular transaction to which the problem relates, and that law normally is the law applicable as on the date on which the transaction in dispute has taken place. If the law which the Tribunal seeks to apply to the dispute is amended, so as to make the law applicable to the transaction in dispute, it would be bound to decide the question in the light of the law so amended. Similarly when the question has been referred to the high Court and in the meanwhile the law has been amended with retroactive operation, it would be the duty of the High Court to apply the law so amended if it applies. By taking notice of the law which has been substituted for the original provision, the High Court is giving effect to legislative intent and does no more than what must be deemed to be necessarily implicit in the question referred by the Tribunal, provided the question is couched in terms of sufficient amplitude to cover an enquiry into the question in the light of the amended law, and the enquiry does not necessitate investigation of fresh facts. If the question is not so couched

as to invite the High Court to decide the question in the light of the law as amended or if it necessitates investigation of facts which have not been investigated, the High Court may refuse to answer to question. Application of the relevant law to a problem raised by the reference before the High Court is not normally excluded merely because at the date when the Tribunal decided the question the relevant law was not or could not be brought to its notice. There is nothing so peculiar in the nature of a reference under the Indian Income-tax Act or the Sales Tax Acts that in deciding it the High Court is restricted to the application of the law which has been superseded by legislation since the date when the reference was made by the Tax Tribunal and is obliged to refuse to apply the law which by legislative direction has to be applied to a particular transaction which is the subject-matter of the reference.

9.10 In Aravali Kshetriya Gramin Bank vs. Assistant Commissioner of Income Tax ITA No.602/2008 decided on 5.9.2017, it has been held as under:-

15. Further, counsel for the respondent contended that the judgment of this Court is required to be considered in view of the Explanation 3 of Section 147 which came into force w.e.f. 2009, the amendment which has been added w.e.f. 1.4.1889. However, it will not be out of place to mention here that the notice was issued on 11.3.2003. This explanation was not there at that time. In that view of the matter, we are not giving any comment whether the impugned jurisdictional judgment will apply or not and when the notice was issued, this explanation was not there.

9.11 In M/s. Oblum Electrical Industries Pvt. Ltd., Hyderabad vs. Collector of Customs, Bombay, it has been held as under:-

12. It is true that in Clause (viii) of the Explanation to the Notification expression 'materials' has been defined to mean goods which are raw materials, components, intermediate products or consumables used in the manufacture of resultant products and their packings or mandatory spares to be exported in the resultant products. But the said definition in the Explanation has to be read in consonance with the main part of the notification. It is a well settled principle of statutory construction that the Explanation must be read so as to harmonise with and clear up any ambiguity in the main provision. (See : Bihta Cooperative Development Cane Marketing Union Ltd. v. Bank of Bihar [MANU/SC/0260/1966](#) : [1967]1SCR848 . The definition of "materials" in Clause (viii) of the Explanation must, therefore, be so construed as not to eliminate the distinction between the words materials required for the purpose of manufacture of products and the words materials used in the manufacture of the resultant products in the main part of the definition.

9.12 In ITO & anr. vs. K.L. Srihari & ors. (2001) 250 ITR 193 (SC), it has been held as under:-

2. We have heard Shri Ranbir Chandra, learned counsel appearing for the petitioners, and Shri Harish N. Salve, learned senior counsel appearing for the respondents. We have also perused the original assessment order dated March 19, 1983, as well as the subsequent assessment order that was passed on July 16, 1987, after the reopening of the assessment under [Section 147](#). On a consideration of the order dated July 16, 1987, we are satisfied that the said assessment order makes a fresh assessment of the entire income of the respondent-assessee and the High Court was, in our opinion, right in proceeding on the basis that the earlier assessment order had been effaced by the subsequent order. In these circumstances, we do not consider it necessary to go into the question that is raised and the same is left open. The special leave petitions are accordingly dismissed.

10. He further contended that even the tribunal in identical matters in case of Dharam Chand Sohan Lal & Co. vs. ITO, Ward-2 (3), Alwar ITA No.207/JP/16 and other connected appeal decided on 1.9.2017 considered the aforesaid judgments and taken a contrary view holding as under:-

10. We have heard the rival submissions and perused the material available on record. The issue is no more res integra. In case of CIT vs. Jet Airways (I) Ltd. (Supra), Hon'ble Justice Dr. D.Y. Chandrachud, after considering the amendment brought in by the Finance (No. 2) Act of 2009, with effect from 1-4-1989 and taking into consideration the earlier decision of the Hon'ble Rajasthan High Court in case of CIT v. Shri Ram Singh [2008] 306 ITR 343 (Raj.) has held as under:

11. The rival submissions which have been urged on behalf of the revenue and the assessee can be dealt with, both as a matter of first principle, interpreting the section as it stands and on the basis of precedents on the subject. Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe under section 147 and following the issuance of a notice under section 148, the Assessing Officer has the power to assess or reassess the income, which he has reason to believe had escaped assessment and also any other income chargeable to tax. The words "and also" cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament otiose. Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words "and also" cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not used the word "or". The Legislature did not rest content by merely using the word "and". The words "and", as well

as "also" have been used together and in conjunction. The Shorter Oxford Dictionary defines the expression "also" to mean 'further, in addition, besides, too'. The word has been treated as being relative and conjunctive. Evidently, therefore, what Parliament intends by use of the words "and also" is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2) must assess or reassess: (i) 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of section 147 with effect from 1-4-1989 clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment of the former, he cannot independently assess the latter." "14. The second line of precedent is reflected in a judgment of the Rajasthan High Court in CIT v. Shri Ram Singh [2008] 306 ITR 343 . The Rajasthan High Court construed the words

used by Parliament in section 147 particularly the words that the Assessing Officer 'may assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings' under section 147. The Rajasthan High Court held as follows : ". . . if is only when, in proceedings under section 147 the Assessing Officer, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then, only in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under section 147. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the Assessing Officer were to come to the conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147." (Emphasis supplied).

11. In the instant case, the basis for formation of belief that the income has escaped assessment and in respect of which the notice under section 148 has been issued relates to payments in cash in contravention to section 40A(3) of the I.T. Act which has escaped disallowance and thus has escaped assessment in the original assessment proceedings completed u/s 143(3) of the Act. On perusal of the reassessment order passed under 147 read with section 143(3) of the Act, it is noted that in AY 2008-09, no disallowance has been made u/s section 40A(3) which form the basis for reopening of the assessment. The AO has however, brought to tax unexplained cash creditors amounting to Rs 10 lacs which has apparently come to his notice during the course of reassessment proceedings. In AY 2009-10, again similar position exist wherein

no disallowance has been made u/s section 40A(3) which form the basis for reopening of the assessment. The AO has however, brought to tax unexplained cash creditors amounting to Rs 10 lacs and expenses worth Rs 1.05 lacs have been disallowed towards various expenses which apparently come to his notice during the course of reassessment proceedings.

12. In the light of above discussions, the very foundation of the proceedings u/s 147 are vitiated and accordingly, we are setting aside the order passed by the AO u/s 147 for both the years under consideration. In the result, the additional ground of appeal is allowed for both the years. The grounds on merit become infructuous and hence dismissed.

11. Counsel for the respondent has taken us to the order of the tribunal wherein it has been held as under:-

22. After considering the assessee's submission as above, the remand report of the A.O. dated 02.09.2011, wherein he has stated is as under:- " As regards the claim of the A.R. of the assessee that the notice is bad in law, the same is also not acceptable in view of that during the post search inquiries made by the department, the companies which provided the Demand Drafts to the assessee company were found existing only on papers and were floated only for the purpose of channelizing money so that entries to the beneficiaries can be provided. This fact also proved from the letters sent by the AO to those companies received back from the postal authorities with the remarks "no such firm exists/ left". The assessee company had also failed produce the copies of account of those companies and the confirmations obtained from those companies. The assessee company has also failed to produce books of account to prove that no cash entries were provided or cash payment was made by the assessee company to those companies against the DDs received. The facts of this case are different to the cases referred in which it was held if it is assessee that subscribed to increase capital wee not genuine under no circulation covered the amount of Share Capital be regarded as undisclosed income of the assessee

company. In its recent decision Hon'ble Delhi High Court in the case of M/s Vijay Power Generator Ltd. Vs. Director of Income-tax and Another 333 ITR 119 have held that where identity and creditworthiness of share applicants is not proved, addition u/s 68 of the Income-tax Act is justified. While delivering this judgment, the Hon'ble High Court have considered the decisions rendered by the Supreme Court in the cases of Stellar Investment Ltd. 251 ITR 263 as well as Lovely Exports Pvt. Ltd. 319 ITR 5 and have held that the ratio in a decision cannot be applied in each case. The facts and circumstances of each case are to be examined as to whether the particular ratio decided in a particular case could be applied. The Hon'ble High Court have further observed that the initial onus is upon the assessee to establish three things necessary to obviate the mischief of section 68 of the Income-tax Act. These are-i) the identity of investors ii) Their creditworthiness and iii) the genuineness of the transaction. Only when these three ingredients are established prima-facie, it is only then the department is required to undertake further exercise. Hence, the contention of the assessee that issue of notice is bad in law merely on the basis of saying that the company allotted shares to those parties, is not acceptable and the ground of appeal taken by the assessee in this regard deserves to be rejected."

"I have considered the contention of the assessee. It is submitted that in absence of the books of accounts for the year produce even copies of the accounts of such companies maintained with the assessee company, no justification seems in the assessee's contention in writing to the companies at the addresses supplied their bank returned back with the remarks of the postal authorities that "no such firm exists/left". The addresses supplied by the A.R. of the assessee are incomplete and different to the address given by their banks. Therefore, the ground of appeal taken by the assessee in this regard deserves to be rejected." "Further, in compliance to your kind directions given to make further enquiries with regard to increase in share capital of Rs.1.75 crore including alleged share capital of the concerns namely M/s Moon Holding & Credit Ltd of Rs.13.60 lacs and Subh In Fin Caps Ltd of Rs.3.00 lacs. In this connection, a letter was sent to the assessee company with a copy to

the AR, requiring furnishing/ produced various details, information, documents and books of accounts. In compliance Sh. M.L. Agrawal, CA alongwith Sh. Rakesh Sharma, accountant of the company attended on 07- 03-2011 and furnished/produced a written reply dated 07- 03-2011 alongwith following information, documents, papers1. Copy of Bank account maintained in the books of the company for F.Y. 98-99 in support of share application money received of Rs.3,00,000/- on 01.10.1998 vide DD/Ch No. 066344 from and Rs.13,60,000/- on 16.12.1998 vide DD/Ch No. 197968 from M/s Moon Holding Ltd, Delhi. 2. Details of members in respect of shares application money received and shares allotted/transferred in F.Y. 98-99 in support of share capital of Rs. 1.75 crore introduced during the year from:-

Moon Holding	Rs.13,60,000/-
Ganesh Benzo Plast	Rs.1,20,00,000/-
Thaper Ispat	Rs.5,00,000/-
Jindal Oil	Rs.30,00,000/-
Swift Finvest	Rs.1,40,000/-
Shambuka Agro	Rs.2,00,000/-
Sub Fin Cap	Rs.3,00,000/-
Total	Rs.1,75,00,000/-

(A chart prepared on that basis is enclosed for kind perusal)

3. Confirmation of members obtained in respect of shares allotted to them: Shambhuka Agro (on the letter pad of that company dated 19-10-2007), Moon Holding (on the latter paid of assessee company dated 18-09-20), Ganesh Benzo Plast (-----do-----),

Thaper Ispat (-----do-----),

Jindal Oil (-----do-----),

Swift Finvest(-----do-----),

Sub Fin Cap(-----do-----),

But, they have shown their inability to furnish/produce following documents, books, namely as:- (i) Duplicate copy/counterfoils of share allotted, (ii) Copies of bank statement, (iii) Bank book maintained by the company. Therefore, in want of these vital information/documents furnished/produced in the matter, the genuineness/ correctness of the

transactions of share application money received to introduce the share capital is not verifiable. However, on the basis of part information/documents furnished with the return submission dated 07-03-2011, a chart of the share allotment made during the year has been prepared which is annexed for your kind perusal. Going through this chart reveals that the share application money were received by the company on various date from Dec, 98 to March 99 of the year from above parties, but the allotment of the shares made to them has only been shown at the end of the relevant accounting year i.e. 31.03.99. Against the most of the entries shown in the company of ledger of share application A/c furnished, no cheque/DD numbers have been shown. As obtained by the AO during the assessment proceedings, the copies of bank statements of two banks (i) PNB,MIA,Alwar for period..... (not legible) and (ii) Federal Bank Ltd., Fathapuri, Chandni Chowk, Delhi for the period 16.12.98 to 16.04.2001 are only available on record. The dates of the bank statement obtained from PNB, MIA, Alwar are not legible. Moreover, no credit entries of the statement are matching with any entry of share application money received. However, in the forwarding letter dated 26.10.2005, the bank authority has mentioned that he has successfully traced the entry dated 17.12.98 for Rs.13,60,000/- collected by draft. In the copy of bank statement of the Federal Bank Ltd, Fathpuri, Chandni Chowk, Delhi, the following amounts credited on transfer which are matching to the share application money received are only verifiable:-

Date	Mode application received form	Amount	Match with the share Money
22-01-99	By H.V.CLG Industries dt. 22-1.99	TR Rs.20,00,000/-	M/s. Ganesh Benji Plast
08-02-99	By TR AGT. Clearing dt. 06-2-99	Rs.10,00,000/-	----- do-----
10-03-99	By Tr 10-03-99	BDP Rs.2,99,655- Shubh In Fin Caps Ltd.	M/s.

In absence of the details of all bank account maintained by the assessee the genuineness of

entire transactions in respect of share application money received is not ascertainable. Therefore, this ground of appeal taken by the assessee company is also liable to be rejected. All in all by not producing the alleged share applicants for verification in person, by not providing their correct present addresses, their copies of books of account & bank statements of all the alleged share applicants, the assessee has virtually closed the doors of meaningful further investigation in this case”.

23. We have given a careful consideration to the above factual matrix and are of the view that the assessee company, being a private limited company which has received the amount towards the share subscription again from two other private limited companies has failed to discharge the initial onus placed on it. Mere fact that the money has been received through banking channel is not sufficient enough to discharge the burden. The confirmations, on the letterheads of the assessee company without specifying any date of confirmation, identification by way name and designation of the person signing those confirmations on behalf of the investee companies, have been filed during the appellate proceedings, however the letters issued by the Assessing officer to these two investee companies have been returned undelivered and even the new addresses submitted are incomplete which raises a serious question mark on the confirmations so filed as the same is not wholesome, credible and verifiable. As we have stated in case of Bright Metals (supra), the AO has to examine the evidence so produced not superficially but in depth having regard to the human probabilities and normal course of human conduct. It is only when the explanation and the material offered by the assessee at this stage passes this muster that the initial onus placed on it would shift leaving it to the Assessing Officer. Further, personal attendance of the Directors of the investee companies were called for by the Assessing officer during the remand proceedings, however they couldn't appear before the Assessing officer for reasons best known to the assessee company. The identity of the subscriber companies and genuineness of the transaction cannot be established even if one were to accept so called confirmations on face value. The assessee company has to submit some thing more tangible to demonstrate the existence,

operations and conduct of these investee companies. No documents have been submitted by the assessee company in this regard. Thus, the identity and genuineness of the whole transaction has not been established in the instant case. Further, as we have stated in case of Bright Metals case, it would be incorrect to state that the onus on the assessee stands discharged in all cases merely on account of the fact that payment is made through banking channels. Whether investee companies have their own profit making apparatus and were involved in any tangible business activity or were they merely rotated money, which was coming through the bank accounts, which means deposits by way of cash and issue of cheques. These are the facts which the assessee has to submit for examination by the AO but not done in the instant case. The creditworthiness and genuineness of the transaction is therefore not proved by showing merely issue and receipt of demand drafts when circumstances requires that there should be some more evidence of positive nature to show that the subscribers have made genuine investment. In the present case, the Assessing Officer clearly harbours doubts about the legitimacy of share subscription in the books of the assessee company and has gone about issuing letters seeking confirmation and calling for the personal attendance of the directors of the investee companies. Whilst it does appear that at the time of assessment proceedings, the assessee's premises were locked due to some Court proceedings and the assessee couldn't submit appropriate documentation, however the assessee was given sufficient opportunity during the appellate proceedings by the Id CIT(A) and by the AO during the remand proceedings, however, genuine doubts as to the identity, creditworthiness and genuineness of transaction continue to persist in the minds of the Assessing officer. In the entirety of facts and circumstances of the case and in light of legal proposition discussed above, the explanation about the nature and source of such sum found credited in its books of accounts has not been found satisfactory and the initial burden on the assessee cannot be said to have been discharged in the instant case. We accordingly set aside the order passed by the Id CIT(A) and confirmed the order passed by the Assessing officer.

24. In the result, addition of Rs 16.6 lacs which forms the subject matter of issuance of notice u/s 148 of the Act is hereby confirmed. This will accordingly vest the Assessing officer with the jurisdiction, to subject to tax, any other income chargeable to tax, which the AO has found to have escaped assessment, and which has come to his notice subsequently, in the course of proceedings under section 147 of the Act.

25. Each of these issues which AO has noticed subsequently during the course of reassessment proceedings and brought to tax is discussed in the following paragraphs. Here we may clarify that none of these issues find mention in the reasons for issuance of notice under section 148. However, in terms of explanation 3 to section 147, the AO continues to vest jurisdiction in respect of these matters as we have discussed in detail earlier.

26. In respect of the first issue, it was noticed by the AO that the assessee has shown an increase in subscribed & paid up capital by Rs. 1.75 Crore (including the above amount of Rs 16.6 lakhs which formed the basis for issuance of notice under section 148) during the year. In spite of repeated query letters and notices, it was noted by the AO that the assessee was unable to produce share application register of allotment of shares or duplicate copies of shares allotted during the year. The A/R only produce copy of share application account in this books and distinctive Nos. of shares allotted to Moon Holding & Credit Ltd and M/s Subh in Fin Caps Ltd. However, the assessee could not produce share allotment register, duplicate copies of shares allotted of shares is declared by assessee. Since increase in subscribed and paid up capital of Rs. 1.75 Crore is not verifiable. The said sum was treated as assessee's own undisclosed money invested in the shape of paid up capital and an addition of Rs. 1.75 Crore u/s 69 (treating the said amount as unexplained investment) was made and added to the total income of the assessee company. The Id CIT(A) following the same reasoning and finding as adopted in case of share subscription of Rs 16.6 lakhs has allowed the relief to the assessee company, the same have been discussed in detail in para 19 above and not reproduced again for sake of brevity. Given the similarity of fact pattern, our findings and directions as referred to in detail in para 23 will apply mutatis-mutandi to this addition made by

the Assessing officer as well. We accordingly confirm the finding of the Assessing officer as the assessee failed to discharge the initial onus placed on it and the addition made in this regard is confirmed.

27. Regarding the second issue, the facts as noted from the assessment records are that the assessee Company was engaged in manufacturing of Vanaspati Ghee. During the year, the assessee has shown sales of Rs. 44,99,14,114/- against immediate proceeding years sales of Rs. 21,42,56,780/-. Though the sales of assessee were better than last year, in the absence of books of account, purchases/sales vouchers, bills/vouchers of expenses debited to trading & profit loss account, the books results shown by assessee was not accepted and a lump-sum addition of Rs. 10.00 Lac was made and the same was added to assessee's total income.

28. Regarding the third issue, the facts as appearing from the assessment records are that as per schedule I of audited accounts, the assessee was provided loans and advances of Rs. 1,99,97,407/- during the year. Further, as per schedule H, there is an addition of Rs.20,89,676/- in fixed deposit account during the year. The assessee has shown other income of Rs.2,54,849/- which accrued/earned on FDR loans. In the absence of copy of interest account, the other income was not held verifiable. An addition of Rs.29,99,610/- which was arrived at 15% of Rs 1,99,97,407/- was made and added back to the total income of the assessee company.

29. Regarding the fourth issue, the facts as appearing from the assessment records are that the bills/vouchers of expenses have not been produced for verification before the AO. The AO disallowed 1/6th of above increased amount i.e. 8,10,279/- vis-à-vis last year, which comes to Rs.1,35,046 and added back to the total income of the assessee company.

30. Regarding the fifth issue, the facts as appearing from the assessment records are that as per schedule D of the audited balance sheet, there was an increase of Rs.4,02,646/- in unsecured loans from others, during the year. Since the assessee has not furnished books of account and confirmation of cash creditors, the increase in unsecured loans remained unverifiable. Therefore, the AO disallowed a

sum of Rs.4,02,646/- u/s 68 treating the same as unexplained cash credits and the said amount of Rs.4,02,646/- was added in assessee's total income.

31. We now refer to the findings of the Id CIT(A) in respect of all these issues (2-5) as referred above which have been dealt with by the Id CIT(A) at para 6.3 of its order which reads as under:

"6.3 I have considered the facts of the case and remand report given by Id. ACIT and submission made by the Id AR and cases relied upon, I find that assessee could not produce the bills and vouchers and complete books of accounts at the time of assessment because the loan recovery proceedings against the appellant from the various banks who had sealed the premises of the appellant. The addition made by the Id. AO on the ground of none production of books which has been produced at the time of remand report but the Id. AO has not verified the contents of the books of account and no specific defects had been pointed out by the AO in his remand report on all the additions. As discussed above the Id. AO does not have any jurisdiction on such issues comes to her notice subsequently in the course of proceedings u/s 147 when reasons to believe explained by the assessee. The appellant had submitted audit report duly certified by CA which is also admissible evidence for claiming of deduction has held by the Hon'ble Delhi High Court in case of Additional Commissioner Vs Jai Engg. Works Ltd. 113 ITR 389 (1978). Therefore, addition made by the Id. AO for Rs. 10 lac, Rs.4,02,646 and Rs.29,99,610/- and Rs. 1,35,046/- is deleted. The assessee get relief accordingly".

34. In ITA No. 10/JP/12, both parties agreed that the facts are parimateria and similar grounds of appeal have been raised by the Revenue as in ITA No. 9/JP/12 decided supra. In view of the same, our observations and decision in ITA No. 9/JP/12 shall apply mutatismutandis to this appeal as well. Ground no. 1 taken by Revenue is confirmed and ground no. 2, 3 & 4 are dismissed.

12. Counsel for the respondent has relied upon the following decisions:-

12.1 In Commissioner of Income Tax vs. Steriplate P. Ltd. ITA No.931/2008 decided on 30.5.2011, it has been held as under:-

8. The aforesaid amendment has been made retrospective and is effective from April 1, 2001. The assessment years involved in the instant appeals are subsequent thereto and, therefore, the same governs the present appeals.

12.2 In The Commissioner of Income Tax vs. M/s. Gillette India Ltd. ITA No.65/2008 decided on 3.5.2017, it has been held as under:-

15. The Delhi High Court in the case of Commissioner of Income Tax vs. I LPEA Paramount (P.) Ltd. [2011] 336 ITR 54 (Delhi), while considering Clause (g) of Section 115JA of the Finance Act, in the year 2009 has made is retrospective with effect from 01.04.1998. Para 4 & 5 of the judgment of Delhi High Court reads as under:

"4. The questions with regard to the provision for doubtful debts and provision for doubtful advances have to be answered in favour of the revenue and against the assessee because of the retrospective amendment introduced in Section 115JA of the said Act. By virtue of Finance (No.2) Act, 2009, clause (g) has been inserted in the Explanation contained in Section 115JA (2). By virtue of the said amendment, the amount or amounts set aside as provision for diminution in the value of any asset, is specifically mentioned. The Supreme Court in the case of CIT v. HCL Comnet Systems & Services: 305 ITR 409 held that provision for doubtful debts and doubtful advances did not fall within clause (c) of the said Explanation inasmuch as they amounted to provision in respect of diminution in the value of asset.

5. Now, with the introduction of the said amendment with retrospective effect from 01.04.1998, the provision for doubtful debts and the provision for doubtful advances, which are nothing but provision for diminution in the

value of asset, are specifically covered under clause (g) of the said Explanation. Consequently, the question insofar as it relates to provision for doubtful debts and provision for doubtful advances, requires to be answered in favour of the revenue and against the assessee. It is so answered.”

13. She also relied upon the decision of tribunal where the tribunal has already upheld the order of AO and reversed the finding recorded by CIT(A).

14. We have heard counsel for the parties.

15. However, tribunal being the last fact finding authority has not given any cogent reason for reversing the finding recorded by CIT(A) in para no.5.3. Solely on that ground, we set aside the order of the tribunal and remit the matter back to the tribunal. It is made clear that we are not commenting on any of the judgments relied by the assessee.

16. The tribunal will reconsider the judgments keeping in mind, the judgment of Supreme Court, High Court as well as judgment of the tribunal itself. We are not answering the issue and the matter is remitted back as stated above. It will be open for the tribunal to decide the issue in accordance with law.

17. The appeals stand allowed to the aforesaid extent.

(INDERJEET SINGH),J

(K.S.JHAVERI),J

Brijesh 18-19.