

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA No.6862/Del./2018
Assessment Year: 2009-10

OMKAM DEVELOPERS LTD., 702, Arunachal Building, 19, Barakhamba Road, Connaught Place, New Delhi	Vs.	ITO, Ward-19(1), New Delhi
PAN :AAACO5036B		
(Appellant)		(Respondent)

And

ITA No.7507/Del./2018
Assessment Year: 2009-10

ITO, Ward-19(1), New Delhi	Vs.	OMKAM DEVELOPERS LTD., 702, Arunachal Building, 19, Barakhamba Road, Connaught Place, New Delhi
PAN :AAACO5036B		
(Appellant)		(Respondent)

Assessee by	Shri Neeraj Mangla, CA
Department by	Ms. Pramita M. Biswas, CIT(DR)

Date of hearing	15.04.2021
Date of pronouncement	11.05.2021

ORDER**PER O.P. KANT, AM:**

These cross appeals by the assessee and the Revenue are directed against order dated 11/09/2018 passed by the Learned Commissioner of Income-tax (Appeals)-XXV, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2009-10.

2. The grounds raised by the assessee in its appeal (i.e. ITA No. 6862/Del/2018) are reproduced as under:

1. *That the assessment order passed u/s 143(3)/147 of the Income Tax Act, 1961 on 30/03/2015 which is subsequently upheld by the Ld. CIT(A) is perverse to the law and to the facts of the case because of getting and granting the approval by the concerned / competent authority in a mechanical manner u/s 151 of the Income Tax Act, 1961 as against the law and to the facts of the case.*
2. *That the assessment order passed u/s 143(3)/147 of the Act and upheld by the Ld. CIT(A) is also not tenable because of invoking provisions of law contained u/s 147 of the Act, without having any of his independent satisfaction thereupon, to the information received in the Investigation Wing of the Department.*
3. *That the assessment order passed u/s 143(3) of the Act and upheld by the Ld. CIT(A) is wither not tenable under the law because the additions made on the basis of information received from Investigation Wing of the Department, on the basis of which reasons for reopening were recorded and the reassessment proceedings were invoked, have been deleted by Ld. CIT(A).*
4. *That the Ld. CIT(A) grossly erred in law in confirming the additions of Rs. 99,98,400/- out of the additions amounting to Rs. 64,66,80,000/- made by the Ld. AO u/s 68 of the Income Tax Act, 1961 despite the fact that the appellant company has discharged the burden complete in all respects as has been prescribed u/s 68 of the Income Tax Act 1961, d all evidences were produced and placed upon records.*
5. *That the Ld. CIT(A) grossly erred in confirming the addition of commission @ 2% on the addition sustained u/s 68 of the Act, despite the fact that the Ld. AO has not brought any material evidence for the same on the record, having nexus to the income determined.*

6. *That the appellant assails his right to amend, alter, change any grounds of appeal or take any further ground at any time even during the course of hearing of instant appeal.*

3. The grounds raised by the Revenue in its appeal (i.e. ITA No. 7507/Del/2018) are reproduced as under:

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 64,94,15,232/- made by the Assessing Officer on account of unexplained credits u/s 68 of the Income-tax Act, 1961 on account of share capital/share premium in its books of accounts and commission paid thereon, despite the fact thn* he assessee was not able to establish the creditworthiness of the creditors and genuineness of transactions as required under section 68 of the Income- tax Act, 1961?"*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the said addition despite the fact that most of the notices u/s 133(6) of the Act sent to the 80 subscriber companies were either received back unserved or no reply was received; most of the e-mails sent to them had bounced back; status of most of the subscriber companies on MCA website was either struck-off or inactive and in response to commission issued under section 131(1)(d) of the Act to the DDIT (Inv.), Unit-3(4), Kolkata, he reported that no such company. M/s Joypriti Hotels Pvt. Ltd. or M/s Joypriti Plastic Builders Pvt. Ltd., existed at the addresses in Kolkata, provided in the confirmations received from them and genuineness of transactions and Tidentity and creditworthiness of the creditors cannot be proved merely on paper?"*
3. *Whether on the facts and circumstances of the case , the Ld. CIT(A) has erred in deleting the said addition by relying upon the decision in the case of PCIT, Delhi-2 vs Best Infrastructure India Pvt. Ltd. in IT A No. 13/2017. whose facts are totally different from that of the present case and in that case the Hon'ble High Court has upheld the action of the IT AT in deleting the addition made under section 68 of the Act on the basis of statements of assessee's directors during the course of search under section 132 of the Act in absence of any other incriminating evidence found /seized during the course of the search to substantiate addition made by the AO during the course of assessment proceedings under section 153A of the Act?.*
4. *The appellant craves to be allowed to add and alter any fresh ground(s) of appeal and / or delete any of the ground(s) of appeal."*

4. Briefly stated facts of the case in chronological order as culled out from the orders of lower authorities are that:

- (i) the assessee claimed to have engaged in building and developing of Real Estate. During the year, the assessee company received investment from 80 entities in share capital of Rs.64,66,80,000/-against subscribers of 77,800 shares having face value of Rs. 10 each at a share premium of Rs.590/- per share.
- (ii) the assessee filed its return of income for the year under consideration u/s 139(1) of Income-tax Act, 1961 (in short 'the Act') on 30/03/2010, declaring income of Rs.2,389/-. The return was processed u/s 143(1) of the Act.
- (iii) subsequently, on receipt of information from the Investigation Wing of Income Tax Department, Kolkata that assessee was one of the beneficiary of the accommodation entries received of ₹ 193 lakhs, the Assessing Officer recorded reasons to believe that income of ₹ 193 lakhs had escaped assessment for the year under consideration and issued notice dated 22/03/2016 under section 148 of the Act asking the assessee to file return of income.
- (iv) in response, the assessee filed return of income on 20/04/2016, declaring income of Rs.2,389/-.
- (v) the assessee and its Authorized Representative were provided a copy of reasons recoded on 6/07/2016; 22/07/2016, along with a copy of the approval granted by the Principal CIT under section 151 of the Act.
- (vi) the Assessing Officer issued statutory notices under the Act for commencing scrutiny proceedings. During the

proceedings on 16.08.2016, the assessee filed details of subscribers of share capital, including name and address.

- (vii) the objections raised by the assessee against the reopening of the assessment on 23/11/2016 and 06/12/2016 were disposed off by the Assessing Officer on 28/11/2016 and 09/12/2016 respectively. The Assessing Officer also provided complete Annexures to the reasons recorded on 28/11/2016 but the request of the assessee to allow cross examination of the witnesses was denied at that stage.
- (viii) the assessee vide letter dated 14/12/2016 and 16/12/2016 filed detailed confirmation of account, latest address, bank statements, copy of acknowledgement of Income Tax Return, certificate of incorporation along with Memorandum of Association (MOA) and Article of Association (AOA) of all share subscriber companies.
- (ix) the Assessing Officer for verification of shares subscriber issued notice under section 133(6) of the Act to all 80 share subscribers. On 27/12/2016, the Assessing Officer informed the assessee that some of the notices were returned unserved and other remained uncomplied and thus he asked the assessee to produce Director(s) of all the 80 subscriber entities. The assessee failed to produce Directors of the shares subscriber companies, however, objected for issue of the notice under 133(6) at the old addresses of the subscribers and, requested not to draw adverse inference.
- (x) the Assessing Officer also issued a commission under section 131(d) of the Act to the Deputy Director of Income Tax (Investigation)- Kolkata for enquiring existence of to

share subscribers, namely, M/s Joyprit Hotels P. Ltd. and M/s. Joyprit Plastics Dealers Private Limited. The enquiry report has been reproduced in the assessment order, wherein companies were not found in existence at the address provided.

- (xi) the Assessing Officer supplied a copy of statement of Sri Pramod Ramden Sharma and Sh. Praveen Kumar Agrawal, wherein Sh. Pramod Ramdin Sharma admitted of using two of the share subscribers, i.e., M/s Joyprit Hotels P.Ltd. and M/s. Joyprit Plastic Dealers P. Ltd., for providing accommodation entries. The assessee, on the other hand, obtained a sworn affidavit from Sh. Pramod Ramdin Sharma and furnished in the office of the Assessing Officer on 21/12/2016. The affidavit mentioned that investment made by both those shares subscriber companies were out of disclosed sources. The Assessing Officer stated that in view of paucity of time, he could not act upon the affidavit.
- (xii) the Assessing Officer has reproduced statement of Sh. Pramod Ramdeen Sharma, who was Director of those companies. His statement was recorded by the Investigation Wing, Kolkata, in the year 2014. In said statement, Sh. Pramod Ramdeen Sharma admitted of working as an employee in the office of Sh. Praveen Agrawal and was only a dummy director in number of companies, including those two companies. The Assessing Officer also carried out inquiries from Registrars of companies regarding share subscriber companies and found that many companies were not active.

- (xiii) on the basis of the inquiries conducted and the information gathered, the Assessing Officer concluded that share subscriber companies were not in existence, not having their own profit-making apparatus and money was only rotated through those companies. He accordingly, treated the entire share capital and share premium totalling to ₹ 64,66,80,000/- as unexplained cash credit in terms of section 68 of the Act, in view of failure of the assessee to establish identity, creditworthiness of shares subscriber companies and genuineness of the transaction of cash credit. He also made addition for the commission at the rate of 2% presumed to have been paid for obtaining the accommodation entries from entry operators, which was worked out at ₹ 1,29,63,600/-. In this manner, the Assessing Officer made total addition of ₹ 65,96,13,600/- under section 68 of the Act in the assessment order dated 29/12/2016 under section 147 read with section 143(3) of the Act.
- (xiv) Before the Ld. CIT(A), the assessee challenged reassessment assessment proceeding on the ground of borrowed satisfaction, approval granted in mechanical manner, completion of assessment without jurisdiction, non-disposal of objections filed against reopening of assessment, non-examination of persons named in reasons recorded, change of opinion, cross-examination of witnesses not allowed, additions made against the law and the procedure specified, notice under section 133(6) of the Act issued at old addresses of subscriber companies, non-adjudication of the evidences furnished by the assessee, show cause notice not

issued/served etc. The assessee also challenged addition on merit. The assessee during first appellate proceedings submitted that fact of the case of the assessee are identical to the facts in the case of **CIT Vs Gagan Deep Infrastructure Private Limited i.e. judgment of Hon'ble Bombay High Court in ITA No. 1613 of 2014**. The assessee also compared its facts with the facts in the case of **Prabhatam Investment Private Limited Vs. ACIT decided by the Tribunal in ITA No. 2525/Del/2015**. The assessee also challenged validity of the reassessment proceeding under section 147 of the Act in view of a specific provision under section 153C of the Act for dealing such allegations.

- (xv) The Learned CIT(A) considered submission of the assessee, however, rejected its contention on the validity of reassessment proceedings. The Ld. CIT(A) upheld the validity of the reasons recorded as well as upheld approval granted by the learned Pr. CIT for issue of the notice under section 148 of the Act. On the issue of the merit of the addition, the Ld. CIT(A) considered the documents filed by the assessee for discharging its onus under section 68 of the Act, which included copy of acknowledgement of the income-tax return filed by the share subscribers stating their permanent account number (PAN), relevant extract of bank statement of subscribers, company master data available with the Registrar of Companies in respect of the subscriber companies. The Ld. CIT(A) relied upon decision of the Tribunal in the case of M/s Prabhatam Investment Private Limited (supra). In view of the decisions relied upon, the Ld.

CIT(A) analyzed the documents furnished by assessee in case of each subscriber and concluded that except four share subscribers, identity, creditworthiness and genuineness of the transaction of remaining share subscribers was established. The Ld. CIT(A) has produced a table in the impugned order containing name and documents filed in respect of all the share subscribers including availability of investible funds with share subscriber companies. In case of four subscribers, namely, M/s Achievers Landcons P. Ltd., Cerastium Private Limited, Flair Buildmart Private limited and U-turn Construction Private Limited, Investible funds of ₹ 1,02,500/- was found in case of each company, and therefore, he concluded that those four companies failed on the test of creditworthiness. Accordingly, on merit he upheld the addition of ₹ 99,98,400/- (=24,99,600 x4) under section 68 of the Act and also corresponding commission at the rate of 2%. In respect of the balance share subscription, the Ld. CIT(A) deleted the addition observing as under:

“Respectfully following the above judgment, which is on similar factual matrix, it can be reasonably inferred that material found during the search in respect of the equity received by the assessee cannot lead to the conclusions drawn by the AO. No specific corroborative evidence has been brought on record by the AO to prove that the equity subscription is an accommodation entry. Besides, appellant has also discharged its onus and submitted all the documentary evidence in respect of the investment. The details submitted in this regard by the appellant have also been made part of order by Assessing officer. It is also undisputed fact that the director of the appellant companies have never made any statement regarding the share capital / share premium / share application money and no disclosure have been made with regard to share capital / share premium / share application money / unsecured loan. As

such, the addition made by the Assessing officer is unsustainable on the various legal grounds and on facts of the case. Basis, the submission of the Appellant, facts and various judgment as per discussions supra, addition of Rs 63,66,81.600 is deleted out of total addition U/s 68 of the Income Tax Act 1961. The addition @of 2% on alleged commission paid to Entry operator is also deleted on pro-ratum basis, in view of the foregoing.”

5. Before us, both the parties appeared through Video Conferencing facilities. The assessee filed a paper-book in two volumes (Pg- 1 to 316 and Pg. 1 to 55) through emails.

6. The Learned Counsel of the assessee challenging the validity of reassessment proceedings supported ground No. 2 of the appeal. He referred to copy of the reasons recorded for reopening available at Pg. 19-23 of PB-1 and the information on the basis of which, reasons were recorded, available at Pg. 24-29 of PB-1. He referred to money trail reported by the Investigation Wing of Kolkata in various Annexures appended to reasons recorded. According to him, the Investigation Wing reported cash deposit of Rs. 15.26 crores in 7 bank accounts maintained by six proprietary concerns (concerns listed in Annexure-C). This amount was then transferred by cheques/RTGS into bank accounts of entities i.e. proprietary concerns, listed in Annexure C-1. Thereafter, the money travelled to bank accounts of entities listed in Annexure-I. Then, money travelled further to entities listed in Annexure-S and finally the money landed in bank accounts of 21 entities i.e. the real beneficiaries, listed in Annexure B. The total money of ₹ 23.49 crores has been claimed by the Investigation Wing to have landed in bank accounts of entities listed in Annexure-B. The name of the assessee company is also appearing in the list of entities in Annexure- B and amount of ₹ 1.93 crore is shown to have been received by the assessee company by way of cheque. In the

reasons recorded, the Assessing Officer has referred to this amount of ₹ 1.93 crore as accommodation entries received by the assessee.

6.1 The Ld. counsel argued that the cash deposits of Rs.15.26 crores identified by the Investigation Wing of Income-tax Department is less than the alleged amount of accommodation entries of Rs.23.46 crores, which substantiates that the information is based on presumptions and the Ld. AO without analyzing the same proceeded to record the reasons for reopening of assessment proceedings in a mechanical manner.

6.2 He further, assailed the reasons recorded and submitted that from the perusal of the information received and the reasons recorded by Ld. AO, the assessment proceedings were initiated on the basis of Suspicious Transaction Report (STR) in the case of Sh. Manohar Jaykishan Shah. There was no reference of any other material. However, as evident from the assessment order, the Ld. AO has relied upon statements of Sh. Pramod Ramdin Sharma and Sh. Praveen Aggarwal which were not the basis of recording of reasons. The same amounts to modification of the reasons recorded and as per the guidelines issued by the Hon'ble Jurisdictional High Court in the case of Sabh Infrastructure Ltd. vs. ACIT (2017) 398 ITR 0198, no modification to the reasons recorded could be possible.

6.3 The Learned Counsel further referred to reply dated 05.01.2021 received from the Assessing Officer in response to queries raised on 07.12.2020 (subsequent to the assessment proceedings) under Right to Information (RTI) Act. He submitted that the Ld. AO in reply to Q. No. 2(b) of RTI has stated that from perusal of bank statements an amount of Rs.1.93 crore was found credited from M/s Joyprit Hotel Pvt. Ltd and M/s Joyprit Plastic Dealers Pvt. Ltd. The learned Counsel submitted that, however, on perusal of the bank

statements of those two concerns, it was evident that the assessee company received an aggregate amount of Rs.2.43 crore from those concerns. According to the learned Counsel, the Assessing Officer had not verified bank statements and only taken the figures of Rs. 1.93 Crores from the information supplied by the Investigation Wing.

6.4 The learned Counsel also submitted that from the reasons recorded, it is evident that the Ld. AO even didn't knew as to from which entity the amount of Rs. 1.93 crores was received by the assessee company.

6.5 He also submitted that reasons recorded are based on suspicion, which is evident from the words used in reasons recorded, i.e., "it appears that assessee M/s Omkam Developers Ltd. has received bogus share capital/share premium to the tune of ₹ 1.93 Crores". He further submitted that reopening has been made on borrowed satisfaction of Investigation Wing, Kolkata without bringing on record any material fact substantiating that the assessee company was involved in the modus operandi of receipt of accommodation entries. He submitted that the Assessing Officer has just accepted the information in a mechanical manner and failed to record an independent satisfaction.

6.6 It was submitted by the Learned Counsel that Hon'ble High Court and Hon'ble ITAT has time and again held that recording of reasons after due application of mind is *sine qua non* for valid notice u/s 148 of the Act. Thus, he requested that the notice issued u/s 148 might be quashed and consequentially the reassessment proceedings completed by Ld. AO might be annulled following the Judgment of Hon'ble ITAT Delhi in the case of Sh. Devki Nandan Bindal vs. ITO (ITA No. 4271/Del/2019 dt. 18/12/2019).

7. In support of ground No.1, challenging the approval granted by the Learned Pr.CIT, the learned Counsel referred to page 19 of the paper-book (PB-1), which is a ' Proforma' of approval granted by the Learned Pr.CIT. The Learned Counsel referred to Column No. 13 of said Proforma and submitted that Learned Pr.CIT while granting approval has put the word "Yes" in mechanical manner only, without taking into consideration the material produced or available with him, which is not permissible under the law. He also referred to Column No. 7 of the said Proforma wherein relevant section for reopening has been quoted as Section 147(b) of the Act, which is no longer in operation/existence.

7.1 He further submitted that the copies of the order sheet forming part of the approval (available on page 23 of PB-1) accorded by the Learned Pr.CIT do not have his signature. He submitted that all these observations conclusively proves that approval under section 151 of the Act is without application of mind and on the basis of said mechanical approval given by the Pr. CIT-7, New Delhi, the notice has been issued by the AO to the appellant company on 22.03.2016 u/s 148 of the I.T. Act.

7.2 In support of his contention that in view of mechanical approval, the orders passed u/s 147/143(3) by the Assessing Officer need to be quashed, the Learned Counsel relied on the decision of the Hon'ble Delhi High Court in the case of **PCIT Vs NC Cable Ltd. in ITA 335/2015** and decision of the Tribunal Delhi bench in the case of **Madhu Apartment Private Limited in ITA No. 3869/Del./2018.**

7.3 In support of ground No.3, the learned Counsel submitted that the Ld. CIT(A) has accepted the genuineness of transactions of the assessee company with M/s Joypriti Hotel Pvt. Ltd and M/s Joypriti Plastic Dealers Pvt. Ltd.; the parties in respect of which Ld. AO claimed to have

received the information. Since the order of Ld. AO has merged with the order of Ld. CIT(A) and there didn't exist any additions on the basis of the reasons recorded for reopening of assessment proceedings; there could not be any other additions which could be rightfully made by Ld. AO or upheld by Ld. CIT(A). Reliance was placed on the judicial pronouncements in following cases:

- i. Ranbaxy Laboratories Ltd. vs. CIT, 336 ITR 136 (Delhi)(HC)
- ii. CIT vs. Jet Airways Limited, 331 ITR 236 (Bombay)(HC)
- iii. INS Finance & Investment Pvt. Ltd. vs. ITO, ITA No. 9266/Del/2019 dt. 26/10/2020 (Para 28 to 30; Page 162-163, PB)

7.4 In support of ground no. 4 of appeal, the learned Counsel submitted that the Ld. CIT(A) confirmed addition u/s 68 of the Act in respect of four (4) subscribers on the pretext that those entities had investible funds of only Rs. 1,02,500/- each. In this regard, he submitted that the assessee company had furnished audited financials of those subscribers for FY 2006-07 and couldn't furnish audited financials for FY 2008-09, however, the fact of investment made by those companies was verifiable from the perusal of bank statement and confirmation of account.

7.5 In respect of capacity to pay it was submitted that by now it has been judicially settled that it is not necessary that those funds must be own funds or out of earnings but same could also be in the nature of borrowings. (**INS Finance & Investment Pvt. Ltd. vs. ITO, ITA No. 9266/Del/2019 dt. 26/10/2020, Pg. 133, PB1**). Since those subscribers have paid funds to the appellant and the stated facts of the case is not being challenged, applying the ratio of several judicial pronouncements

cited by the appellant in the appellate proceedings before Ld. CIT(A), no additions were required to be made by Ld. AO to the income of the assessee company.

7.6 Regarding the ground no. 5, the learned Counsel submitted that the addition of commission made by Ld. AO is on presumptions and since the primary additions made by Ld. AO are not tenable under the law, this, consequential additions of commission should also be deleted.

8. On the contrary, Learned DR relied on the order of the lower authorities and submitted that Ld. CIT(A) is justified in rejecting the contention of the assessee challenging the validity of the reassessment. In support of her contention that material available with the Assessing Officer was tangible material outside record, which were sufficient to initiate valid reassessment proceeding, she relied mainly on the decision in the case of **Paramount Communication Private Limited, (2017) 392 ITR 444 (Delhi)** by the Hon'ble Delhi High Court, the SLP filed against which has been dismissed by the Hon'ble Supreme Court as reported in 2017-TIOL-253-SC-IT. She also relied on the list of other decisions which revolve around the ratio as to whether the material received from Investigation Wing could be considered as tangible material for reopening of the assessment.

8.1 With reference to the arguments of the Learned Counsel that approval was granted by Learned Pr.CIT in mechanical manner and without application of the mind, the Learned DR submitted that absence of signature on the order-sheet, does not mean that the Ld. CIT(A) has not perused the reasons recorded by the Assessing Officer and the information enclosed. As regarding the mention of section 147(b) of the Act in Column No. 7 of the Performa, the Learned DR submitted that it was a mistake in the nature of clerical mistake. Regarding ground No.3

of the appeal of the assessee, she submitted that the issue of deletion of additions based on reasons recorded has been challenged by the Revenue before the Tribunal, until then, the ratio of the decisions relied upon by the Learned Counsel of the assessee cannot be applied. Regarding ground No.4 of the appeal of the assessee, the Learned DR submitted that addition has been filed on the basis of lack of creditworthiness, which is evident from the information filed by the assessee itself. Regarding ground No. 5 of the appeal of the assessee, she submitted that in view of the fact of accommodation entries received which has been upheld by the learned CIT(A), the corresponding commission has been rightly upheld by the LearnedCIT(A).

8.2 With reference to the grounds raised by the Revenue in its appeal, the Learned DR relied on the order of the Assessing Officer and submitted that the action of the Learned CIT(A) in deleting the addition is not justified. She submitted that the Inspector of Income Tax Department at Kolkata could not find those two share subscriber companies, namely, M/s. Joypriti Hotels Private Limited and M/s Joypriti Plastic Dealer Pvt. Ltd. at the addresses provided by the assessee. She submitted that those entities were frequently changing their addresses even on the website of Registrar of companies in order to avoid investigation by the tax authorities. The fact of non-existence of those two parties and other parties verified in the process of notice issued under section 133(6) of the Act was duly communicated to the assessee and the assessee was asked to produce the director(s) of those shares subscriber companies, but the assessee failed to do so. She also submitted that at the fag end, of the assessment proceeding, the assessee submitted affidavit of Sh Pramod Ramdeen Sharma, who was Director in M/s Joypriti Hotel Private Limited and M/s Joypriti Plastic Dealer Pvt. Ltd. during the period of

investment in shares capital of the assessee. According to her, on the one hand, the assessee is filing affidavit of Sri Pramod Ramdin Sharma and, on the other hand, was asking his cross examination. She submitted that the onus was on the assessee to produce Sh. Pramod Ramdin Sharma before the Assessing Officer for verification of his contention. She also drawn attention to a long list of the companies in which, Sh. Sharma was Director during the period of investment in share capital of the assessee. The Learned DR submitted that genuineness of the transaction was not established in the case of the assessee in view of the decision of the Hon'ble Supreme Court in the case of NRA Iron and Steel Private Limited, (2019) 412 ITR 161 (SC). In view of the arguments, the Ld. DR submitted that entire addition made by the Assessing Officer, might be sustained.

9. On the other hand, in relation to ground raised by the Revenue, the Learned Counsel of the assessee relied on the order of the Learned CIT(A) and submitted that assessee has furnished all the documents to discharge its onus under section 68 of the Act. Regarding notices under section 133(6) returned back, the learned Counsel submitted that notices were issued at the old addresses despite the new addresses provided by the assessee. Regarding finding of non-existence of shares subscriber companies on the basis of the Inspector's Report, the Learned Counsel submitted that said report was not confronted to the assessee and the two parties under reference had shifted their addresses to Maharashtra and, therefore, could not be located at the old addresses. He submitted that the entire assessment proceedings have been completed within a period of two-three months and only time period of one-day was provided to the assessee to produce the Directors of the shares subscriber companies and thereafter on the next day, the Assessing Officer has

passed the impugned assessment order. He further submitted that the Assessing Officer has relied on the statement of Sri Pramod Ramdin Sharma recorded by the Investigation Wing and no cross-examination was provided to the assessee despite being specifically asked many times during assessment proceeding. He submitted that the Ld. CIT(A) has followed binding precedent of the Tribunal in the case of Prabhatam Investment Ltd. (supra) and Hon'ble Bombay High Court in the case of Gagandep Infrastructure Ltd. (supra).

10. We have heard rival submission of the parties on the issue in dispute raised in the cross appeals. As far as ground No. 1 of the appeal of the assessee is concerned, the assessee has challenged the validity of the reassessment proceeding on the ground that approval for issue of the notice under section 148 of the Act was granted by the Learned Pr.CIT in a mechanical manner and without application of mind and, therefore, reassessment proceeding must be quashed. For adjudicating this issue, the reasons recorded by the Assessing Officer and relevant proforma of approval granted by the Pr. CIT are reproduced as under:

"Reason for the belief that income has escaped assessment in the case of M/s, Omkam Developers Pvt. Ltd. A.Y. 2009-10 (Pan:AAACQ5036B)

1.	<i>Name & Address of the Assessee</i>	<i>M/s Omkam Developers Ltd, 702, Aruachal Building, 19, Barakhamba, Road, Connaught Place, New Delhi</i>
2.	<i>Assessment Year</i>	<i>2009-10</i>
3.	<i>Financial Year</i>	<i>2008-09</i>
4.	<i>PAN</i>	<i>AAACO05036B</i>

PUC is a proposal for reopening the case u/s 147 of the Act for the A.Y 2009-10 in the prescribed Performa.

The information received from ADIT (Inv), Unit-3(4), Kolkata vide his letter dated ADIT/U-3(4)/FIU-IND/MJS/15-16/411 dated 22.06.2015 wherein it is mentioned

that; in the suspicion transaction report of 1000010583 in the name of Manohar Jaykishan Shah was received and it was reported in the I said FIU-IND-STR No. 1000010583 that there were 311 linked entities amongst whom fund transfers were made and in few accounts there were deposits also.

In pursuance to the said report. Bank Statements of various entities have been obtained and on investigation, it has been noticed that Omkam Developers Pvt. Ltd (Pan AAACO5036B) was one of the beneficiaries during the F.Y 2008-09 relevant A.Y.2009-10 and the amount brought through I accommodation entries by the above mentioned company is Rs. 193.00 Lakhs.

Copy of the Status Report in the case of Manohar Jay kishan Shah in connection with FIU-IND-STR No.1000010583 is reproduced below:-

A. Background:

• One Suspicious Transaction Report was received in the month November, 2009 from FIU-IND. In the said report, 31 related accounts were reported out of which 12 accounts were found to be associated, with business of Metal Trading Wherein Mr. Manohar Jaykishan Shah is a Proprietor/Signatory. There are other 19 outstation Branch Accounts which are linked/connected to main 12 accounts and having non-related business/not in the same line of business accounts. During the financial year 2008-09, high, value cheques totaling around Rs. 2030 crore are deposit at outstation branches in these accounts. Subsequent to which on realisation of high value credit amount, debit internal transfer transaction of large value and in round figures has been, transacted within connected group/linked accounts. The cumulative turnover In 31 accounts discussed was reported to be 673 crores.

B. VERIFICATION OF FACTS AND INVESTIGATIONS DONE:

To verify in the STR, the Bank Accounts of all 31 accounts mentioned in the STR were requisitioned from the Bank and scrutinized. The 31 Bank accounts- were opened at different, branches of the Development Credit Bank. The following, facts emerged from the scrutiny of Bank Accounts:

I. There were 7 Bank Accounts belonging to 6 entities in which cash of Rs. 15.26 crore was deposited in the F.Y.-2008-09: The cash deposited were swiftly Transferred to other entities through Cheques/RTGS. These-6 entities are proprietorships. The detail is given as per Annexure-C. The funds from other entities through Cheques/RTGS were also received in these accounts. The details of another 21 proprietorships given are STR is as per Annexure-C1.

II. The find from the entities mentioned in Annexure-C and C1 were transferred to a number of entities which are mostly entities already identified as the companies controlled by the entry operators, few of them have been listed in Annexure-1.

III. The fund was rotated among the entities detailed in Annexure-C, C1 and Annexure-1

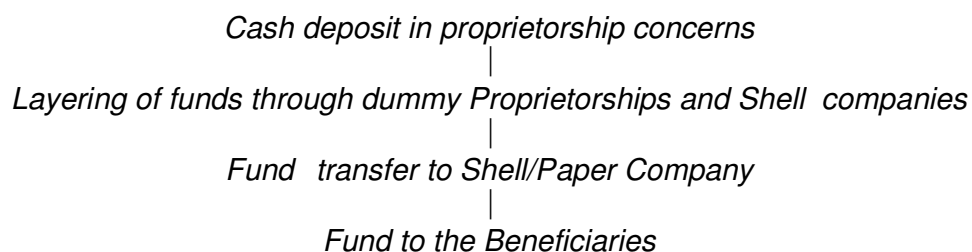
IV. There were 6 Bank Accounts Belonging to 6 Companies in which funds were received from mostly entities discussed in Annexure-C, C1 and Annexure-1 and the same was swiftly transferred to the other entities (Mostly Companies). The details of 6 such companies are given in Annexure -5

V. The fund was transferred to the entities which are the real beneficiary of the funds from the companies mentioned in Annexure-S. The details of such, companies are given in Annexure –B.

Modus operandi of providing accommodaton entry

The summons u/s 131 were issued to the individuals and entities mentioned in the STR. The field verification from the inspector was also done. In most of the cases either the summons could not he served or there was no compliance, The facts of immediate source of the beneficiaries being shell companies have already been established and recorded u/s 131 of the Income Tax Act-1961 during the investigation in other cases. The fact as also corroborated by the non-compliance to the summons as well as non-existence of real business of most of the entities mentioned in Annexure-C, C1 and I and S.

Flow Chart of Cash Flow



Conclusion

(i) In retrospect it can be rightly conceded that, the beneficiary companies have introduced n cash in primary accounts discussed in Annexure-C and s symbolized by various companies (created for the purpose re-1, Annexure-S) operated by entry operators by entry operators, the unaccounted funds have been entered In the regular books of accounts of the beneficiary companies.

(ii) in view of the above, the total amount which has been transferred to the beneficiaries or the recipient companies from the bank accounts of paper companies during F.Y. 2008-09 is details in Annexure-8.

The A.O. of the all beneficiary (Annexure-B) companies is being appraised of] regarding accommodation entry accepted by the companies in F.Y. 2008-09. Further, A.O. of V concerns listed in Annexure-C, C-I and S is also being intimated regarding,

cash deposit and credit made in different bank controlled by them for taking necessary action.

It appears that assessee M/s Omkam Developers Ltd. has received 'I bogus share capital/premium to the tune of Rs.1.93 Crores. The Income Tax | Returns of the assessee were also examined and noticed that the share premium; of assessee was increased to Rs.81,28,52,000/- in the relevant year from Rs. 17,69,50,000/-in the preceding year.

As discussed in earlier paras, the assessee has obtained such entries through above mentioned modus-operandi, it is actually assessee's own money (cash) which was rotated through such channel. This cash was out of his unaccounted income.

I have reasons to believe that an amount of Rs.1.93 crores has escaped from the Assessment for the A.Y. 2009-10 which was chargeable to tax. I am also satisfied that on account of failure on the part of the assessee to disclose truly and fully all the material facts necessary for assessment for the j above assessment year, the income chargeable to tax to the tune of Rs.193.00 Lakh as escaped assessment with the meaning of Section 147 of the IT Act 1961

I have perused the information received from the Investigation Wing, Kolkata. The Investigation Wing of the Department has sent comprehensive detail comprising inter alia the beneficiary's name, value of entry taken etc.

In the aforesaid case as per record from ITD, return of income was filed on declaring Rs.2,389/- income, it is noticed that the assessee company M/s Omkam Developers Ltd, received accommodation entries to the tune of Rs.1.93,crores during the F.Y. 2008-09 relevant to assessment year 2009-10 from the entry operators as mentioned in the chart above and same was not offered for taxation.

Having perused and considered the information, I have reason to believe that income of the assessment company to the extent of Rs.193 Lakh has escaped assessment for the A.Y. 2009-10. Therefore, proceedings u/s 147 i.e. clause (b) of Explanation 2 of the provisions of section 147 of the I.T. Act, 1961 is proposed to be initiated for the A.Y. 2009-10.

As per ITD record, Return of Income has filed on 30.03.2010 at an income of Rs.2,389/- for the A.Y. 2009-10.

Since four years has been expired from the end of the relevant assessment year in this case for the said assessment year, it is therefore I/requested that the reasons recorded above for the purpose of reopening of assessment is put up for kind satisfaction of Pr.CIT, Delhi-7, New Delhi in terms of proviso, to Section 151 of the Income Tax and approval for issue of notice u/s 147 may kindly be accorded."

6/7/16

M/s Omkam Developers Ltd.
A.Y. 2009-10**FORM OF RECORDING THE REASONS FOR INITIATING PROCEEDINGS U/S 147 OF THE I.T. ACT
AND FOR OBTAINING THE APPROVAL OF ADDL.CIT./CIT**

1.	Name & address of the assessee	M/s OMKAM DEVELOPERS LTD., 702, ARUNACHAL BUILDING, 19, BARAKHAMBA ROAD, CONNAUGHT PLACE, NEW DELHI-110001.
2.	Permanent Account No.	AAAC05036B
3.	Status	LTD. COMPANY
4.	Circle/Ward	WARD 19(1), NEW DELHI.
5.	Assessment year in respect of which is it proposal to issue notice u/s 148.	2009-10
6.	Quantum of income which has escaped assessment	Rs. 193.00 LAKH
7.	Whether the provision of Section 147(a) or 147(b) applicable or both the sections are applicable	147(b) of the Act.
8.	Whether the assessment is proposed to be made for the first time. If the reply is in affirmative, Please state: (a) Whether any voluntary has already been filed, and (b) If so, The date of filling the said return.	Yes Yes 30.03.2010
9.	If the answer to item No.8 in the negative, Please state: (a) The income originally assessed (b) Whether it is case of under assessment, assessment at too low a rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation.	NA NA Under Assessment
10.	Whether the provisions of sec. 150(1) are applicable. If the reply is in affirmative, the relevant facts may also be brought out so that provisions of section 150(2) would not stand in the way of initiating proceedings u/s 147.	No
11.	Reasons for the belief that income has escaped assessment.	As per order sheet dated Income Tax Officer Ward-19(1), New Delhi
12.	Whether the Addl. CIT is satisfied on the reasons recorded by the ITO that it is a fit case issue of notice under section 148.	Addl. CIT, Range-19, New Delhi
13.	Whether the Pr. CIT is satisfied on the reasons recorded by the ITO that it is a fit case issue of notice under section 148.	74. 1/4/16 16/3/16 Pr. CIT, Delhi-7, New Delhi

10.1 On perusal of the proforma for the approval granted by the PCIT, it is evident that in the relevant column No.13 for satisfaction of the Pr.CIT, he has only mentioned "yes". No other information is available on record or provided by the Id. DR, which could establish application of mind by

the CIT, while granting sanction/approval for issue of notice u/s 148 of the Act. No other evidence was produced as to substantiate that matter was ever discussed between the Assessing Officer or Addl. CIT and the Learned Pr.CIT for arriving at satisfaction of Learned Pr.CIT on the reasons recorded by the Assessing Officer. Even no evidences whether Ld PCIT examined the material relied upon by the Ld AO for reopening, was produced before us. In similar circumstances, Hon'ble Delhi High Court in the case of **NC Cable Ltd (supra)** held *that section 151 of the Act clearly stipulates that Learned CIT, who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion.* The Hon'ble High Court further observed that *the mere appending of the expression 'approved' says nothing. It is not as if the CIT has to record elaborate reasons for agreeing with the noting put up but at the same time, satisfaction has to be recorded of the given case, which can be reflected in the briefest possible manner.* The Hon'ble High Court further observed that in that case *the exercise appeared to have been the ritualistic and formal rather than meaningful, which is the rationale for safeguard of an approval by a high-ranking officer.* Thus, in the instant case, mere mentioning of "yes" for approval, without any other evidence of application of the mind, amounts to mechanical approval by the Learned Pr.CIT.

10.2 Further in Column No. 7 of the proforma, the section for invoking reassessment has been recorded as 147(b) of the Act. During the relevant period, section 147(b) was no longer in existence. This shows that the Ld. AO has filed the Proforma in mechanically manner and Ld. CIT has also approved the same mechanically. In the case of Madhu Apartment Private Limited vs. ITO, ITA.Nos.3869 & 3870/Del./2018

wherein the Tribunal, Delhi Bench, vide order dated 01/02/2021 held as under:

*“7. After considering the rival submissions, we are of the view that the issue is covered by the Order of ITAT, Delhi G-Bench, Delhi in the case of VRC Township Pvt. Ltd., Delhi (supra) in which reopening of the assessment in identical circumstances was held to be bad in law and sanction accorded by the Sanctioning Authority was also found invalid, therefore, reopening of the assessment was quashed. **In the present case, the Learned Counsel for the Assessee has pointed-out that assessee has raised this issue before the Ld. CIT(A), but, he has rejected the submissions of the assessee holding that Section 147(b) as mentioned in the reason and Format is a typographical human error which is curable under section 292B of the I.T. Act, 1961. This issue is also considered in the Order of VRC Township Pvt. Ltd., (supra) following the decision of Hon’ble Bombay High Court in the case of **Kalpana Shantilal Haria vs. ACIT [2017] 100 CCH 165 (Bom.)**. Following the same reasons for decision, we set aside the Orders of the authorities below and quash the reopening of the assessment in both the assessment years under appeals. All additions stand deleted. Accordingly, appeals of the Assessee are allowed.”***

10.3 In the instant case before us, also the Learned DR has argued that the mistake of noting section under section 147(b) of the Act for reassessment proceeding is a clerical mistake, however, the Tribunal in the above decision has rejected the said contention and quashed reassessment proceeding on the ground of non-application of mind while granting approval for reopening of the assessment under section 151 of the Act.

10.4 Respectfully, following the decision of the Hon’ble Delhi High Court in the case of **NC Cable Ltd (supra)** and decision of the Tribunal in the case of **Madhu Apartment Pvt. Ltd (supra)**, we quash the reassessment proceeding in the case of the assessee.

10.5 Since we have quashed the reassessment proceeding while adjudicating ground No.1 of the appeal of the assessee, no additions made by the Assessing Officer could be sustained. As far as other grounds of appeal of the assessee challenging validity of reassessment proceeding are concerned, same are rendered merely academic in nature and, therefore, we are not adjudicating upon those grounds. As

far as grounds of the parties challenging merit of the addition are concerned, same are rendered infructuous in view of the reassessment proceeding already quashed by us.

11. In the result, the appeal of the assessee is allowed, whereas appeal of the Revenue is dismissed.

Order pronounced in the open court on 11th May, 2021

**Sd/-
(KULDIP SINGH)
JUDICIALMEMBER**

**Sd/-
(O.P. KANT)
ACCOUNTANTMEMBER**

Dated: 11th May, 2021.

RK/-(DTDS)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi