IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI

BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

ITA No.3220/DEL/2024
(Assessment Year: 2013-14)

JNJ Electronics Limited, GI-48, G.T. Karnal Road, Industrial Area, Delhi – 110 033. **(PAN :AABCJ7704Q)**	vs.	DCIT, Central Circle 13, New Delhi.

ITA No.3221/DEL/2024
(Assessment Year: 2013-14)

Jay Iron and Steels Limited, GI-48, G.T. Karnal Road, Industrial Area, Delhi – 110 033. **(PAN :AABCJ3067E)**	vs.	DCIT, Central Circle 13, New Delhi.

ITA No.3222/DEL/2024
(Assessment Year: 2013-14)

JPM Gas Limited, GI-48, G.T. Karnal Road, Industrial Area, Delhi – 110 033. **(PAN :AACCJ3048A)**	vs.	DCIT, Central Circle 13, New Delhi.

ITA No.3223/DEL/2024
(Assessment Year: 2013-14)

Jay Ace Technologies Limited, GI-48, G.T. Karnal Road, Industrial Area, Delhi – 110 033. **(PAN :AACCJ2030N)**	vs.	DCIT, Central Circle 13, New Delhi.

ITA No.3224/DEL/2024
(Assessment Year: 2013-14)

JJF Casting Limited, GI-48, G.T. Karnal Road, Industrial Area, Delhi – 110 033. **(PAN :AACCJ4227B)**	vs.	DCIT, Central Circle 13, New Delhi.
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Salil Aggarwal, Sr. Advocate
Shri Madhur Aggarwal, Advocate
Shri Shailesh Gupta, CA
Shri Mahir Aggarwal, Advocate
Shri Uma Shankar, Advocate
REVENUE BY : Shri Vikram Singh Sharma, CIT DR

Date of Hearing : 30.06.2026
Date of Pronouncement : 24.08.2026

ORDER

PER S.RIFAURRAHMAN,AM:

1. These appeals filed by the assessees are directed against the orders of ld. Commissioner of Income-tax (Appeals)-28, New Delhi dated 08.05.2024 for the Assessment Year 2013-14.

2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order. We take up assessee's appeal being ITA No.3223/Del/2024 in the case of Jay Ace TechnologiesLimited for Assessment Year 2013-14 as lead case wherein the assessee has raised the following grounds of appeal:-

"1. That having regard to the facts and circumstances of the case, Ld. CIT (A) erred in law and on facts in confirming the addition of Rs.27,49,00,000/- on the basis of incorrect reason recorded for re-opening of assessment and the re-opening of the assessment on the basis of information received from DDIT (Inv), Unit - 2(1), Kolkata and that too without confronting the same to appellant is without jurisdiction and consequent notice issued u/s 148 and the order passed in this case u/s 147 of the Income Tax Act is against the statutory provisions of Income Tax Act and is barred by limitation and is void ab-initio.

1.1 That having regard to the facts and circumstances of the case and in law the ld CIT (A) erred in confirming the addition of Rs.23,95,00,000/- on account of unsecured loan received from Suhana Marketing Pvt Ltd ignoring the facts of thecase, explanation and evidence submitted during the course of assessment proceeding and ld CIT(A) also ignored the order of Hon'ble ITAT, Delhi vide appeal no.9726/Del/2019 dated 31/05/2023 and as such the impugned addition confirmed in the order is against the facts on record, bad in law and is liable to be quashed.

1.2 That having regard to the facts and circumstances of the case and in law the ld CIT A) erred in confirming the addition of Rs.3,54,00,000 on account of unsecured loan received from Manish Merchant Pvt Ltd is liable be deleted in view of the assessment order dated 31103/2016 passed u/s 153A/ 143(3) of the Income Tax Act and ld CIT(A) order dated 25/08/2017 vide appeal no 73/16-17 passed for A Y 2010-11 in the case of appellant and ld CIT(A) also ignored the order u/s 153C / 143(3) dated 31/03/2016 of Manish Merchant Pvt Ltd and as such the impugned addition confirmed in the order is against the facts on record, bad in law and is liable to be quashed.

1.3 That having regard to the facts and circumstances of the case and in law the learned CIT (A) arbitrarily and, mechanically rejected the explanation and evidence tendered by the appellant and made the addition by drawing subjective, premeditated and preconceived inferences and therefore the same is not sustainable.

2. That having regard to the facts and circumstances of the case and in law the learned CIT (A) erred in confirming addition of

Rs.54,98,000/- on account of commission @ 2% on Rs.27,49,00,000/- by alleging that the appellant paid commission for taking accommodation entry and the addition so made is arbitrary, have no base, is against the statutory provisions of Income Tax Act and is based on assumption and presumption.

3. Brief facts of the case are, assessee filed its return of income on 28.06.2015 declaring loss of Rs.16,52,65,090/-. Subsequently, the assessment was completed under section 153A/143(3) of the Income-tax Act, 1961 (for short 'the Act') at the returned income. Further, revision order under section 263 of the Act was passed on 18.12.2018 in respect of assessment order passed under section 153A/143(3) of the Act dated 30.03.2016 after making addition of Rs.96,90,000/- u/s 68 of the Act. The Assessing Officer has recorded in the assessment order that after recording reasons for reopening of the case and taken necessary approval from the higher authorities, a notice u/s 148 of the Act was issued on 28.03.2021. In response, assessee filed its return of income submitted through electronically on 15.08.2021 declaring Nil income. Accordingly, notice u/s 143(2) was issued and served on the assessee. Further, assessee filed its objections against the reopening of the assessment vide letter dated 08.02.2022 and the same was disposed off by the Assessing Officer on 11.02.2022.

4. The Assessing Officer observed that as per the information available with him, a perusal of the bank statement of Rangoli Sarees, JMTS Creations,

Trustworthy Traders and Fasttrack Trading Co. in the Bank of India, it is observed that large amounts were credited/deposited mainly in cash in the bank account of above individual/proprietorship concerns which were further transferred to the bank accounts of Strenuous Suppliers Pvt. Ltd., Somya Commercial Pvt. Ltd., Shree Shyam Trader Pvt. Ltd. and Bholenath Tradelink Pvt. Ltd.. The Assessing Officer observed that on perusal of MCA website, it was observed that abovesaid four companies' names were struck off by the MCA. Further, he observed that the abovesaid companies are found to be non-filers of ITRs and further he observed that the above-stated companies have transferred funds to various beneficiary companies and one of them is M/s. Suhana Marketing Private Limited, who has then transferred funds to the assessee. Further, he observed that the statement of Shri Anand Kumar Sharma was recorded on 06.01.2014. During the abovesaid statement, he has admitted that he controlled over 500 companies approx. and books of account of those companies were controlled by him and the directors of those companies are dummy directors. Since, he has admitted that he is used to sell paper companies to clients through brokers. Further, he admitted M/s. Suhana Marketing Private Limited and Manish Merchants Private Limited are paper companies controlled by him. He has reproduced the above statement at page 5 of the assessment order. Subsequently, a show-cause notice was issued to the assessee and in response, assessee has submitted that it has received Rs.24.90 crores from M/s. Suhana Marketing Private Limited and in support of the same, assessee has furnished the confirmation of accounts and other details. After considering the submissions of the assessee, the Assessing Officer noticed that the assessee has shared reasons for reopening of the case of M/s. Suhana Marketing Private Limited, not the final assessment order. He observed from the reply of the assessee as, it looks like it is shown that the addition will be made in the case of the stated company, it itself proves that the assessee itself has accepted the fact that the stated company is a dummy company and they have submitted as under :-

> "1. Suhana Marketing Pvt Ltd :- Suhana Marketing Pvt Ltd is a regular Income Tax Assessee having PAN AAMCS7271. The return of income for AY 2013-14 has also been filed by Suhana Marketing Pvt Ltd declaring income of Rs.19,81,683/- on 31/03/2015. Before reopening of assessment u/s 148 of the Income Tax Act notice us 133(6) of the Income Tax Act were issued to Suhana Marketing Pvt Ltd vide notice dated 16.03.2021. In response to notice issued u/s 133(6) of the Income Tax Act, Suhana Marketing Pvt Ltd filed reply dated 22.03.2021 and confirmed the genuineness of transaction with Assessee Company,
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> 2. The assessee received sum of Rs.24,90,00,000/- from Suhana Marketing P Ltd. The order dated 30.03.2016 passed u/s 153A has been set aside u/s 263 on the ground that sum of Rs.95,00,000/- received from Suhana Marketing Pvt Ltd has not been added to taxable income. Consequently order u/s 263/ 143(3) were passed after making addition in respect of sum of

Rs.95,00,000/- received during AY 2013-14 from Suhana Marketing Pvt Ltd

3. As such it has already been held in the order passed u/s 263/143(3) that sum of Rs 95,00,000/- received as unsecured loan from Suhana Marketing Pvt. Ltd is not genuine and sum of Rs.23,95,00,000/- received as share application money from Suhana, Marketing Pvt Ltd is genuine (the copy of account of Suhana Marketing Pvt Ltd in respect of unsecured loan and share application money is enclosed as Annexure-II. As such in the order passed u/s 263/143(3) during AY 2013-14 the addition in respect of sum of Rs.95,00,000/- has already been made. Further the assessee company has not entered into transactions with various parties mentioned in the notice. The documentary evidence in respect of genuineness of amount received from Suhana Marketing P Ltd has already been submitted along with our earlier submission.

4. It may also be observed that the assessment of Suhana Marketing Pvt Ltd for AY 2013-14 has been reopened by Ward-7(1). Kolkata (the reason recorded of Suhana Marketing Pvt Ltd is enclosed as Annexure-III). As the addition in respect of source is being made by the Income Tax Department in the hands of Suhana Marketing Pvt Ltd and as such no addition can be made in the hands of assessee which is being taxed in the hands of Suhana Marketing Pvt Ltd."

5. Further, along with the above submissions before the AO, the assessee had submitted with regard to Manish Merchant Pvt. Ltd., as under :-

"Manish Merchant Pvt Ltd. :- The assessee has not received sum of Rs 27,50,00,000/-from Manish Merchant Pvt Ltd. During AY 2013-14, the assessee has received sum of Rs.3,54,00,000/- from Manish Merchant Pvt Ltd and not Rs27,50,000/- alleged in the notice (the copy of account of Manish Merchant Pvt Ltd is enclosed as Annexure-I). From the perusal of copy of account it may also be observed there is also repayment to Manish Merchant

Pvt Ltd during AY 2013-14 of Rs.4,00,50,000 and opening balance as on 31.03.2012 was Rs.4,00,50,000/-.

It may be observed that Manish Merchant Pvt Ltd is a regular Income Tax Assessee having PAN AAFCM1912R and is assessed with your honours office. The return of income for A Y 2073-14 has also been filed by Manish Merchant Pvt Ltd on 30.09.2013 declaring income of Rs.80,41,140/-. Search and seizure operation were conducted on 20.09.2013 in the case of JPM Group and in pursuance of search the case of the Mantsh Merchant Pvt Ltd. were centralized vide order dated 18.02.2014 with your honours office.

The assessment u/s 153C/ 143 (3) were conducted in the case of Manish Merchant Pvt Ltd and the order dated 31.03.2016 u/s 153C /143(3) were passed after making addition of Rs.8,87,26,000/-. From the perusal of order of Manish Merchant Pvt Ltd it may be observed that in the order passed u/s 153C/ 143(3) the addition in respect of all the credits appearing in the bank account of Manish Merchant Pvt Ltd has been made. In the para no 4 of order of Manish Merchant Pvt Ltd it is mentioned that during the post search inquiries and during assessment proceeding bank statement of various entry providing companies including that of Manish Merchant Pvt Ltd were called and analyzed and thereafter bank statement of second and third layer companies were also called. It is mentioned in para no 4.7 of order of Manish Merchant Pvt Ltd that credit appearing in the bank account of Manish Merchant Pvt Ltd is Rs.8,87,26,000/- and in the order of Manish Merchant Pvt Ltd total credit of Rs.8,87,26,000/- in the bank account has been added to taxable income. In view of the above as all the credit has already been added in the order of Manish Merchant Pvt Ltd and as such no, addition canbe made in the hands of assessee the source in respect of which have already been added to taxable income. Further the documentary evidence in respect of genuineness of amount received from Manish Merchant Pvt. Ltd. has already been submitted along with our earlier submission.

6. After considering the submissions of the assessee, AO observed that mere filing confirmation from the parties does not discharge the onus of the assessee and it cannot be believed that they lend their crores of rupees in

an unrelated private company without any due diligence and no security against the above lending. Further he observed that credit worthiness and genuineness are not proved and the sources of the funds remains highly suspicious. With regard tothe case of Manish Merchant Pvt. Ltd. has already been established as an entry provider, therefore, in this case provisions of section 68 of the Act is attracted. Accordingly, he proceeded to make the addition u/s 68 of the Act read with section 115BBE of the Act.

7. Aggrieved with the above order, assessee preferred an appeal before the ld. CIT(A) and filed detailed submissions and the same are reproduced by the ld. CIT (A) in his order. After considering the detailed submissions, ld. CIT (A) sustained the addition made by the AO.

8. At the time of hearing, ld. AR of the assessee submitted chronological sequence of events and further submitted as under :-

S. No.	Date	Particulars
1.	29.11.2013	Return of Income was filed by the assessee declaring a loss of a sum of Rs. 18, 51, 68, 923/-. Same is enclosed at **page 1 of PB – I**.
2.	30.03.2016	Assessment under section 143(3) r.w.s. 153A of the Act was framed by learned AO, accepting the returned income, as a result of search on assessee and other JP Minda group of companies on 20.09.2013. It is relevant to note that on the date of search, return of income for AY 2013-14 was

		pending *(as time limit to issue notice u/s 143(2) was available)*, as such, the assessment got abated **(kindly see pages 2 to 3 of PB – I)**. It is also relevant to note that, on the very same day i.e. 30.03.2016, assessments for other companies of JP Minda group were also framed and even for assessee company, assessment order in respect of AY 2010-11 was framed wherein, an addition of a sum of Rs. 19, 40, 00, 000/- was made on account of alleged unexplained share capital **(kindly see pages 100 to 154 of PB – I)**. A bare perusal of the aforesaid assessment order makes it amply clear that the so called alleged report of Investigation Wing with regards to various Kolkata Based Companies, was available on record with the Revenue Authorities but still no addition of was ever made assessment order pertaining to in AY 2013-14**(Emphasis Supplied)** **(kindly see pages 100 to 102, 108, 110 to 113, 150 to 153 of PB – Icontaining assessment order for AY 2010-11).** That further, even learned CIT (A) vide order dated 25.08.2017 in the case of assessee company for AY 2010-11 had deleted the aforesaid addition **(kindly see pages 211 to 220 of PB – II).** Thereafter, the aforesaid deletion was upheld by ITAT in JP Minda group of cases, which has further, been upheld by Hon'ble High Court of Delhi. This shows that even though learned AO had alleged material/ information in his possession, that assessee company has taken accommodation entries from Kolkata based companies, however, no such addition was made by learned AO in the assessment order so passed u/s 143(3) r.w.s. 153A of the Act for AY 2013-14 ***(in abated assessment)***, while addition was made in AY 2010-11*(both orders passed simultaneously on 30.03.2016).*
3.	30.03.2018	Order under section 263 of the Act was passed by PCIT, after examining the assessment records for all assessment years and a direction was given to AO for making an

		addition of a sum of Rs. 95, 00, 000/- with regards to unsecured loan received by the assessee – accompany.
4.	17.11.2022	The aforesaid order of PCIT was challenged by assessee before Hon'ble ITAT, however, the said appeal was withdrawn and as such, appeal of assessee was dismissed as withdrawn in ITA No. 3994/Del/2018.
5.	18.12.2018	Learned AO in pursuance to directions of PCIT u/s 263 of the Act, made an addition of a sum of Rs. 95, 00, 000/- on account of alleged unexplained unsecured loan from M/s Suhana Marketing Pvt. Ltd. and also a sum of Rs. 1, 90, 000/- as alleged commission on aforesaid loan **(kindly see pages 4 to 8 of PB – I).**
6.	31.05.2023	Hon'ble ITAT deleted the aforesaid addition by holding that assessee had sufficiently discharged the burden under section 68 of the Act and the said transaction of loan is a genuine transaction **(kindly see pages 9 to 18 of PB – I)**.
7.	16.03.2021 22.03.2021	Notices u/s 133(6) were issued by learned AO to M/s Manish Merchants Pvt. Ltd. and M/s Suhana Marketing Pvt. Ltd. which were duly replied by the said companies **(kindly see pages 19 to 22 of PB – II).**The<u>aforesaid notices were issued by learned AO prior to issuance of notice under section 148 of the Act and duly replied by subscribing companies. That further, even the replies dated 08.02.2022 were filed by the aforesaid parties during the course of reassessment proceedings, which have been arbitrarily brushed aside by learned AO</u> <u>**(kindly see pages 44 to 45 of PB – I).**</u>
8.	28.03.2021	Notice under section 148 of the Act was issued by learned AO along with reasons recorded. • Notice at pages 23 of PB – I. • Reasons at page 24 to 27 of PB – I • Approval under section 151 at page 27 to 28 of PB – I **Arguments in Brief:** i) Reopening of assessment is unjustified, as scope of order passed by PCIT under section 263/ 153A of the Act <u>cannot be expanded</u> by issuance of further notice under section 148 of the Act, as learned AO cannot travel beyond the order passed by PCIT

under section 263 of the Act. Kindly **see pages 24 to 27 para 9 of PB – I**.

ii) Reopening on basis of <u>Stale Information</u>, as even though learned AO refers to DDIT (inv) Kolkata letter dated 12.03.2020, but it contains same old information that assessee company had taken accommodation entries from Kolkata Based Companies, which was already available when abated assessment was framed u/s 153A/ 143(3) of the Act and which was also revised under section 263 of the Act by PCIT.

iii) Only basis of learned AO is the statement of Sh. Anand Kumar Sharma dated 06.02.2014 which is much prior to the date of framing of assessment order dated 30.03.2016 u/s 153A/ 143(3) of the Act and also revision of order by PCIT dated 30.03.2018 u/s 263 of the Act. As such, there is <u>no fresh tangible material</u> rather it is only re-examination or re-verification or analysis of same old material.

iv) <u>Factually incorrect reasons</u> have been recorded, as even the amounts received from the alleged paper companies have been wrongly noted*(Rs 52.40 crores instead of 27.49 crores)* and even the approval so accorded under section 151 of the Act by PCIT fails to take note of the fact that statement of Sh. Anand Kumar Sharma dated 06.02.2014 as mentioned in the reasons recorded was not on record of learned AO, as the same has never been provided by learned AO for rebuttal and cross examination.

v) Further, even the so called <u>statement of Sh. Anand Kumar Sharma dated 06.02.2014 an alleged accommodation entry provider was not provided to assessee company for rebuttal and even cross examination not provided</u>, even though specifically demanded by assessee company vide reply dated 08.02.2022**(kindly see pages 46 to 50, 50A to 50D, 51 and 56 to 57 of PB – I).**

		vi) That further, learned AO has even failed to appreciate the fact that both the aforesaid companies had furnished replies along with documentary evidences before learned AO during the course of reassessment proceedings which have not been rebutted by learned AO neither statement of alleged accommodation entry provider was ever provided for rebuttal nor any cross – examination was provided**(kindly see reply dated 07.01.2022 at pages 38 to 40 of PB – I and also reply dated 08.02.2022 at pages 44 to 45 of PB – I)**.
9.	16.03.2022	Learned AO in the impugned assessment order u/s 147/153A r.w.s. 143(3) of the Act, has made addition of a sum of Rs.27, 49, 00, 000/- as unexplained credits received from alleged aforesaid two paper companies and Rs. 54, 98, 000/- as alleged commission **(kindly see the impugned reassessment order in the brief file)**.
10.	08.03.2024	Learned CIT (A) has dismissed the appeal of assessee company both on legal issue and merits **(kindly see pages 11 to 14 of the impugned order in brief file)**.

PROPOSITION 1: Reopening of assessment is unjustified, as scope of order passed by PCIT under section 263/ 153A of the Act cannot be expanded by issuance of further notice under section 148 of the Act. Learned AO cannot travel beyond the order passed by PCIT under section 263 of the Act so as to invoke the provisions of section 147 of the Act. Reliance is placed on following case laws:

- **PCIT vs Mahesh Kumar Gupta (Delhi High Court) in ITA No. 810/2016**

"4. There is no dispute that the search and seizure proceedings in this case did not result in anything, therefore, material either in the form of books of account or other documents related to the issue of deemed dividend under Section 2(22) of the Act. The amounts paid were in fact originally declared in the assessment returns of the assessee. The CIT, therefore, had opportunity to exercise his powers

as it were on the basis of returns as filed originally and validly under Section 263 of the Act.

5. In the circumstances in the absence of any material disclosing that the issue of deemed dividend had been wilfully derived or had been deemed or otherwise withheld from the assessment an addition under Section 153A was warranted – based on the proposition taught by this Court in judgment dated 28.08.2015 in ITA 707/2014 titled: CIT vs Kabul Chawla. Therefore, we concur with the ITAT's opinion in this regard. The search and seizure proceedings in such cases are undoubtedly meant to bring to tax amount that are to be determined on the basis of materials seized in the course of such searches; permitting anything over and above that would virtually amount to letting the Revenue have a third or fourth opinion as it were. Searches – to quote the view of Attorney-General (NSW) vs Quin (1990) HCA 21 in another context are "not the key which unlocks the treasury" of the Revenue's jurisdiction in regard to matters that had attracted attention in the regular course of assessment."

PROPOSITION 2: Reopening on basis of Stale Information, as even though learned AO refers to DDIT (inv) Kolkata letter dated 12.03.2020, but it contains same old information that assessee company had taken accommodation entries from Kolkata Based Companies, which was already available on record of Revenue Authorities when abated assessment was framed u/s 153A/ 143(3) of the Act and which was also revised under section 263 of the Act for impugned AY 2013-14. Reliance is placed on following case laws:

(i) **Rasalika Trading and Investment Co. P. Ltd. vs DCIT (Delhi HC) reported in 365 ITR 447(kindly see pages 1 to 6 of PB – II)**
Section 68, read with section 147, of the Income-tax Act, 1961 - Cash credit (Accommodation entries) - Assessment year 2005-06 - Assessee-company was engaged in business of investment and security - Assessing Officer completed assessment of assessee for assessment year 2005-06 under section 143(3) on 24-12-2007 - Subsequently he issued on assessee a notice under section 147 read with section 148 for reassessment - He recorded reasons to effect that (i) he received investigation report dated 13-3-2006 from DIT (Investigation), New Delhi, (ii) said report indicated that assessee

was amongst beneficiaries of bogus accommodation entries, and (iii) in view of investigation report, he had reason to believe that assessee had introduced its unaccounted/disclosed income routed through such bogus accommodation entries - Reasons to believe did not state that investigation report was not with Assessing Officer when he completed original assessment - Whether impugned notice was based upon stale information which was available at time of original assessment - Held, yes - Whether, therefore, attempt to reopen assessment was really result of a change of opinion - Held, yes [Para 5] [In favour of assessee]

(ii) Pardesi Developers and Infrastructure Pvt. Ltd. vs DCIT (Delhi HC) reported in 351 ITR 8 **(kindly see pages 7 to 16 of PB – II).**

(iii) Rani Sati Surajgarhia vs DCIT (ITAT Delhi) in ITA No. 409/Del/2020 **(kindly see pages 17 to 29 of PB – II)**.

PROPOSITION 3: THAT APPROVAL GRANTED IS A MECHANICAL APPROVAL AND HENCE INITIATION OF PROCEEDINGS UNDER SECTION 147 OF THE ACT ON THIS GROUND IS INVALID.

Factually incorrect reasons have been recorded, as even the amounts received from the alleged paper companies have been wrongly noted *(Rs 52.40 crores instead of 27.49 crores)* and even the approval so accorded under section 151 of the Act by PCIT fails to take note of the fact that statement of Sh. Anand Kumar Sharma dated 06.02.2014 as mentioned in the reasons recorded was not on record of learned AO, as the same has never been provided by learned AO for rebuttal and cross examination. Reliance is placed on following case laws on the aforesaid proposition:

Judgment of Hon'ble High Court of Delhi in the case of SBC Minerals Pvt. Ltd. vs CIT in WP(C) No. 7885/2023**.**

Judgment of Hon'ble High Court of Delhi in the case of Shourya Infrastructure Pvt. Ltd. vs ITO in WP(C) No. 12709/2018.

Judgment of Hon'ble High Court of Delhi in the case of Vinod Kumar Solanki vs CIT reported in 166 taxmann.com 71

Judgment of Hon'ble High Court of Bombay in the case of Saraswar Cooperative Bank Ltd. vs ACIT reported in 301 Taxman 90.

Judgment of Hon'ble Supreme Court of India in the case of Chhugamal Rajpal vs SP Challa reported in 79 ITR 603.

Order of Hon'ble ITAT Delhi in the case of Bhaijee Commodities (P) Ltd. vs ACIT reported in 202 ITD 757.

PROPOSITION 4: NON APPLICATION MIND BY AO IN THE REASONS RECORDED, SAME HAVE BEEN RECORDED ON THE BASIS OF INFORMATION RECEIVED FROM ADIT (INV), WITHOUT THERE BEING ANY TANGIBLE MATERIAL WHATSOEVER.

i) Reopening on basis of Stale Information, as even though learned AO refers to DDIT (inv) Kolkata letter dated 12.03.2020, but it contains same old information that assessee company had taken accommodation entries from Kolkata Based Companies, which was already available when abated assessment was framed u/s 153A/ 143(3) of the Act dated 30.03.2016 and which was also revised under section 263 of the Act dated 30.03.2018 for AY 2013-14.

ii) Only basis of learned AO is the statement of Sh. Anand Kumar Sharma dated 06.02.2014 which is much prior to the date of framing of assessment order u/s 153A/ 143(3) of the Act and also revision of order by PCIT u/s 263 of the Act. As such, there is no fresh tangible material rather it is only re-examination or re-verification of same old material.

iii) Factually incorrect reasons have been recorded, as even the amounts received from the alleged paper companies have been wrongly noted and even the approval so accorded under section 151 of the Act by PCIT is also mechanical, noting wrong facts.

iv) Further, even the so called statement of Sh. Anand Kumar Sharma dated 06.02.2014 an alleged accommodation entry provider was not provided to assessee company for rebuttal, even though specifically demanded by assessee company **(kindly see pages 46 to 50, 50A to 50D, 51 and 56 to 57 of PB – I).**

v) A bare perusal of the reasons recorded would make it amply clear that the learned AO has not mentioned about any tangible material except the letter dated 12.03.2020 from DDIT (INV) Kolkata, which suggests that the learned AO had no material in his possession to initiate the instant reassessment proceedings, as it has been held by various courts that mere receipt of letter/ information from another officer/ investigation wing does not constitute to be a tangible material and reopening on the basis of the same is not justified:

- **Sanjay Kaul vs ITO (Delhi HC) reported in 175 taxmann.com 384**

  Section 68, read with section 147, of the Income-tax Act, 1961 - Cash credit (Reassessment) - Assessment year 2014-15 - Assessee had traded in shares of two companies, namely, IISL and SRK - An information was received by Assessing Officer from Investigation Wing that shares of IISL was a penny stock and it was being rigged to provide bogus accommodation entry to beneficiaries - Further, Assessing Officer found that SRK was flagged as one of BSE listed penny stock companies in Investigation Report circulated from Principle DIT (Inv.) - On basis of same, a reopening notice was issued on ground that assessee had claimed bogus short-term capital loss on penny stocks to evade tax liability - It was noted that information on basis of which reassessment notice was issued was general in nature and did not point towards involvement of assessee in arrangement of providing accommodation entry by contriving bogus short-term capital loss - Further, there was nothing to show that information produced above was applicable to assessee - **Materials based on which said report was prepared had also not been placed on record by revenue** - Conclusion arrived at by Assessing Officer was based on suspicion created by information that shares of IISL and SRK were penny stocks - Whether, on facts, impugned reassessment notice issued against assessee was unjustified and same was to be set aside - Held, yes [Paras 27, 29 and 30] [In favour of assessee]

- **PCIT vs. RMG Polyvinyl (I) Ltd. reported in 2017] 396 ITR 5(Delhi),** it has been held as under:

Recently, in its decision dated 26th May, 2017 in ITA No. 692/2016 ***Pr. CIT v. Meenakshi Overseas [2017] 82 taxmann.com 300 (Delhi),*** *Delhi high court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report."*

As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from ACIT, CC-30, New Delhi cannot be said to be tangible material per se <u>without a further inquiry being undertaken by the AO</u>. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had."

- CIT Vs. Multiplex Trading & Industrial Co. Ltd. (Hon'ble Delhi High Court) reported in 378 ITR 351
- Signature Hotels P. Ltd. Vs. Income Tax Officer reported in [2011] 338 ITR 51
- Sarthak Securities Company Private Limited versus Income Tax Officer, reported in 329 ITR 110 (Delhi),
- CIT Vs. Insecticides (India) Ltd. 357 ITR 330 (Delhi)
- Pr. CIT vs. Meenakshi Overseas Ltd. reported in 395 ITR 677 (Del)

Proposition 5: Where all the documentary evidences are on record in respect of share capital issued to Manish Merchants Pvt. Ltd. and Suhana Marketing Pvt. Ltd. and even the said companies have duly replied during the course of reassessment proceedings in response to notices under section 133(6) of the Act. Still Assessing officer failed to conduct any scrutiny of the said documents or rebut the aforesaid evidences so filed by the assessee and the said subscribing companies, the addition made by the AO cannot be sustained.

- Judgment of Hon'ble High Court of Delhi in the case of Pr. CIT vs. Laxmi Industrial Resources Ltd. reported in 397 ITR 106 (Del)
- Judgment of Hon'ble High Court of Delhi in the case of CIT vs. Fair Finvest Ltd. reported in 357 ITR 146 (Del)
- Judgment of Hon'ble High Court of Delhi in the case of PCIT vs Krishna Devi reported in 431 ITR 361.

PROPOSITION 6:RELIANCE ON STATEMENTS NEVER PROVIDED FOR REBUTTAL TO ASSESSEE AND FAILURE TO PROVIDE CROSS EXAMINATION *(THOUGH DEMANDED ON VARIOUS OCCASSIONS)* OF SH. ANAND KUMAR SHARMA IS FATAL TO REASSESSMENT PROCEEDINGS

- 62 Taxmann.com 3 dated 02.09.2015 Andaman Timber Industries vs. CCE

- PCIT vs Best Infrastructure (India) P. Ltd. (Delhi HC) reported in 397 ITR 82

- 322 ITR 396 dated 16.02.2010 CIT vs. Ashwani Gupta (Delhi HC)

9. Further, ld. AR submitted his submissions as under :-

1. That with regards to the aforesaid matter, assessee seeks to submit that on the last date of hearing on 10.02.2026, learned CIT DR has furnished a paper book comprising of 104 pages in the case of M/s JPM Gas Ltd. *(without any certificate and also not in case of M/s Jay Ace Ltd.),* wherein, following documents have been brought on record for the first time before Hon'ble Tribunal:

i) Statements of alleged entry operator Sh. Anand Sharma dated 02.07.2013 (pages 73 to 77), 06.01.2014 (pages 78 to 83) and 06.02.2014 (pages 84 to 97) and;

ii) DDIT (Inv) Kolkata letter dated 12.03.2020 (pages 98 to 104)

2. At the outset, it is most humbly submitted that reliance was only placed by learned AO on statement dated 06.02.2024*(not on other two statements in reasons recorded)* and information dated 12.03.2020 provided by DDIT (Inv) Kolkata in the reasons recorded**(kindly see pages 24 to 27 of PB – I).** However, **the same were never provided to assessee for rebuttal either before disposal of objections or during the course of reassessment proceedings**. Kindly see pages 46 to 50 of PB – I at page 49 **(emphasis supplied)** for assessee's objections to reopening dated 08.02.2022 and pages 50A to 50D for disposal of objections by learned AO dated 11.02.2022. The said request was also made before learned CIT (A) vide written submission at page 225 and 226 of PB – I. A bare perusal of the aforesaid documents and even the impugned reassessment order would amply demonstrate that the aforesaid documents are being furnished by the Revenue before Hon'ble ITAT for the very first time, andwere never confronted by the learned AO along with reasons recorded or either before disposal of objections. As such, it is submitted that *"non-supply of foundational material along with reasons recorded, especially the statements and investigation wing report will make the reassessment proceedings vitiated and bad in law*", reliance is placed on following case laws*:*

i) Micro Marbles (P) Ltd. vs ITO (Rajasthan High Court) reported in 457 ITR 569

21. The aforesaid material, which formed the basis for forming opinion that the officer has reason to believe that the income chargeable to tax has escaped assessment in the hands of the petitioner for the relevant year, do not appear to have been supplied to the petitioner to enable it to file a proper and effective reply/objections to the reasons to believe.

22. Accepting that as per the decision of the Supreme Court in *GKN Driveshafts (India) Ltd.* v. *ITO* [2002] 125 Taxman 963/[2003] 259 ITR 19/179 CTR 11 (SC), dated 25-11-2002, the Assessing Officer is bound to furnish reasons within a reasonable time and on receipt of the same, the noticee is entitled to file objections to the issuance of such notice and the Assessing Officer is bound to consider and dispose of the objections, so filed, by a speaking order, we are of the opinion that supply of the material which forms the basis for forming such opinion becomes *sine qua* *non* to enable the noticee to effectively participate in the proceedings by filing objections.

23. We are also conscious of the decision rendered in *Raymond Woollen Mills Ltd.* (*supra*), which provides that the sufficiency and correctness of the material cannot be considered at the stage of dealing with the validity of the notice, or the order passed on the objections thereon. Notwithstanding the above, the crucial aspect is whether the relevant material, on the basis of which an opinion is formed that the income chargeable to tax has escaped assessment, needs to be supplied to the noticee along with the reasons to believe or what would be the result if it is not made available.

24. A Division Bench of the High Court of Delhi in *SABH Infrastructure Ltd.* v. *Asstt. CIT* [2018] 99 taxmann.com 409/[2017] 398 ITR 198 (Delhi), observed that large number of writ petitions are coming up before the Court challenging the reopening of assessment by the Revenue under section 147/148 of the Act and despite numerous judgments on the point the same errors are being repeated while issuing such notices. It, therefore, laid down the guidelines *inter alia* that where "reasons to believe" make a reference to another document, whether as a letter or report, such document and/or relevant portion of such report should be enclosed along with the reasons and that the exercise of considering the objections to the reopening of the assessment is not a mechanical ritual but a quasi-judicial function.

25. In view of the above decisions and one of the guidelines laid down therein, the supply of documents referred to in the reasons to believe becomes inevitable and in the event such documents are not supplied, it would be flagrant violation of the principles of natural justice.

26. A Division Bench of the Bombay High Court in *Tata Capital Financial Services Ltd.* v. *Asstt. CIT* [2022] 137 taxmann.com 315/287 Taxman 1/443 ITR 127 (Bom.) while deciding Writ Petition No. 546/2022 *vide* judgment and order dated 15-2-2022, reiterated the above proposition of law, as laid down by the Delhi High Court. It directed the Revenue to adhere to certain guidelines in reopening the assessment proceedings. It emphasized that the Assessing Officer shall not merely state the reasons to believe in the letter addressed to the assessee, but if the reasons make reference to any other document or a letter or a report, such document or letter or report should be enclosed to the reasons. Therefore, in view of the aforesaid decision also, it appears to be mandatory on the part of the Assessing Officer to supply the petitioner with all relevant documents, referred to in the reasons to believe so that the petitioner may file proper objections opposing reopening of the assessment.

27. In the case at hand, as previously mentioned, reason to believe supplied to the petitioner refers to information received from the Deputy Director of Income Tax, Investigation as also to the statement of Deepak Jain recorded under section 132 (4) of the Act during the course of the investigation pursuant to the search and seizure carried out at his premises as also the entries in the form of bogus loan/purchase/sale of Rs. 93,21,520/-appearing in the books of M/s Sanmatri Gems Pvt. Ltd. for the Assessment Year 2017-18. Neither of the above documents have allegedly been supplied to the petitioner. The petitioner in the grounds to the petition has taken a categorical stand that the respondents failed to furnish the information which formed the basis for reopening the assessment. It was not even provided with the statement of Deepak Jain, on which heavy reliance was being placed. There is no averment in the reply of the respondents anywhere that any such information or a copy of the statement was supplied to the petitioner along with the reasons to believe.

28. In view of the above, the reasons to believe, as supplied to the petitioner, on the face of it are incomplete and do not afford the petitioner due and proper opportunity to file objections against such reassessment. The non-supply of the above material is within the teeth of the directions of the Division Bench of the Delhi and Bombay High Courts.

29. The submission of Shri Bissa that reasons to believe cannot be equated with the final conclusion and as long as the Assessing Officer has sufficient material to demonstrate that he had *bonafidely* formed the opinion that the income chargeable to tax has escaped assessment, the requirement of law stands satisfied is of no avail as there are no two opinions on the above aspect. Sufficiency of material is one thing and supply of the same is another, which is mandatory in nature. Therefore, the non-supply of the material referred to in the reasons to believe would be enough to render the proceedings bad, even though the material for forming the opinion may be sufficient.

30. The **argument of Shri Bissa is that information furnished by the Deputy Director of Income Tax, Investigation, by itself is sufficient for reopening the proceedings, more particularly when the said information was confirmed from other sources. Again the sufficiency of the information is not in question, nor its confirmation. What is questionable is the effect of its non-supply, to which there is no answer**.

31. Thus, in the light of the decisions of the Delhi and the Bombay High Courts, as referred to above, the non-supply of the material, especially the documents of entry in the books of M/s Sanmatri Gems Pvt. Ltd. and the statement of Deepak Jain recorded under section 132 (4) of the Act, is sufficient to vitiate the proceedings.

32. It may be noted that the statement recorded under section 132 (4) of the Act can be used in evidence for making the assessment only if such statement is made in context with other evidence, or material discovered during search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger the assessment.

33. In view of the aforesaid facts and circumstances, we are of the opinion that shorn of all other technical aspects which may have been raised before us, the very fact that the material referred to in the "reasons to believe" was not supplied to the petitioner, the entire proceedings for the reopening of the assessment and leading to the consequential assessment stand vitiated in law.

ii) Sabh Infrastructure Ltd. vs ACIT (Delhi High Court) reported in 398 ITR 198

19. Before parting with the case, the court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the court would like the

Revenue to adhere to the following guidelines in matters of reopening of assessments :

> while communicating the reasons for reopening the assessment, the copy of the standard form used by the Assessing Officer for obtaining the approval of the Superior Officer should itself be provided to the assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the Assessing Officer to the assessee is to be avoided ;
>
> the reasons to believe ought to spell out all the reasons and grounds available with the Assessing Officer for reopening the assessment—especially in those cases where the first proviso to section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the Assessing Officer on the same and if so, the conclusions thereof ;
>
> where the reasons make a reference to another document, whether as a letter or report, such document and/or relevant portions of such report should be enclosed along with the reasons ;
>
> the exercise of considering the assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed.

iii) GKN Driveshafts (India) Ltd. vs ITO (SC) reported in 259 ITR 19

2.1 It is thus, submitted that the aforesaid statement and DIT (Inv) letter being produced for the first time before Hon'ble Tribunal needs to be excluded and deserves to be rejected since impugned proceedings have been initiated under section 147 of the Act and it is not a case of regular scrutiny assessment, as such, the aforesaid documents since formed the foundational basis for the instant reassessment proceedings, was to be provided by learned AO along with the reasons recorded or with the disposal of objections, which have not been done in the instant matter. Thus, the impugned proceedings are vitiated in law and deserves to be quashed.

3. Even otherwise, since the aforesaid documents are being filed for the first time by Revenue, same should have been accompanied by Rule 29 Application of ITAT Rules, which has not been filed in the instant matter and further, **non – production of aforesaid documents by learned AO along with reasons recorded is fatal to reopening of assessment which can't be cured by filing the same before Hon'ble Tribunal for the very first time**.

3.1 That Rule 29 *(extracted below)*clearly provides that if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, the Tribunal may record reasons for production of the evidences and the material. The learned CIT DR has also not made out any case as to why, the basic foundational material was not provided by AO for rebuttal prior to disposing the objections, as such, it is prayed that the said documents need not be considered for adjudication by the Hon'ble Bench.

Rule Production of additional evidence before the Tribunal.
29. The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or , if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for

reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

3.2 Reliance is placed on the **judgment of Hon'ble High Court of Delhi in the case of CIT vs Text Hundred India (P) Ltd. reported in 351 ITR 57**, wherein, it has been held as follows:

"**14.** The next question which arises for consideration is as to whether the exercise of discretion in the instant case permitting the additional evidence by the Tribunal, is apposite? It is undisputed that rule 29 of the Rules is akin to Order 41 Rule 27(1) of the Code of Civil Procedure. The true test in this behalf, as laid down by the Courts, is whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. The legitimate occasion, therefore, for exercise of discretion under this rule is not before the Appellate Court hears and examines the case before it, but arises when on examining the evidence as it stands, some inherent *lacuna* or defect becomes apparent to the Appellate Court coming in its way to pronounce judgment, the expression 'to enable it to pronounce judgment' can be invoked. Reference is not to pronounce any judgment or judgment in a particular way, but is to pronounce its judgment satisfactory to the mind of Court delivering it. **The provision does not apply where with existing evidence on record the Appellate Court can pronounce a satisfactory judgment (emphasis supplied).**"

4. That further, it is most humbly submitted that it is not the function of Hon'ble ITAT to fill up the lacunas created by learned AO, more so, if such lacuna is fatal to entire reassessment proceedings. Reliance is placed on the judgment of **Hindustan Ferodo Ltd. vs Collector of Central Excise reported in 89 ELT 16 (SC).**

5. That further, it is submitted that reliance on **statements never provided for rebuttal at the objection stage and also failure to provide cross examination is fatal to reassessment proceedings** which makes the instant proceedings vitiated in law. Reliance is placed on following case laws:

i) CIT vs Pradeep Kumar Gupta (Delhi HC) reported in 303 ITR 95.

ii) Jiten Gurnani vs ITO (ITAT Delhi) in ITA No. 4908/Del/2012.
iii) Kishinchand Chellaram vs CIT (SC) reported in 125 ITR 713.
iv) 62 Taxmann.com 3 dated 02.09.2015 Andaman Timber Industries vs. CCE
v) PCIT vs Best Infrastructure (India) P. Ltd. (Delhi HC) reported in 397 ITR 82
vi) 322 ITR 396 dated 16.02.2010 CIT vs. Ashwani Gupta (Delhi HC)

6. That further, and without prejudice to the above, it is submitted that even though powers of ITAT in matter of setting aside an assessment are large and wide, but these cannot be exercised to allow Assessing Officer an opportunity to patch up weak part of his case and to fill up omission, since a party guilty of remissness and gross negligence is not entitled to indulgence being shown. More so, when such omission to fatal to entire reopening of assessment. Reliance is placed on the judgment of Hon'ble **ITAT Delhi Third Member) in the case of ACIT vs Anima Investment Ltd. reported in 73 ITD 125** and Hon'ble Bombay High Court in the case of **PCIT vs Paradise Inland Shipping P. Ltd. reported in 400 ITR 439**. That reliance is also placed on the judgment of **Hon'ble Madras High Court in the case of S. Hastimal vs CIT reported in 49 ITR 273** on the proposition that "after a lapse of many years, assessee should not be placed upon rack and cannot be called upon to do the impossible".

7. That further, in the DDIT (Inv) letter dated 12.03.2020 it was mentioned that *"the facts mentioned in this letter are indicative and not exhaustive. The detail efforts need to be made during the course of assessment to ascertain actual quantum of concealment and take appropriate action as per the provisions of law"*. Whereas, a bare perusal impugned reassessment order would demonstrate that no enquiry whatsoever was made by learned AO, whereas, all the documentary evidences are on record in respect of unsecured loan/ share capital issued to Manish Merchants Pvt. Ltd. and Suhana Marketing Pvt. Ltd. and even the said companies have duly replied during the course of reassessment proceedings in response to notices under section 133(6) of the Act. Still Assessing officer failed to conduct any scrutiny of the said documents or rebut the aforesaid evidences so filed by the assessee and the said

subscribing companied, the addition made by the AO cannot be sustained.

- Judgment of Hon'ble High Court of Delhi in the case of Pr. CIT vs. Laxmi Industrial Resources Ltd. reported in 397 ITR 106 (Del)
- Judgment of Hon'ble High Court of Delhi in the case of CIT vs. Fair Finvest Ltd. reported in 357 ITR 146 (Del)
- Judgment of Hon'ble High Court of Delhi in the case of PCIT vs Krishna Devi reported in 431 ITR 361.

8. That at the cost of repetition, and for brevity, the assessee seeks to also summarize its submissions made on earlier occasion in writing, wherein, following submissions were made:

i) Reopening of assessment is unjustified, as scope of order passed by PCIT under section 143(3) r.w.s. 263/ 153A of the Act cannot be expanded by issuance of further notice under section 148 of the Act.

ii) Reopening on basis of Stale Information, as even though learned AO refers to DDIT (inv) Kolkata letter dated 12.03.2020, but it contains same old information that assessee company had taken accommodation entries from Kolkata Based Companies, which was already available when abated assessment was framed u/s 153A/ 143(3) of the Act and which was also revised under section 263 of the Act.

iii) Only basis of learned AO is the statement of Sh. Anand Kumar Sharma dated 06.02.2014 which is much prior to the date of framing of assessment order u/s 153A/ 143(3) of the Act and also revision of order by PCIT u/s 263 of the Act. As such, there is no fresh tangible material rather it is only re-examination or re-verification of same old material.

iv) Factually incorrect reasons have been recorded, as even the **amounts received from the alleged paper companies have been wrongly noted** and even the approval so accorded under section 151 of the Act by PCIT is also mechanical, noting wrong facts.

v) Further, even the so called statement of Sh. Anand Kumar Sharma dated 06.02.2014 an alleged accommodation entry provider was not provided to assessee company for rebuttal and even cross examination not provided, even though specifically demanded by assessee company **(kindly see pages 46 to 50, 50A to 50D, 51 and 56 to 57 of PB – I).**

vi) That further, learned AO has even failed to appreciate the fact that both the aforesaid companies had furnished replies along with documentary evidences before learned AO during the course of reassessment proceedings which have not been rebutted by learned AO neither statement of alleged accommodation entry provider was provided for rebuttal nor any cross – examination was provided.

10. In view of the aforesaid submissions apart from detailed oral submissions made during the course of hearing, ld. AR prayed that the impugned reassessment proceedings be quashed and appeal of Assessee Company be allowed.

10. On the other hand, ld. DR of the Revenue brought to our notice the relevant impugned order and assessment order and submitted that reopening of the assessment was not pressed on the tangible material available on record. With regard to not providing cross objection to the assessee during reassessment proceedings, ld. DR submitted that it isnot right on the assessee to make such demand. In this regard, he relied on the decision of ITAT, Mumbai Bench in the case of GTC Industries Ltd. vs. ACIT 65 ITD 380 and M/s. Andaman Timber Industries vs. CCE, Kolkatta II 281 CTR 214 (SC).

11. With regard to reliance on **GKN Driveshafts (India) Ltd. vs ITO (SC) case** on disposal of objections raised by the assessee for reopening of the assessment, ld.DR submitted that objections raised by the assessee are duly disposed off by the AO. Therefore, the AO has followed the due process of law. He brought to our notice page 11 of the first appellate order and para 5.1.3 of the order and submitted that ld. CIT (A) has brought on record that various cash deposits made by the alleged companies like Rangoli Sarees etc. and transferred to the bank account of four companies which are alleged to be controlled by Anand Kumar Sharma and subsequently these companies were found to be non-existing, struck off of names in the MCA website and noticed that they were having very meagre income. Since these companies transferred funds to Suhana Marketing Pvt. Ltd. and other companies which were fully controlled by Anand Kumar Sharma and even Anand Kumar Sharma has not retracted the statement, therefore, the statement recorded is incriminating in nature. Therefore, there is no requirement to allow cross-examine of the person who has given the statement. He heavily relied on the detailed findings of the ld. CIT (A) and submitted that in the case of Soman Sum Citi vs. JDCIT, Range 2, Kalyan in ITA No.2960/Mum/2016 wherein it is held that right of cross examination is

not absolute. He relied on above decision and finally relied on the orders of the lower authorities.

12. With regard to other appeals, Ld. AR submitted that facts in other cases of the group are exactly similar to the facts in the present case and he relied on the submissions made in Jay Ace Technologies Ltd.

13. Considered the rival submissions and materialplaced on record. We observed from the record that the assessment of the company was completed u/s 143(3) r.w.s 153A of the Act by accepting the returned income after search proceedings in the assessee as well as in other group concerns of JP Minda Group on 20.09.2013. We also observed that during the above proceedings, the report of investigation wingwith regard to search proceedings and statement of Mr. Anand Kumar Sharma dated 06.02.2014 was very much available and no addition was proposed or made. We observed from the page 110 of the paper book, which is the assessment order passed u/s 143(3)/153A of the Act for AY 2010-11, exact similar discussion was made and analysed the modus operandi adopted to deposit cash in various entities and were routed through the entities like Suhana Marketing and other entities based in Kolkatta. Based on the above, the addition was made u/s 68 on the issue of Share Capital and Share Premium. In appeal by the assessee and revenue, ultimately

Hon'ble High Court of Delhi had decided in favour of the assessee. No doubt the issue involved relates to Share Capital.

14. Subsequently, proceedings u/s 263 was initiated in all the assessments made u/s 143(3) r.w.s 153A of the Act involving all the assessment including the assessment year under consideration. Ld PCIT directed to make addition of Rs. 95 lakhs on the issue of unsecured loan. The same issue under consideration. Based on the above directions, the AO made the above addition on account of alleged unexplained unsecured loan from Suhana Marketing Pvt Ltd along with related commission payments for getting accommodation entries. In appeal before ITAT, the coordinate bench deleted the above addition with the findings that the loan transaction is a genuine transaction.

15. Further observed that before initiating the proceedings u/s 148, the AO himself issued notices u/s 133(6) of the Act dated 16.03.2021 to M/s Manish Merchants Pvt. Ltd. and M/s Suhana Marketing Pvt. Ltd and after their response, not discussed the same in his order. On receipt of response from them dated 22.03.2021, he over looked the same and proceeded to issue further notice u/s 148 of the Act to initiate reassessment proceeding on 28.03.2021.We noticed that the issue raised in revision proceedings u/s 263 is exactly same as raised by AO in the present proceedings and all the relevant materials used to initiate proceedings also same.

16. We observed that the AO had relied upon the information received from Investigation Wing dated 12.03.2020 and the information contained in the above report from Investigation Wing is the same old information which was the basis of initiation of proceedings u/s 153A and 263 of the Act. Now the same information was rebottled afresh in order to initiate the reassessment proceedings, the reason drawn above is due to the fact that the assessee was not shared with any of the fresh information received from Investigation Wing. AO had heavily relied on the statement recorded from Mr. Anand Kumar Sharma dated 06.02.2014, nothing new was brought on record. In our view, the AO had proceeded to initiate the reassessment proceedings based on the information which was already available on assessment records. AO had taken approval u/s 151 of the Act and approving authority had approved the same relying on the same old statement dated 06.02.2014, this itself shows that mechanical approvals.

17. Further we observed that the AO had initiated the proceedings prior to initiation of reassessment proceedings and collected the confirmation from both the parties under consideration and still proceeded to initiate the proceedings as not sufficient proof for genuineness of the transaction. After considering the relevant facts on record, we observed that the AO had used the old information which was already available on record to

reassess the assessment. On the similar issue on record, the Hon'ble Delhi High Court held in the case of Rasalika Trading and Investment Co. P Ltd (supra) that the impugned notice was issued based upon the stale information which was already available at the time of original assessment and the same will be considered as change of opinion.In the given case, the relevant information which was the main basis for initiation of proceedings u/s 153A and 263, the same information was used to initiate the proceedings on the basis of fresh information received from investigation wing, as discussed above, the above fresh information from investigation Wing itself doubtful. In our view, the information used by the AO to initiate and to get approval u/s 151 is nothing but stale information, it can only considered as change of opinion. Therefore, we do not hesitate to delete the additions made and proceedings initiated are beyond jurisdiction.

18. The other propositions raised by the assessee are not adjudicated at this stage and in the result, grounds raised by the assessee on the jurisdictional issues are allowed.

19. In the result, appeal filed by the assessee is allowed.

20. Since the facts in ITA Nos.3220, 3221, 3222 and 3224/Del/2024 are exactly similar to ITA No.3223/Del/2024, our above findings in ITA Nos.3223/Del/2024 are applicable *mutatis mutandis* in ITA Nos.3220,

3221, 3222 and 3224/Del/2024. Accordingly, the appeals filed by the assessees in ITA Nos.3220, 3221, 3222 and 3224/Del/2024 are allowed.

21. To sum up : all the appeals filed by the assessees are allowed as indicated above.

Order pronounced in the open court on this 24th day of August, 2026.

Sd/-	**sd/-**
(SUNIL KUMAR SINGH)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 24.08.2026
TS

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI