M/S D.D. Agro Industries Ltd., Ludhiana vs Acit, Ludhiana on 7 September, 2017

IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER
AND SHRI B.R.R.KUMAR, ACCOUNTANT MEMBER

ITA Nos. 349 & 350/CHD/2017
A.Y.: 2007-08 & 2008-09

M/s D.D.Agro Industries Ltd., Mittal Kanda Lane, Indl. Area-C, Ludhiana. PAN : AABCD1536G	Vs	The ACIT, Circle-7, Ludhiana.
(Appellant)		(Respondent)

Appellant By : Shri Sudhir Sehgal
Respondent By : Smt. Chandra Kanta, Sr.DR

Date of hearing : 28.06.2017
Date of Pronouncement : 07.09.2017

ORDER

PER DIVA SINGH,JM The present appeals have been filed by the assessee assailing the correctness of the separate orders dated 30.012017 of ld. CIT(Appeals)- 3 Ludhiana pertaining to 2007-08 and 2008-09 assessment years. It was the common stand of the parties before the Bench that the issues raised in the present appeals are identical in both the years, as such the arguments advanced in ITA 349/CHD/2017 would fully apply to ITA 350/CHD/2017 also. Accordingly, for ready reference, grounds raised in the said appeal are reproduced hereunder :

1. That the Worthy CIT (A) has erred in confirming the action of the Assessing Officer in reopening the case u/s 148.

2. That the Ld. CIT (A) has failed to appreciate the fact that there was no reason to believe or any tangible material with regard to reopening of the case u/s 148 and, therefore, the whole proceedings are void ab-initio.

3. Notwithstanding the above said ground of appeal, the Ld. CIT(A) has erred in confirming the addition of Rs. 50 lacs as made by the Assessing Officer on account of contribution of share capital/share premium by M/s Genesis Fashions P. Ltd.

4. That the assessee having proved the identity, capacity and genuineness of transfer of contribution of Rs. 50 lacs as made by M/s Genesis Fashions P. Ltd., and therefore, such addition as confirmed by the CIT (A) is bad in law and deserves to be quashed.

5. That the CIT (A) has also erred in taking cognizance of the statement recorded during course of survey of one of the director in view of the judgment of Hon'ble Supreme Court in the case of Khader Khan Sons.

ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09

2. The relevant facts of the case are that the assessee returned an income of Rs. 54,30,750/- on 26.10.2007. Notice u/s 148 was issued on 31.03.2014 after recording of reasons which have been reproduced in the assessment order itself. Based on the reasons recorded, the assessee was issued a show cause notice to explain the receipt of share application money and justify why addition u/s 68 should not be made in the respective years. The show cause notice has been scanned and included in the assessment order.

2.1 Apart from arguing why addition was not maintainable on the basis of reasons recorded, the assessee also offered its explanation on merit vide letter dated 12.02.2015. It was stated that shares had been allotted to the following persons :

Person	Amount received (Rs.)
Genesis Fashions P. Ltd	50,00,000/-
Malkiat Singh	1,00,000/-
Ludhiana Scrips P. Ltd.	28,50,000/-

2.2 The AO accepted the reply of the assessee as satisfactory in

regard to the share application money received from M/s Ludhiana Scrips P.Ltd. and also share application of Shri Malkiat Singh as one of the Directors. The AO, however, took exception to the explanation offered on behalf of M/s Genesis Fashions P.Ltd from whom Rs. 50 lacs had been received. The AO required the assessee to prove the identity, genuineness and credit worthiness of the said party and was also required to produce the documents in support of its claim.

2.3 The explanation offered was not accepted by the AO on account of the following reasons :

• M/s Genesis Fashions P. Ltd. has filed return of income of almost NIL • There is never sufficient credit in the bank account of the assessee. Money is credited almost immediately before being debited.

• All the amounts being transferred are in round figures of lacs. Usually in the bank account of an investment company there are credits of interest which are seldom round figures. This means there is simply movement of huge funds through the bank accounts. • As per the return, the address of Genesis Fashions P. Ltd. is same as that of the assessee M/s D.D.Agro Industries P. Ltd.

2.4 The AO was of the view that since a survey u/s 133A was conducted on the business premises of the assessee on 02.09.2014 wherein a Director had accepted

that it was a mere paper company, the documents relied upon namely Income Tax Returns, bank accounts etc. ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 could not be considered to be sufficient evidence. The Director was required to be produced. The record shows that the Director was not produced. Accordingly, in the circumstances, it was concluded that the assessee could not establish its case. The case law relied upon by the assessee was held to be inapplicable leading to the addition of Rs. 50 lacs.

3. The assessee agitated the issue unsuccessfully in appeal before the CIT(A). Still aggrieved, the assessee is in appeal before ITAT.

4. The ld. AR submitted that he would be addressing his arguments on the basis of the synopsis filed wherein respective pages of the impugned order and the assessment order alongwith the documents already on record having been filed before the AO and the CIT(A) available in the consolidated Paper Book filed on 19.04.2017 in the two appeals would be referred to.

4.1 Addressing ground Nos. 1 and 2, it was submitted that considering the material available on record, the assessment itself deserves to be quashed as on a plain reading of the reasons recorded, it would show that there was no reason to believe that income has escaped assessment. It was his argument that in-fact there was no reason available as per record before the AO even to suspect as no tangible material has been referred to in the reasons recorded by the AO for taking recourse to Section 148. It was submitted that merely on the basis of a routine information by the Directorate of Income Tax that in same companies, share applications had been received on a premium, the AO without going into any fact or evidence, blindly accepted the routine communication and concluded that income has escaped. The decision taken on blind faith without caring to analyze a single fact, it was submitted, is contrary to the accepted legal position. Referring to the record, it was submitted, no effort whatsoever was made to independently form a view considering the routine information. The AO straight away accepted the routine information as gospel truth and concluded that income chargeable to income tax has escaped to the tune of Rs. 1.50 Crore.

4.2 Carrying us through the reasons recorded, it was submitted that no tangible material has been referred to by the AO who has blindly proceeded to suspect and not cared to form any belief. It was his ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 submission that firstly the information received was a general information. Secondly, even if the information is considered, it would show that by itself, there was no allegation that Share Application money itself was bogus. In the circumstances, it was his submission that the AO proceeded blindly to accept the fact for reasons best known to him that the claim was bogus. It was argued that the AO has carelessly acted on pure suspicions. The information at best, it was submitted, could be said to perhaps arouse suspicion and in a bonafide action, the AO then as per law was

required to look into the facts. No reference to any fact, it was submitted, has admittedly been made.

4.3. The mere use of the words 'that the facts have been analyzed by the AO, it was submitted, are merely self serving statement and by itself do not demonstrate that facts actually have been seen. To elaborate this argument, it was submitted that the notice refers to Share Application money of Rs. 1.50 Crores whereas the amount actually was Rs. 1.49 Crores. Thus, even this basic fact was also not cross checked by the AO. It was argued that the AO acting in haste on pure suspicions, shirking his responsibility as even without looking at the basic facts has taken the action and unsettled the settled position.

4.4 Even otherwise, it was his submission that if for a moment, it is accepted for the sake of the argument that the AO was justifiably suspicious that on account of premium paid, the claim of Share Application money was a bogus transaction, then in such a situation the addition should have been made of the entire amount. The selective choosing of part of the share application money only from one party cannot be said to be a fair exercise of power. If the AO, as per record, considers that shares at a premium in a specific year for the assessee company were not justified but accepts the Share Application money from the other two parties on the very same reasons and selectively chose to only consider addition in the hands of this one party, the said exercise is arbitrary and it is self evident on the face of the record. It was his submission that he would not want to go to the other reasons and just leave his arguments to highlight the arbitrariness and whimsical action of the AO by stating and referring to the fact that addition of only Rs. 50 lacs has been made and not of the entire amount of Rs. 1.49 Crores. Elaborating and reiterating the argument, it was submitted that if for a moment it was to be considered that share ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 application on a premium to the tune of Rs. 1.50 Crores was doubted then the same reason should have been good for the entire amount which should have been added. The AO, it was submitted, has selectively accepted on same facts that premium on share application to the tune of Rs. 1 Crore was to be accepted and for the remaining Rs. 50 lacs, he has added. Addressing the reasons again, it was submitted that there is no hint let alone an allegation that the shares have not been allotted as till date the said company is a shareholder in assessee's case.

4.5 It was submitted that nothing has been brought on record to show that the investment by M/s Genesis Fashions Pvt. Ltd. was not genuine or identity was not disclosed. It was his submission that reference has been made to the decision of the Apex Court in the case of Durga Prasad More and Sumati Dayal's case casually roping in the principles of human probability. It was his submission that the said decision had no applicability to the facts of the present assessee. In the facts of the present case, it was argued, the company is not a bogus company nor has it been held to be a bogus company by any authority or order of any Court. There was no tangible or

cogent material for the action taken.

The AO in the facts of the present case, it was submitted, did not apply his independent mind. He has merely used terms like "analyzed all facts and figures", in the last para at page 5 of the assessment order without referring to either any fact or any figure. It was submitted, the use of such words does not by itself support the self serving statement that facts have been considered or analyzed as stated by him.

4.6 "Reason to believe" it was submitted, is the "sine qua non" for the purposes of initiating proceedings u/s 148. It was also his submission that since the action of re-opening impacts the vested right of the assessee, where on facts there is a concluded assessment in his favour, the Revenue, it was argued, cannot be allowed to upset the same except by following the due process of law. This vested right in a concluded assessment, it was submitted, cannot be taken away frivolously on mere whims and fancies of the Assessing Officer. The Law of the land, it was submitted, requires that reasons to believe should be coming out from the reasons recorded and in the facts of the present case, it was submitted, there is no live link let alone a close nexus between the so called general routine information/material before the AO. The routine ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 information of the Directorate of Income Tax, it was submitted, did not either hint or point to anything for any reason justifying the action. In the facts of the present case, it was reiterated it was a routine information available with the AO on which nothing was done by the AO who without looking into any fact proceeded to issue notice without forming his belief to satisfy himself about escapement of income. It was reiterated that nowhere in the reasons recorded, it has been stated that what facts were considered or seen.

4.7 Reliance was also placed upon the following decisions placed in the second set of judgements :

> I. Income Tax Officer V/s Arti Khattar [Pgs 17 to 22] 41 CCH 25 DEL-ITAT II. ITO V/s M/s Comero Leasing & Financial Pvt. Ltd [Pgs 23-32] ITA No.4281/DEL/2010, ITAT, Delhi Bench at New Delhi III Sunita Jain V/s Income Tax Officer [Pages 33-42] 4.8 Reverting again to page 5 of the assessment order, it was submitted that the AO has not cared to point out the failure on the part of the assessee to disclose its income fully and truly. No reference to any document or statement except quoting general decisions on human probability has been done. Reliance was placed on the decision of the Chandigarh Bench of the ITAT in the case of Smt. Sarika Jain reported in 46 ITR (Trib) 680, (copy placed at pages 5 to 15 of the Paper Book) for the proposition that in the absence of referring to any document or fact merely referring to decisions of High Court in that case and Apex Court in the present case does not fulfill the requirements of due application of mind in the cases of the case sought to be reopened. The decisions cited before the ITAT referred to at pages 13 to 15 namely;

Inductotherm (India) P.Ltd. Vs M.Gopalan, DCIT 356 ITR 481 (Gujrat), CIT Vs Smt. Paramjit Kaur 311 ITR 38 (P&H), Signature Hotels P. Ltd. Vs ITO & another 338 ITR 51 (Delhi), CIT Vs Atul Kumar Swami 362 ITR 693 (Delhi), CIT Vs Orient Craft Ltd. 354 ITR 536 (Delhi) and CIT Vs Atlas Cycle Industries 180 ITR 319 (P&H) of the said decision were also heavily relied upon. Similarly, the

proposition of law as addressed by the Chandigarh Bench in the order dated 14.09.2016 in the case of Prem Sagar Jain & Ors. ITA 71/CHD/2015 & others (copy placed at pages 16 to 32 of the Paper Book) wherein reference had been made to fraudulent billing activities and accommodation entries on the basis of which re-opening was directed which proceedings had been quashed. Specific findings of the said decisions highlighted at pages 25 to 31 of ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 the Paper Book, it was submitted, fully supported the case of the assessee as lack of tangible material for re-opening was clearly made in the facts of the present case justifying quashing of the order. It was his submission that in-fact, the assessee in the facts of the present case has a much better case as there is no allegation of any accommodation entry.

4.9 Reliance was also placed upon decision of the jurisdictional High Court in the case of Paramjit Kaur 311 ITR 381 (P&H) (copy placed at pages 33 to 36; and the order dated 11.05.2016 of the Amritsar Bench of the ITAT in the case of Shri Amrik Singh Vs ITO in ITA 630/ASR/2015 copy placed at pages 37 to 62. The conclusion arrived at the pages 61-62 of the said decision was heavily relied upon. On the basis of the said decisions which echo the well accepted legal position, it was submitted, suspicions and assumptions cannot be a valid justification to re-opening. Reliance was placed upon the latest decision of the Mumbai Bench of the ITAT in the case of Shapoorji Pallonji & Co. reported in (2017) 63 ITR 10 (ITAT Mum) (copy separately filed) dated 03.03.2017 so as to submit that being the latest on point of law, it comprehensively sums up the cases on the issue and specific attention was invited to the conclusion drawn at page 28, 29 & 30 namely it was a borrowed satisfaction that also on incorrect facts; ITO V Shri Nilesh Thakur, Green World Corporation V ITO (2009) 314 ITR 81 (S.C), Syntex Ltd. (2009) 313 ITR 221. SLP by the Department against this decision, it was submitted was dismissed by the Apex Court (C.No. 8167 of 2009), Kelvinator of India Ltd. (2002) 181 I.T. Reps 460 (Del) (FB)=(2002) 256 (Del), Sheth Brothers Vs JCIT (2001) 251 ITR 270 (Guj), CIT V Corporation Bank Ltd. (2002) 254 ITR 791 (S.C), Garden Silk Mills P.Ltd. Vs DCIT (1999) 237 ITR 668 (Guj), CIT V Hickson & Dadajee Ltd. (1980) 121 ITR 368 (Bom.), Garden Silk Mills V DCIT (1996) 222ITR 68 (Guj.), Mercury Travels V DCIT (2002) 258 ITR 533 (Cal.), JCIT Vs George Williamson (Assam) Ltd. (2002) 258 ITR 126 (Gauhati), CIT Vs Sambhar Salt Ltd. (2003) 262 ITR 675 (Raj). Considered in the said decision, it was submitted, fully support the case of the assessee in the present set of facts. Reliance was also placed on Aventis Pharma Ltd. V ACIT 323 ITR 570 (Bom), Shri Krishna Pvt. Ltd. V ITO 221 ITR 538 (S.C). and the decisions relied upon therein for the proposition that if after independent application of mind, reason to ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 believe is missing, the law does not permit action u/s 148. Thus, if in the absence of reasons to believe the action is initiated in law where routine information is blindly accepted by the AO, the reason, as per plethora of decisions cannot be held to be acceptable in law. Written submissions advanced before the CIT(A) reproduced in para 3.3 at papers 8 to page 25 of the order were also heavily relied upon and read out.

4.10 The proposition of law as considered by the CIT(A) holding the re- opening to be valid supported by decisions of Supreme Court namely Rajesh Jhaveri Stock Brokers P.Ltd., A.L.A.Firm V CIT, Raymond Woollen Mills Ltd., Phool Chand Bajrang Lal & another V ITO it was submitted, have been incorrectly considered to support the conclusion as they operate on different set of facts and circumstances and were not applicable to the facts of the present case as the facts were distinguishable. Consequently, the ratio of the said decisions, it was submitted, was not attracted.

The following chart highlighting the distinction was heavily relied upon :

Judgement relied by the CIT(A)	Our submissions
Rajesh Jhaveri Stock Brokers P.Ltd 291 ITR 500 (S.C)	This judgment rather support the ca because, it has been stated at page must have "reason to believe" that

escaped assessment and in the present case, there was no "reason to believe" and rather on the same facts, there is judgment of Chandigarh Bench of the ITAT, in the case of M/s Shiva Exports , wherein, the notice u/s 148 was quashed, though, the earlier assessment had been framed u/s 143(1) and there was no reason to believe and the reliance is being placed on the Judgment of M/s Shiva Exports as per Pages 1 to 16 relevant Pages 6 and 7 of the Judgment Set-ll.

A.L.A.Firm Vs CIT (1991) 189 ITR 285 This judgment also states that there has to be "reason (S.C) to believe" on the basis of specific and relevant information and in our case, no such information much less specific/relevant information was there Here also, it has been held that that whether there was Raymond Woollen Mills Ltd. V/s ITO 236 ITR 34 prima-facie material with the department or not and (SC) in our case, there is no prima facie material and no doubt has been raised on the capital contribution by the other company.

In this case, the Managing Director had confessed that the Phool Chand Bajrang Lai V/s ITO 203 ITR 456 (SC) company had not advanced any loan to any other person and, therefore, there was sufficient material for formation of belief.

In our case, there is no any such statement or any adverse material against the assessee.

4.11 In the circumstance, reliance was placed upon the decision of the Apex Court in the case of Lakhmani Mewal Dass 103 ITR 437 (SC), (copy placed at pages 1 to 4). Carrying us through the principles laid ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 down in the said decision, it was his prayer that the proceedings deserve to be quashed.

5. On merits also, it was submitted that the addition was not maintainable. Attention was invited to the copies of the confirmations/share applications made to the assessee company for shares placed at pages 1 to 10 of the Paper Book. Copy of the bank account of M/s Genesis Fashions P.Ltd. from where the amount had been deposited, it was submitted is at page 12-13 of the Paper Book. Copy of the Broker i.e. of Mayank Financial Services in the books of M/s Genesis Fashions P.Ltd., it was submitted is enclosed at page 11 which demonstrates that the funds were available by way of sale of shares through the brokers and the source stood explained. The list of shareholders, it was submitted is with the Registrar of Companies and copy of the same is at pages 19 to 31 wherein the name of M/s Genesis Fashions P.Ltd. appears in the record of the Registrar of Companies. Thus, it was submitted that sufficient evidence has been led and in-fact it was submitted, the said company is still a shareholder as on date and there has been no re-purchase of shares by the Directors. Unless the documents on record are upset the genuineness, it was submitted, stands established. Reliance was placed upon the order of the ITAT in the case of M/s Kisco Castings 152 TTJ 69 (CHD)

(Tribunal) and M/s Mandi Alloys ITA 222/2015 dated 27.11.2015 for the proposition that since assessee had established identity of the shareholder and their sources have been proved, no adverse view could be taken. Decision of the jurisdictional High Court in the case of Shree Dadu Auto ITA 704/2009 dated 30.03.2010 was also relied upon. Addressing the statement of the Director during the course of survey relied upon by the Revenue, it was submitted that in terms of the decision of the Apex Court in the case of Khadar Khan Sons 300 ITR 0157 (Mad) approved by the Apex Court in 352 ITR 480 (S.C) (copy placed at page 63-65 and 66 of the Paper Book respectively) it has been well settled that survey u/s 133 does not empowers any IT authority to examine any person on oath, hence any such statement has no evidentiary value. The said decision, it was submitted, has been followed by the Chandigarh Bench in the case of Shri Sanjeev Kumar 31 ITR (Trib) 680 CHD-TRIB (copy placed at page 67-77 of the Paper Book), wherein the conclusion drawn by the CIT(A) in upholding the action of the AO in the facts was stated ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 to be contrary to law as the statement was held to have no evidentiary value.

5.1 It was further submitted that the reliance placed by the CIT(A) on the judgement in the case of Smt. Harjeet Kaur & Ors., on facts was distinguishable and not applicable to the case at hand. Referring to the said decision, it was submitted that in the facts of that decision, wrong PAN numbers were furnished and wrong identity was established i.e. in effect, identity could not be established which was not a fact in the present case.

5.2 Reliance was also placed upon the order dated 03.02.2016 of the Amritsar Bench of the ITAT in the case of Amravati Infrastructure Developers Pvt. Ltd. in ITA 122/ASR/2013 placed at page 55 to 69 of second set of judgement wherein on similar set of facts and circumstances, it has been held that the identity, genuineness and credit worthiness of the share applicant company stands proved. Another order of the Chandigarh Bench in the case of Radhey Sham Diamond Jewellers of ITAT Chandigarh was also relied upon. Further reliance was placed upon the decision of the Bombay High Court dated 20th March,2017 in the case of Gagandeep Infrastructure Pvt. Ltd. in ITA 1613 of 2014 copy placed at page 43-49 of the second set of the judgement and reliance was also placed upon order dated 05.09.2016 of the ITAT Delhi Bench in the case of M/s Anshika Investments 61 IT Reps.517-DEL-TRIB, copy placed at page 50-54 in the facts of the said decision also the case of the Revenue was that share application money had been paid on a premium and if identity is established, transaction is covered up, service stands explained, the genuineness stands established. Accordingly, it was his submission that even on merit, addition could not be sustained.

6. Ld. CIT-DR submitted that every property has a value attached to it and what was the reason that the assessee's share was selling at a premium, has not been addressed by the assessee in the course of his arguments.

6.1 Relying upon the statements recorded, it was her submission that assessee's company was a worthless company. Emphasizing this fact vehemently, it was submitted that despite filing a Paper Book, assessee has not cared to file a copy of its balance sheet in the Paper Book. The ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 ld. AR seeking permission to intervene, submitted that he has available with him copy of the balance sheet in 2007-08 assessment year, however, it has not been included in the Paper Book. However, in the Paper Book for 2008-09 assessment year, copy of

the balance sheet is included and available at pages 6-17 of the said Paper Book. It was his submission that in case the ld. Sr.DR would want to go through the balance sheet for 2007-08 assessment year, it is available. Ld. Sr.DR accepted the balance sheet and on going through the same, invited specific attention to the Profit & Loss Account. The profits were negligible. Referring to Schedule-2 of the balance sheet, it was submitted, they were also negligible. Any person wanting to invest in a company, it was submitted, would first look at the profits. Thus, what was the reason for a person wanting to invest ten times the value at a premium in a worthless company. Inviting attention to the reasons recorded which have been reproduced in the assessment order itself conveniently by the AO, it was submitted that the decision of the Chandigarh Bench in the case of ACIT Vs Som Nath Maini 100 TTJ 91 (CHD) has been relied upon. The decisions relied upon by the assessee, it was submitted, did not apply as the assessee company has been demonstrated to be a worthless company. Referring to reasons recorded at page 5, it was submitted that the information was sufficient for the formation of belief. Heavily relying upon the assessment order and the decisions relied upon by the CIT(A), it was submitted, that the decisions relied upon by him are fully applicable.

6.2 In the circumstances, it was her submission the finding arrived at by the CIT(A) in para 3.4 and 3.6, considering the decisions of the Apex Court relied upon, it was submitted, fully justify the conclusion drawn in para 3.6 Heavy reliance was placed on the following paras :

> 3.4 I have gone through the reasons for reopening of assessment u/s 148 as mentioned by the Assessing Officer by relying on various case laws and also, the basis of addition made by the Assessing Officer on merits alongwith detailed submissions of the counsel of the appellant. The Assessing Officer has in the reasons brought out in detail, the reason to believe, with regard to the reopening of the case u/s 148 and on the other hand, the appellant had contended that there was no reason to believe with regard to the escapement of income. As is brought out in the reasons recorded by the Assessing Officer, the net worth of the appellant company did not commensurate with the share application money as well as share premium viz the net worth and reserves of the appellant company and that alone was sufficient for forming a belief for the issuance of notice u/s 148. 3.5. I have also gone through the detailed submissions of the counsel of the appellant and different case laws as relied upon by him on issue of assumption of jurisdiction ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 by the Assessing Officer and I find that in those cases, which have been relied upon by the counsel of the appellant, the facts were entirely different.

Therefore, such case laws are not applicable to the facts of the present case. There are several judicial pronouncements on the sufficiency of belief for reopening the assessement. Reliance is being placed on these decisions:

> • ACIT Vs Rajesh Jhaveri Stock Brokers P. Limited.291 ITR 500 SC At the time of initiation of re-assessment proceedings only reason to believe that income chargeable to tax has escaped assessment is sufficient to invoke jurisdiction of AO to initiate

re-assessment proceedings.

> "Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment The word "reason" in the phrase "reason to believe"

would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in Central Provinces Manganese Ore Co. Ltd. v. ITO [1991] 191 ITR 662. for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction (see ITO v. Selected Dalurband Coal Co. P. Ltd. [1996] 217 ITR 597 (SC) ; Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC).

The scope and effect of section 147 as substituted with effect from April 1,1989, as also sections 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of section 147, separate clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under section 147(a) two conditions were required to be satisfied: firstly the Assessing Officer must have reason to believe that income, profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the Assessing Officer could have jurisdiction to issue notice under section 148 read with section 147(a). But under the substituted section 147 existence of only the first condition suffices. In other words if the Assessing Officer for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment It is, however, to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to section 147. The case at hand is covered by the main provision and not the proviso. So long as the ingredients of section 147 are fulfilled, the Assessing Officer is free to initiate proceeding under section 147 and failure to take steps under section 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings even when intimation under section 143(1) had been issued."

• A.L.A. Firm v. CIT [19911189 ITR 285 (SO The jurisdiction of the Income-tax Officer to reassess income arises if he has, in consequence of specific and relevant information coming into his

possession subsequent to the previous concluded assessment, reason to believe that income chargeable to tax had escaped assessment It was held that even if the information be such that it could have been obtained by the Income-tax Officer during the previous assessment proceedings by conducting an investigation or an enquiry but was not in ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 fact so obtained, it would not affect the jurisdiction of the Income-tax Officer to initiate reassessment proceedings, if the twin conditions prescribed under section 147 of the Act are satisfied.

• Raymond Woollen Mills Limited. Vs ITO 236 ITR 34 SC In this case, we dp not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. .

• Phool Chand Bairang Lai And Another. Phool Chand Bairanq Lai And Another.Vs ITO 203 ITR 456 SC Failure to disclose fully and truly material facts. Cash loan claimed to be taken by assessee from company. Accepted as genuine and original assessments made allowing interest thereon as deduction. Subsequent information from officer assessing company that its managing director had confessed that company had not advanced any loan to any person during period covering date of cash loan Belief of ITO that income had escaped assessment Notice for reassessment Not mere change of opinion Sufficiency of reasons for forming the belief is not for the court to judge subsequent information definite, specific and reliable Notice for reassessment valid.

3.6 What is required for the purposes of forming a belief for taking recourse to action u/s 148 is sufficiency of belief and by going through the reasons for re-opening, it is quite clear that there was a reasonable belief with the AO for re-opening of the case u/s 148 and hence grounds with regard to 148 are dismissed and the action of the AO is confirmed."

6.3. Addressing the arguments advanced on the merits of the addition, it was submitted that in the course of the survey, statement of Director was recorded and carrying us through the specific questions and answers to the questions raised, it was submitted that the Director accepts that M/s Genesis Fashions Pvt. Co. was a paper company. Attention was also invited to page 8 of the assessment order so as to contend that the assessee has no case on merit. Inviting attention to the said page following conclusion of the AO was heavily relied upon :

> "Survey u/s 133A was conducted on the premises of the assessee on 02.09.2014 and during the survey proceedings it was found that there is no physical existence of the company M/s Genesis Fashions P. Ltd in that address - there were no assets, no

business, no staff pertaining to M/s Genesis Fashions P. Ltd. It is merely a company floated to provide entries and exists only on paper in ROC documents, ITRs, bank account, etc. but has no physical existence."

6.4 Referring to the record, it was submitted that the address of M/s Genesis Fashions P.Ltd. was same as the assessee. Attention was invited to page 17 of the assessment order so as to submit that despite three specific opportunities, the assessee failed to produce the specific Director before the AO. It was submitted that the primary onus was upon the assessee to ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 substantiate his facts and in the circumstances, the findings of the CIT(A) from para 3.7 to para 3.12 and the following discussion on law evidently leads to the conclusion that the assessee had failed miserably to make out his case:

"3.7. I have gone through the assessment record and the detailed submissions filed by the appellant along with the case laws relied upon by it. In my considered opinion this is the case wherein there remains an iota of doubt with regard to the identity genuineness and creditworthiness of M/s Genesis Fashions Private Limited from where the appellant company has procured share application money during the year under consideration. It is relevant to note that during the year the appellant company has received Rs. 50 lakh as share application money from M/s Genesis Fashions Private Limited. The assessing officer has mentioned in the assessment order page 7 that the assessing officer had the doubt over the genuineness of M/s Genesis Fashions Private Limited as it has filed return of income of almost nil income. The bank account of the above concern showed that never sufficient credit was there and money was credited almost immediately after being debited. All the amounts being transferred are in round figures which is very unlikely in the case of investment companies. Very importantly the address of M/s Genesis Fashions Private Limited is same as of the assessee M/s the DDA Grew Industries Private Limited.

3.8 The assessing officer decided to carry out a survey under section 133A to clear the doubts with regard to M/s Genesis Fashions Private Limited. The survey was carried out on the premises of the appellant on 2 September 2014 and during the said proceedings, it was found that there is no physical existence of the company M/s Genesis Fashions Private Limited existed at the address of the appellant there are no assets, no business, no staff pertaining to M/s Genesis Fashions Private Limited. It was merely a company floated to provide entries and insist only own people in our of the documents, ITR is, bank account etc. but has no physical existence. The most important fact is that during the course of survey conducted by the department at the premises of the appellant on 02.09.2014, it has been admitted by the Director of the appellant company that the concern M/s Genesis Fashions Pvt. Ltd is a paper company and it has also been admitted that the appellant company did not have any documentary evidence relating to the share transaction. The letter as filed by the appellant during the course of survey has been reproduced by the Assessing Officer from pages 9 to 12 of the assessment order, which justifies the action of the Assessing Officer in making the addition of Rs. 50 lacs.

3.9 Based on these facts the assessing officer rightly held that there is no identity of the company and genuineness and creditworthiness cannot be proven at all by the appellant company. The assessing officer has also relied upon the statement of the Director of the company wherein the Director has admitted clearly that these concern is only a paper company and no real work is being done the assessing officer has reproduced the statement of the Director in her assessment order wherein the director's as admitted that M/s Genesis Fashions Private Limited is merely a paper company and has been used to give accommodation entries to the appellant and others. 3.10 In the written submission filed by the appellant has filed the ITR is, bank account and other documents pertaining to its registration in ROC, however, in view of the admittance on the part of the Director at the time of survey and after considering the relevant facts there is no doubt that M/s Genesis Fashions Private Limited is paper company which was used to give the commission entry and has been a used to bring back the appellant's own out of books funds to its books of accounts. It is also seen that the assessing officer has pointed out to the appellant to produce the director of M/s Genesis Fashions Private Limited, at the time of assessment proceedings, however, even after giving three opportunities the Director of M/s Genesis Fashions Private Limited, could not be produced by the appellant. After considering all these facts, there is no doubt that the appellant company has completely failed to discharge its onus with regard to identity, genuineness and creditworthiness of M/s Genesis Fashions Private Limited and the share application money received from it particularly after the survey action under section 133A in the premises of the appellant itself wherein M/s Genesis Fashions Private Limited also exists on paper.

3.11 As regards, the addition of Rs. 50 lacs as made by the Assessing Officer on account of contribution of share/share premium made by M/s Genesis Fashions Pvt. Ltd, it is clear that there was no net worth of the company, who had contributed a sum of Rs. 50 lacs towards the share capital and share premium in the appellant company and the Assessing Officer has discussed in detail after giving reasonable and sufficient opportunity to the appellant to prove the identity, capacity and genuineness of transaction and which the appellant has miserably failed to establish such essential ingredients of section 68. The assessing officer has also relied upon ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 several judicial decision in this matter. The honourable ITAT, Indore in the case of the pressure of plant agree one Dashrath lal agarwal, Ratlam vs Department of incomevtax in its decision dated 9 November 2011 ITA No. 158/ind/2009 has also confirmed the addition on account of non-genuine share capital and share premium and the identity of subscribers could not be established. 3.12 The issue is also directly covered by the ratio of the decision of honourable jurisdictional High Court as well as the jurisdictional ITAT, Chandigarh, In the case of Smt. Harjeet Kaur versus ACIT in ITA No. 280 of 2013 wherein the honourable Punjab and Haryana High Court has upheld the finding and the decision of the honourable ITAT, Chandigarh in the case of (ITA NO. 949/chd/2011 of ITAT Chandigarh). In this case also the honourable ITAT, Chandigarh discussed the issue

based on the dubicious transactions. Various courts have also upheld this view of Id. AO that there are three limb of section 68 and it is the primary onus of assessee only to prove the identity, genuineness and creditworthiness. The initial catchphrase of the section is:

"Where any sum is found credited in the books of account of the assessee" meaning thereby that Section 68 is attracted where an entry relating to a sum is found to have been credited in the books of the assessee, which thus implies, existence of books and recording of a sum which the Assessing Officer considers as doubtful."

i) Smt.Shanta Devi v. CIT [1988] 171 ITR 532 (Punj. & Har.).

ii) Decision by Hon. Indore Bench of ITAT in case of Agrawal Coal Corpn. (P.) Ltd. v.

Asstt CIT63DTR201.

iii) CIT vs. Frostair (P.) Ltd. [2012] 26 taxmann.com 11 (Delhi)

iii) CIT Vs Prescision Finance P.Ltd. (Cal) 208 ITR 465

iv) K.C.N. Chandrasekhar Vs ACIT (ITAT Bang.) 66 TTJ 355

v) CIT V United Commercial & Industrial Co. (P)Ltd. (Cal) 187 ITR

vi) CIT Vs Nova Promoters 7 Finlease (P) Ltd. (2012) 18 Taxmann.com 217 (Del)

vii) CIT Vs Oasis Hospitalities Pvt. Ltd. (2011) 333 ITR 119

viii) CIT Vs N R Portfolios P.Ltd. ITA Nos. 134/2012\Lovely Exports 216 CTR 195 (Del)

ix) Divine easing 299 ITR 268 (S.C)

x) CIT Vs Independent Media (P) Ltd. 210 Taxmann 14 (Del)(2012)

xi) Subhlakshmi Vanijya (P) Ltd. V CIT (Kolkata)

xii) CIT Vs Korlay Trading Co. Ltd. (1998) 232 ITR 820 (Cal)

xiii) K.M. Sadhukhan & Sons (P) Ltd. V CIT (1999) 239 ITR 77/107 Taxman 403 (Cal)

xiv) CIT V Precision Finance (P) Ltd. (1994) 208 ITR 465/ (1995) 82 Taxman 31 (Cal) 6.5 On the basis of these facts and reasoning, the Conclusion drawn by the CIT(A) in para 3.18 was heavily relied upon by the Revenue. For ready reference, para 3.18 is reproduced hereunder :

3.18. The Ld. Counsel of the appellant has relied upon the various judgments of different High Courts and ITAT. Such judgments are not at all applicable, since there is admission by the appellant itself during the course of survey that the share transactions were bogus coupled with the fact that there was no justification of such a high premium as allegedly contributed by M/s Genesis Fashions Pvt. Ltd and also the capacity of 'M/s Genesis Fashions Pvt. Ltd has not been proved and thus, the action of the Assessing Officer in making the addition u/s 68 is upheld. In view of the detailed discussion above, it is held that the appellant has failed to discharge its onus of proving the genuineness and creditworthiness of the above transaction and it is beyond any doubt that transaction was just a cover-up to bring its own unaccounted money into its books of accounts. Therefore, the disallowance of Rs.50,00,000/- u/s 68 of the Act on account of unexplained cash credit is ordered to be confirmed. Resultantly these grounds of appeal are dismissed"

6.6 Accordingly, it was her submission that the additions on merit also deserves to be sustained.

6.7 In view of the fact that similar reasons and similar arguments remain the same in 2008-09 assessment year and the CIT(A) has dismissed the appeal of the assessee considering these very ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 arguments, accordingly it was submitted that those arguments may also be considered for 2008-09 assessment years also and the addition may be sustained.

7. In reply, ld. AR submitted that the assessee has a vested right in a concluded assessment and in case the Revenue wants to reopen the concluded assessment, then it can do that only on the basis of reasons recorded. The Revenue can only rely on the reasons recorded to show that the exercise of authority is in terms of the statutory provisions and there is some material on record to show that there was reason to believe that income has escaped assessment. It was his submission that before addressing the departmental arguments, he would respond first to the repeated insulting arguments advanced by the ld. Sr.DR namely that the assessee is a "worthless" company. It was submitted that he has strong objections to the use of such insulting words. The company, it was submitted, as the assessment order itself would show, is engaged in manufacturing zinc, sulphate, zinc metal, zinc oxide and pet perform. The assessee continues to exist and has done business as per law. The AO, in the facts of the present case, admittedly has not applied his mind at all and has acted on a routine information blindly on mere suspicions. The assessee company, it was submitted, has done a business of Rs. 20 Crores in the earlier assessment year and Rs. 23 Crores in the year under consideration. Its Balance Sheet, it was submitted, is available and the profits earned may be Rs. 75 lakh and Rs. 54 lakh respectively and Reserves and surplus of Rs. 1 Crore and Rs. 3.5 Crore in a specific year itself and may appear to be negligible to the ld. Sr.DR, however, it was his argument that it is well understood and known to all that profit alone by itself cannot be an indicator of the future prospects of a company. The reserves and surplus held

though have been deliberately ignored by the Sr.DR., however, it was his submission that at no point of time the AO has anywhere held that the assessee was a bogus company. He has merely refused to accept Share Application Money from one party out of a total of three parties and has added only Rs. 50 lacs relatable to the said party as opposed to the Share Application Money from the remaining two parties which all cumulatively totaled to Rs. 1.49 Crores. However, even though the ld. Sr.DR is trying to make out a case which was never the case of the AO by referring to balance sheet which admittedly has not been referred to ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 by the AO, it was his submission that though he has addressed the merits of the argument, however, he would also agree that it is a settled legal position that the Revenue at best could only rely upon the reasons recorded by the AO and these reasons now at this stage cannot be supplemented by the Revenue by making derogatory and provoking references to the business of the assessee. It was his submission that the ld. Sr.DR has necessarily to justify assumption of jurisdiction relying upon the reasons recorded which admittedly do not reflect any application of mind of the AO. The routine information received, it was submitted, has been blindly accepted by the AO and the Sr.DR has failed to refer to any fact or evidence to assail this consistent argument on record. The action of the AO, it was submitted, is against the settled legal position. Carrying us through the reasons recorded which have been extracted in the assessment order itself, it was submitted, that no where it is reflected in the routine information that the claim of share application money on a premium was bogus. The facts relatable to the assessee have not even been hinted to in the said routine information. The AO necessarily was required to look at the facts of the case and then form the belief that income has escaped assessment. The AO, it was submitted, instead considers the decision in the case of Som Nath Maini and various other decisions including the decision in the case of Durga Prasad More and Sumati Dayal without referring to the facts of the assessee's case. Had the AO cared to address the facts of assessee's case, it was submitted, he would not have wrongly referred to receipt of share application amounting to Rs. 1.50 Crores and would have noticed that it was infact Rs. 1.49 Crores.

7.1 It was submitted that the entire case of the tax authorities rests on this statement of the Director of the assessee company who, it is noted has stated that it was a paper company. The arguments that there is no independent application of mind by the AO; routine general information has been blindly accepted as a gospel truth; it is a case of borrowed satisfaction by the AO which has been frowned upon by the Courts; no independent formation of belief of any such exercise has been embarked upon by the AO are all arguments based on facts which have been consistently ignored by the tax authorities based on suspicions. Accordingly the prayer has been that assessment may be quashed. The decision of the Apex Court that statement recorded u/s ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 133 have no evidentiary value, was relied upon which had not been unsettled. All necessary supporting evidences as required by the AO, it was submitted, are available on record which have been discarded purely on suspicions. Accordingly, it was his prayer that the addition may be deleted even on merits.

8. We have heard the rival submissions and perused the material available on record. Before adverting to the specific arguments of the parties before the Bench, it would be appropriate to first refer to the salient facts on record; namely that after issuance of notice u/s 148 and recording of reasons, which we note have been consistently assailed by the assessee on the grounds that the assumption of jurisdiction itself is incorrect as the reasons recorded do not indicate in any manner what-so-ever, that the AO has applied his independent mind to the facts of the case. The information received and relied upon is stated to be a routine information which no-where indicated anything to suggest that assessee's income had escaped assessment. The information received is stated to have been blindly accepted by the AO without even caring to form his independent belief that action u/s 148 was warranted etc. We propose to deal with the arguments thereon subsequently but before that, the admitted facts may be referred to namely that the assessee received share application money from three parties totaling Rs. 1,49,50,000/- in the year under consideration. The AO after recording of reasons and issuance of Show Cause Notice that share application money was received in 2007-08 assessment year from the named parties to whom shares were allotted in the 2008-09 assessment year which fact is recorded in the assessment order itself in page 3 by the AO. The assessee admittedly as per the final Show Cause Notice dated 24.06.2016 issued by the AO evident from the scanned copy reproduced in page 2 of the assessment order itself had issued 241500 shares in 2008-09 assessment year of face value of Rs. 10/- at the premium of Rs. 100/-. The assessee's reply as per record has been received by the AO who has extracted the following chart at page 7 of his order as under :

Person	Amount received (Rs.)
Genesis Fashions P. Ltd	50,00,000/-
Malkiat Singh	1,00,000/-
Ludhiana Scrips P. Ltd.	28,50,000/-

8.1. The AO, admittedly considering the explanation, only questioned the receipt of share application money from M/s Genesis Fashions Pvt. Ltd. The receipt of share application money from Shri Malkiat Singh and M/s Ludhiana Scrips Pvt. Ltd. was not questioned. Explanation offered on their behalf has not been brought out in the order and only the following finding has been recorded :

> "Sh. Malkiat Singh is one of the Directors of the company and satisfactory documents have been submitted. The amount received from M/s Ludhiana Scrips P. Ltd. was returned back ie. during FY. 2007-08. Hence the main focus of our investigation and analysis would be on the money received from M/s Genesis Fashions P.Ltd. from which a major sum of Rs. 50 lacs has been received".

8.2 Admittedly, the assessee was required to prove the identity, genuineness and creditworthiness of the M/s Genesis Fashions Pvt.Ltd. only and consequently was asked to produce various documents pertaining to the introduction of Share Capital.

8.3 Admittedly, again the following information vide letter dated 09.02.2015 u/s 142(1) was sought from the assessee as per page 8 of the assessment order reproduced as under :

- Amount and date of receiving share capital
- Mode of transaction (cash/cheque/DD)
- Confirmation from the subscribers/concerned parties
- Copy of Income Tax Return with the computation chart of the subscribers/ co parties
- Relevant bank statements
- Details/evidence regarding the identity of the subscribers/concerned partie

their creditworthiness and the genuineness of transaction 8.4 The assessee admittedly filed its reply thereon on 12.02.2105. The requisite information admittedly was filed and made available to the AO. The same was found to be unacceptable on account of the following reasons by the AO as per page 8 of the assessment order reproduced as under:

> • M/s Genesis Fashions P. Ltd. has filed return of income of almost NIL • There is never sufficient credit in the bank account of the assessee. Money is credited almost immediately before being debited.
>
> • All the amounts being transferred are in round figures of lacs. Usually in the bank account of an investment company there are credits of interest which are seldom round figures. This means there is simply movement of huge funds through the bank accounts. • As per the return, the address of Genesis Fashions P. Ltd. is same as that of the assessee M/s D.D.Agro Industries P. Ltd.
>
> 8.5 The AO further takes note of the fact that in the survey u/s 133A conducted on the premises of the assessee on 02.09.2014, the Director of the assessee company itself had stated that it was a paper ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 company. It is seen that the entire case of the tax authorities rests on this statement given. The assessee as is evident, has assailed the jurisdictional issue on the ground that there is no independent application of mind by the AO; routine general information has been blindly accepted as gospel truth by the AO it is a case of borrowed satisfaction which has been frowned upon by Courts; no independent formation of belief exercise can be said to have been embarked upon by the AO. It has been is argued that if such an exercise had been done then it would have been noticed by the AO that share application money received was Rs. 1,49,50,000/- and not Rs. 1.50 Crores as wrongly mentioned in the reasons recorded. The exercise of power is said to be contrary to settled legal position namely referring to facts of some other cases instead of the specific facts of the assessee. Further, the exercise is stated to be selective and arbitrary on the grounds that if the fact of allotment of shares of the

assessee company on premium to Shri Malkiat Singh and M/s Ludhiana Scrips P.Ltd. can be accepted then the very same logic and rationale would apply to reasons for allotment of share application money on a premium to M/s Genesis Fashion P.Ltd. also. Thus, the jurisdiction issue, it has been canvassed, fails even on this fact emanating from the record. In fact, the ld. AR has strongly objected to the repeated stance of the Departmental Representative describing the assessee company as a worthless company. He has invited attention to the copies of the balance sheet available on record for 2008-09 assessment year and for 2007-08 assessment year made available to the ld. DR to rebut the statements. He has submitted that he is pained to note the level of representation and has objected to the ld. DR to use provocative and derogatory terms like "worthless company". He has submitted that the shares allotted to M/s Genesis Fashion Pvt. Ltd. still continue to remain in the hands of the said company. It was submitted that the decision to invest in a specific company or not cannot be dictated to by the tax authorities. If the decision of Shri Malkiat Singh and M/s Ludhiana Scrips P.Ltd. could be accepted as a justified decision to purchase shares on a premium in the very same company at the very same time, then the Department not having questioned those transactions, had no basis to question the rationale of M/s Genesis Fashions Pvt. Ltd. to apply for those specific shares in that specific ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 period of time at a premium. The decision to invest or not to invest , it has been argued, cannot be decided as per the whims of AO. All the queries/questions raised by the AO, it has been argued, have been addressed, none of these, it was stated have either been shown to be incorrect or have been rebutted by the Revenue. The suspicions of the tax authorities, it has been canvassed, cannot decide the issues. The source of funds, the availability of funds, the bank through which it was transferred, the days/dates/amounts/the Income Tax Returns/documents with ROC etc. are all available on record and it has been stated, have not been assailed by way of any evidence.

Simply because the Director was not produced, it has been submitted the Department has proceeded on suspicions. Addressing the said suspicion, it was submitted, that he would not want to get into a debate on the reasons why the Director did not present himself. The fact of selective targeting of a specific company ignoring the other two major parties who too had applied for shares of assessee company on a premium is self evident. He has instead relying on the decision of the Apex Court in the case of Khadar Khan & Sons (cited supra) has rebutted the department stand stating that statements recorded u/s 133A do not have any evidentiary value. No rebuttal to the said legal proposition has been advanced by the Revenue. The record shows that the assessee as per record has made available copies of the confirmations from M/s Genesis Fashions Pvt.Ltd. which are available at Paper Book pages 6 to 10. Copies of the ledger account of Broker in the books of M/s Genesis Fashions Pvt.Ltd., M/s Mayank Financial Services is available at page 11, copies of the bank statements of M/s Genesis Fashions Pvt.Ltd. is available at Paper Book page 12 and 13, copy of ledger account of share application money for the period 01.04.2006 to 31.03.2007 is available at Paper Book pages 14 to 18. The details of the specific cheques co-relating with the date and the specific cheque number and amount are at Paper Book page 15, copy of Form No. 2 filed with

Registrar of Companies for 2008-09 is available at pages 19 to 31 wherein the name of the specified parties is mentioned at Paper Book page No.

31. We note that in the peculiar facts and circumstances of the case, considering the rival stand of the parties, the fact that the assessee was engaged in manufacturing of zinc, sulphate, zinc metal, zinc oxide and ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 pet perform is not in dispute as noted by the AO himself. In our considered view, considering the facts of the present case, we hold that the AO has assumed jurisdiction relying upon non specific routine information blindly without caring to first independently consider the specific facts of the assessee's case. The AO in his wisdom, instead of caring to refer to the facts of the case at hand which he ought to have first considered, has instead considering the facts as considered by the ITAT in the case of Som Nath Maini and that too without first caring to establish that the facts are identical which we note infact are entirely distinguishable has further compounded the mistake by meandering through the case laws and decisions in entirely different set of facts and circumstances and instead attempted to write a thesis on what would constitute "information". Instead of referring in the reasons recorded to the specific facts of assessee's case for justifying the assumption of jurisdiction, the AO addresses the legal position on what would constitute information. Even on merits, it is seen that the AO has proceeded selectively. No justification has been given why share application on a premium is considered not questionable for two concerns when the facts and circumstances of assessee's case remained identical i.e. if the assessee company was worth investing into on a premium in a specific year by two other concerns why only for M/s Genesis Fashions Pvt. Ltd., the share application money on a premium is questioned. The existence of M/s Genesis Fashions Pvt.Ltd. at the very same address by itself, we hold, does not give cause to any infirmity. On the contrary, the existence in-fact stands proved. The documents in support of the transactions, we note, have not been rebutted. Considering the law as it stands and the provisions of the Act, neither assumption of jurisdiction can be upheld nor the addition made on the basis of suspicions, surmises and conjectures. The statement of the Director by itself recorded u/s 133A having no evidentiary value as per settled legal position as considered by the Apex Court in the face of the documentary evidence on record in the peculiar facts of the present case cannot be brushed aside by the tax authorities on the basis of suspicions and surmises. Accordingly, we allow relief to the assessee both on the jurisdictional issue addressed in Ground No. 1 and 2 and on merits addressed in Ground Nos. 3 to 5. Before parting, we deem it appropriate to note that the case laws relied upon by the ITAs 349 & 350/CHD/2017 A.Y. 2007-08 & 2008-09 parties for the various propositions of law as brought out in the arguments of the respective parties have all been considered. Reference thereto is considered to be not necessary as primarily the issues have to be considered in the matrix of facts on record and thereafter the propositions of law and settled legal principles thereon come into play. In the facts of the present case, we are of the view that the assessee succeeds on the jurisdictional issue itself as assumption of jurisdiction in the facts of the present case is contrary to settled legal principles as have been elaborately discussed in the earlier part of this order. Since the jurisdictional issue has been decided in assessee's favour, the issue on merits becomes academic. However, as we have already considered the arguments of the parties on the merits of the addition also and have found that even on merits, the addition is not maintainable. The issue on merits, accordingly also stands decided in favour of the assessee as the evidence and facts on record in the light of the arguments is brought out in the earlier part of this order stand un- rebutted by the Revenue. Accordingly, the appeal of the assessee

is allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 07.09. 2017.

Sd/-	Sd/-
(Dr.B.R.KUMAR)	(DIVA SINGH)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

'Poonam'
Copy to:

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

Asstt. Registrar
ITAT/CHD