

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

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER**

**ITA No.1424/DEL/2021  
[Assessment Year: 2008-09]**

M/s Nishit Fincap Private Limited, B-1/14, Upper Ground Floor, Rana Pratap Bagh, Delhi-110007	Vs	Income Tax Officer, Ward-18(3), New Delhi
<b>PAN-AAACN3687M</b>		
Assessee		Revenue

Assessee by	Sh. Suresh Kumar Gupta, Adv.
Revenue by	Sh. Om Prakash Sr. DR

<b>Date of Hearing</b>	<b>29.03.2022</b>
<b>Date of Pronouncement</b>	<b>11 .04.2022</b>

**ORDER**

**PER R.K. PANDA, AM.**

This appeal filed by the assessee is directed against the order dated 27/04/2021 of the CIT(A) National Faceless Appeal Centre (NFAC) for Assessment Year 2008-09.

2. The grounds raised by the assessee are as under:-

*"1. The Ld. CIT(A) has erred both in law and circumstances of the case in upholding the reassessment proceedings initiated u/s 147 of the IT Act ignoring the contention of appellant that the proceedings have been initiated by the AO without application of independent mind on the material, if any, provided by the Inv. Wing of the department. In view of the above defects in the compliances the resultant reassessment proceedings are required to be set aside.*

2. *The Ld. CIT(A) has erred both in law and in facts of the case in upholding the impugned reassessment proceedings ignoring the fact that the sanction u/s 151 of IT Act has been obtained from inappropriate authority i.e. the Addl. CIT, Range-18, New Delhi instead of correct authority i.e. Pr. CIT /Pr CCIT/ CCIT/ CIT, New Delhi and in the absence of sanction from the appropriate authority the consequent reassessment proceedings are not valid*

3. *The Ld. CIT(A) has erred both in law and in facts of the case in upholding the impugned reassessment proceedings ignoring the fact that the sanction u/s 151 of IT Act has been mechanically accorded by the sanctioning authority which is evident from the application of clause (b) of the Explanation 2 to section 147 of the Act initiating action u/s 147 implying that the AO failed to consider the fact that the appellant is already assessed u/s 143(3) of the Act and in such a case that the said clause has no application.*

4. *The Ld. CIT(A) has erred both in law and circumstances of the case in upholding the reassessment proceedings u/s 147 of the IT Act which is not properly initiated and therefore need be quashed as the appellants case is covered by proviso to section 147 of the IT Act and that being the case the AO has failed to give a finding as which material facts the appellant failed to disclose fully and truly during original proceedings and in the absence of any such finding, the initiation of reassessment proceedings and the impugned assessment order both are bad in law because such proceedings are as a result of change of mind by the successor incumbent on the same set of facts.*

5. *The Assessing Officer has erred in law in completing the assessment u/s 144 r.w.s 147 without issuing a notice u/s 143(2) of the Act against the return of income filed on 16.11.2015 in response to notice u/s 148 of IT Act issued by the AO and such non-compliance of the above mandatory requirement of law to issue notice u/s 143(2) of IT Act against return of income filed makes the resultant assessment order in appeal null and void- ab-initio.*

6. *The impugned assessment is invalid and without jurisdiction as the said assessment is completed without complying with legal requirements of the provisions of*

*section 147/148 of the Income Tax Act therefore such assessment is void ab initio and liable to be quashed.*

*7. The Ld. CIT(A) on the facts and circumstances of the case has erred in upholding the validity of impugned assessment order passed u/s 143(3)/147 of the Act on the ground that the AO was not entitled to take cognizance of the material seized from the third party by invoking provisions of sec 147/148 of the Act ignoring the specific provision u/s 153C of the Act dealing with such material.*

*8. The Ld CIT(A) has erred in law and in facts of the case in upholding the legality of the order of assessment as the same has been passed beyond the period of limitation prescribed u/s 153(1) of the IT Act.*

*9. The Ld. CIT(A) has erred both in law and circumstances of the cases in upholding the addition of Rs. 15,00,000/- u/s 68 of the IT Act holding the share capital as unexplained cash credit ignoring the fact that the assessee has discharged its initial onus u/s 68 of the IT Act explaining nature and source of the credits by filing requisite documents during assessment proceedings.*

*10. The Ld. CIT(A) has erred both in law and circumstances of the cases in reliance on the material to take view adverse to the appellant without confronting the same and therefore action of the AO is in contravention of the principals of natural justice.*

*11. The Ld. CIT(A) has erred both in law and circumstances of the cases in upholding action of the assessing officer in making an addition of Rs.27,000/- being 1.8% of the alleged accommodation entries of Rs. 15,00,000/- is arbitrary and without basis and therefore need be quashed.”*

3. Facts of the case, in brief, are that the assessee is a company, which was incorporated on 20<sup>th</sup> March 1997 under the Companies Act, 1956 and is engaged in the business of sale/purchase of shares and providing finance to corporate and other parties. It has two directors namely Sh. Manoj Kumar

and Sh. Anuj Gupta. It filed its return of income on 28.09.2008 declaring total income of Rs.18,230/-. The return was selected for scrutiny and noticed u/s 143(2) and 142(1) were issued and served upon the assessee. The AO in the order passed u/s 143(3) dated 03.12.2010 completed the assessment determining the total income at Rs.48,360/-, wherein, he made disallowance out of preliminary expenses at Rs.17,603/-, disallowance out of general expenses at Rs.1,060/- and disallowance u/s 14A r.w.r 8D at Rs.11,465/-.

3.1. Subsequently, the AO reopened the case u/s 147 of the Act by recording the following reasons.

**“Reasons for the belief that income has escaped assessment in the case of M/s Nishit Fincan Pvt. Ltd. (PAN-AAACN3687M)”**

*PUC is a proposal for reopening the case u/s 147 of the I.T. Act for the A.Y. 2008-09 in the prescribed proforma.*

*A search and seizure action u/s 132/133A of the I.T. Act, 1961, was conducted at the residential and business premises of Shri Surender Kumar Jain group of cases (entry operator). During the course of post search investigation and preparation of appraisal report it has been evidently established that Shri Surender Kumar Jain is known entry providers and is in the business of providing accommodation entries to various beneficiary companies/entities/persons through cheques through a number of paper & dummy companies in lieu of cash.*

*During the course of search action vast number of incriminating documents were found and seized. These documents included date wise and month wise hand written cheque books and cash books maintained by Shri Surender Kumar Jain over a long period of time. In these cheque books and cash books details of cheque provided to the beneficiary companies/entities/persons companies/entities/persons were recorded date wise.*

*From the verification of the documents seized from the residence of Shri Surender Kumar Jain it clearly appears that the assessee company had obtained accommodation entries from various paper companies of Shri Surender Kumar Jain in lieu of cash during the Financial Year 2007-08 relevant to the assessment year 2008-09 for a total amount mentioned against their names. These bogus share capital and premium has clearly escaped taxation in these assessment years therefore these amounts are required to be taxed in the hands of these companies by initiating action u/s 148 of the I.T. Act, 1961.*

*Details of the company/entity/person and cheque/pay orders issued in the name of this company/entity/person are reproduced below in a tabular:*

Bank Book Date	From	To	Bank	Cheque / RTGS	Cheque date	Amount	Through	Annx No.	Page No.
07.02.08	Shalini Holdings Ltd.	Nishit Fincap Pvt. Ltd.	UT1	Ch. No. 190299	07.02.08	1,500,000	Vimal Bhargava	A-94	9
<b>Total</b>						<b>1,500,000</b>			

*I have perused the information received from the Investigation Wing, New Delhi. The Investigation Wing of the Department has sent comprehensive details comprising inter alia the Beneficiary's Name, Value of entry Taken, Date on which Entry taken etc.*

*In the aforesaid case return of income was filed on 14.10.2008 declaring income of Rs. 18,230/-.*

*Subsequently, after receipt of information of accommodation entries taken by the beneficiaries, it is noticed that the assessee company M/s Nishit Fincap Pvt. Ltd. received accommodation entries to the tune of Rs. 15,00,000/- during the F.Y. 2007-08 relevant to assessment year 2008- 09"from the companies of entry operators as mention in the chart above.*

*Having perused and considered the information, I have reason to believe that income of the assessee company to the extent of Rs. 15,00,000/- has escaped assessment for the A.Y. 2008-09 on account of failure on part of the assessee company to disclose fully and truly all material facts/particulars of its income necessary for its assessment for the A.Y. 2008-09. Therefore, proceedings u/s 147 i.e. Clause (b) of explanation 2 of provisions of Sec. 147 of the I.T. Act, 1961. is proposed to be initiated for A.Y. 2008-09.*

*Since four years have elapsed from the end of the relevant assessment year i.e. A.Y. 2008-09, approval of the Addl. Commissioner of Income Tax, Range-18, New Delhi is solicited u/s 151(1) of the I.T. Act, 1961."*

4. Accordingly, notice u/s 148 of the Act was issued and served upon the assessee. The AO also supplied the reasons recorded to the assessee. The assessee vide letter dated 16.11.2015 submitted that the return of income already filed u/s 139 may be treated as return filed in response to notice u/s 148 of the Act. Subsequently, the AO issued a detailed questionnaire to the assessee. Rejecting the various explanations given by the assessee, the AO made addition of Rs.15 Lakhs to the total income of assessee being the amount of Rs.15 lakhs received by the assessee from M/s Shalini

Holdings Ltd. as income u/s 68 of the Act. Similarly, the AO made addition of Rs.27,000/- being expenses incurred for obtaining the accommodation entries of Rs.15 lakhs.

5. Before the Id. CIT(A), the assessee apart from challenging the addition on merit, challenged the validity of the reassessment proceedings. However, the Id. CIT(A) was also not satisfied with the arguments advanced by the assessee and upheld the validity of the reassessment proceedings. Similarly, he also upheld the additions made by the AO on merit.

6. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

7. There is a delay of 133 days in filing of the appeal before the Tribunal. The assessee has filed a condonation application stating therein that the appeal was required to be filed on or before 31.05.2021. However, the same has been filed on 11.10.2021, due to the death of the director of the company Sh. Vimal Bhageria on 25.04.2021 and the prevailing corona situation in the country. The Id. Counsel for the assessee submitted that the Hon'ble Supreme Court, vide its order dated 23<sup>rd</sup> March, 2020 in Cognizance for Extension of

Limitation, *Suo Moto Writ (Civil) No.3 of 2020*, has extended the period of limitation in all cases in proceedings, in all Courts/Tribunals throughout the country with effect from 15<sup>th</sup> March 2020 till further orders ('Limitation Extension Order'). The Court had exercised its power under Article 142 read with Article 141 of the Constitution of India and declared that the said order is a binding order within the meaning of Article 141 of the Constitution of all Courts, Tribunals and authorities. Further, the Hon'ble Apex Court in the final order dated 23.09.2021 in MA No.655/2021 in SMW(C) No.3/2020 held that the period from 15.03.2020 till 02.10.2021 shall stand excluded in computing periods of limitation prescribed under various laws for instituting proceedings under respective laws. Relying on various decisions, he submitted that the delay in filing the present appeal of 133 days is not intentional and the same was beyond the control of the assessee and therefore the delay in filing the appeal should be condoned.

8. After hearing both the sides and considering the totality of the facts of the case, the delay in filing the appeal is condoned.

9. The Id. Counsel for the assessee, at the outset, submitted that the original assessment was completed u/s 143(3) of the Act on 03.12.2010 for AY 2008-09. The case of the assessee was reopened vide notice u/s 148 of the Act dated 18.03.2015, which is after a period of four years from the end of the relevant assessment year. Referring to the reasons recorded, he submitted that the AO has merely stated that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment. However, there is no mention as to how and why there is failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment. He submitted that in the instant case, the AO had not made any independent enquiry on the information and there is no adverse material regarding the company characterized as bogus entity. The AO had not seen the original assessment record and has not considered the same while forming belief of escapement of income. Thus, it is an undisputedly clear cut case of non application/mis-application of mind by the AO on the material available before him.

9.1. He submitted that in the instant case, the AO has obtained approval from the Addl. CIT instead of CIT as per section 151(1) of the Act. Relying on various decisions, he submitted that when the approval has not been taken from the authority prescribed under the Act and the same has been taken from another authority, such approval being not in accordance with law, the entire proceedings have to be quashed. For the above proposition, he relied on the following decisions:-

- i. CIT vs SPL's Sidhartha Ltd. 345 ITR 223 (Del.),
- ii. Ghanshyam K. Khabrani vs ACIT (Bom) in WP 1246 of 2012 dt.12.03.2012,
- iii. Pr. CIT vs M/s Khushbu Industries in ITA No.1035 of 2017 dt. 11.11.2019 (Bom.)
- iv. CIT vs Aquatic Remedies Pvt. Ltd. in ITA No.904 of 2016 (Bom.) dt.25.07.2018,
- v. Yum Restaurants Asia Pte Ltd. vs DDIT (2017) 397 ITR 639 (Del) and
- vi. CIT vs Soyuz Industrial Resources Ltd. [TS-6005-HC-2015(Delhi)].

10. The ld. Counsel for the assessee in another plank of his argument submitted that there is non-compliance of condition laid down in the first proviso to section 147 of the Income Tax Act. Referring to the said provisions, he submitted

that the said provisions enjoins duty upon the AO to go into the assessment records and record a finding and to identify which material facts have not been disclosed fully or truly by the assessee in the original assessment proceedings. It is only from perusal of the original assessment records through which the AO could have found out that material facts were not disclosed truly and fully. He submitted that after independent verification of the evidences furnished by the share applicant in response to notice u/s 133(6) of the Act, copy of which is placed at pages 30 and 31 of the paper book, the AO had completed the original assessment u/s 143(3) of the Act by accepting the credits as genuine. However, a perusal of the reasons recorded shows that no such exercise has been done by the AO and he has simply relied on the information from the Investigation Wing to invoke section 147 of the Act.

10.1. Referring to the decision of the Hon'ble Delhi High Court in the case of CIT vs Viniyas Finance & Investment Pvt. Ltd. in ITA No.271/2012 (Del.) dated 11.02.2013, the ld. Counsel for the assessee submitted that under identical situation the reassessment proceedings were quashed. Referring to the decision of the Hon'ble Supreme Court in the

case of NDTV vs DCIT, reported in 424 ITR 607 (2020) (SC), he submitted that the reassessment proceedings were quashed for not mentioning first proviso in the reason recorded. He submitted that the above identical fact is also present in the instant case. He submitted that similar view has been taken in following cases and the reassessment proceedings were quashed.

- i. CIT vs DCM Ltd. 24 DTR 72 (Del.),
- ii. Haryana Acrylic Manufacturing Co. Vs CIT and Anr., 308 ITR 38 (Del.),
- iii. Wel Intertrade (P) Ltd. & Anr. Vs ITO 308 ITR 22 (Del.)
- iv. CIT vs Purolator India Limited 343 ITR 0155 (Del.) and
- v. Atma Ram Properties Pvt. Ltd. vs DCIT 203 Taxman 0408 (Del.)

11. Referring to the decision of the co-ordinate Bench of the Tribunal in the case of GM Overseas vs ACIT in ITA No.1891/Del/2020, dated 21.03.2022, he submitted that the reassessment proceeding has been quashed on failure of compliance of first proviso to section 147 on identical facts. Referring to the decision of the Tribunal in assessee's own case for AY 2007-08 in ITA No.2323/Del/2017 order dated

16.09.2020 he submitted that under identical circumstances, the reassessment proceedings were quashed by the Tribunal.

12. The Id. Counsel for the assessee in his another plank of argument submitted that the assessee vide letter dated 16.11.2015 (paper book pages 55 to 56) submitted before the AO that the return of income filed u/s 139 may be treated as return filed in response to notice u/s 148 of the Act. Although, this facts has been accepted by the AO, however no notice u/s 143(2) has been issued by the AO after 16.11.2015 before completion of the reassessment proceedings. Although, this legal ground was raised before the Id. CIT(A), however, he rejected the same on the ground that the assessee did not file any objection to notice u/s 148 of the Act and therefore the assessee loses its right to raise this issue in appellate proceedings. He submitted that the assessee in the instant case has raised objections challenging the validity of reassessment proceedings vide letter dated 18.12.2015 (paper book pages 44 to 46) and the AO had disposed of the objection vide order dated 03.03.2016 (paper book pages 47 to 49). Therefore, the observation of the Ld. CIT(A) on this issue is factually incorrect. Even otherwise also he submitted that the

AO cannot be absolved from his duty to issue and serve a notice u/s 143(2) as per provisions of the Act as there is no saving clause given in section 143(3) of the Act. Relying on various decisions including the decision of the Hon'ble Supreme Court in the case of CIT vs Laxman Das Khandelwal, reported in 417 ITR 325 (SC), he submitted that the failure to issue a notice u/s 143(2) renders the assessment order void even if the assessee has participated in the proceedings and the provisions of section 292BB does not save complete absence of notice. He submitted that the provisions of section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure complete absence of notice itself. Referring to the following decisions, he submitted that non-issuance of notice u/s 143(2) makes the earlier assessment proceedings a nullity.

- i. ACIT vs. Hotel Blue Moon (2010) 321 ITR 362 (SC);
- ii. Pr. CIT vs. Shri Jai Shiv Shankar Traders Pvt. Ltd. ITA No.519 of 2015, Dated 14/10/2015(Del);
- iii. Pr CIT vs M/s Paramount Biotech Industries Ltd In ITA No.887, 888/2017 Dated 24.10.2017 (Del);

- iv. DIT v. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249 (Del);
- v. PCIT v. Silver Line (2016) 383 ITR 455 (Delhi) (HC)
- vi. Pr CIT vs Staunch Marketing Pvt Ltd 404 ITR 299 (Del)
- vii. Alpine Electronics Asia Pvt. Ltd. Vs. DCIT 341 ITR 247 (Del)

13. The ld. Counsel for the assessee in his another plank of argument submitted that the jurisdiction u/s 147 was assumed on the basis of various incriminating documents found in the search on Sh. S.K. Jain and his brothers, which is evident from the reasons recorded. It has also been mentioned in the reasons that from verification of documents seized in above search it clearly appears that assessee has taken accommodation entries from the entities of Sh. S.K. Jain group in lieu of cash. From these discussions, it is evident that the AO had no material to initiate action u/s 147 except for the material relating to the assessee found in the course of search on above named individuals. Therefore, only the provisions of section 153C could have been invoked and no reference u/s 147/148 could have been taken. For the above proposition, he relied upon the decision of the co-ordinate Bench of the

Tribunal in the case of M/s Saurashtra Color Tones Pvt. Ltd. vs ITO vide ITA No.6276/Del/2018, order dated 22.01.2020 (SMC).

14. So far as the merit of the case is concerned, the Id. Counsel for the assessee submitted that the assessee has filed all the relevant evidences/documents to discharge the onus cast on it u/s 68 of the Act such as share application form, confirmation, relevant period bank statement, audited balance sheet, Income Tax Return acknowledgment for AY 2008-09 and 2007-08 of M/s Shalini Holdings Ltd. etc. Further, necessary query was conducted u/s 133(6) in original proceedings from the shareholders which were received directly by the AO. The AO in the impugned reassessment proceedings did not find any fault with the evidences submitted and in fact notices u/s 133(6) of IT Act were also issued in the reassessment proceedings, which were complied with by the shareholder (copy of which is placed at paper book page 111). Further, the assessment in the case of M/s Shalini Holdings Ltd. has been completed u/s 153C/153A vide order dated 28.03.2013 for AY 2008-09 by the concerned AO and no additions were made to the returned income. There was no adverse finding given by

AO on their activities. Therefore, even on merit also no addition is called for.

15. The Ld. DR, on the other hand, heavily relied on the order of the AO and the ld. CIT(A).

16. I have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the assessee has filed the return of income in the instant case on 28.09.2008 declaring total income of Rs.18,230/-. The original assessment was completed u/s 143(3) on 03.12.2010 determining the total income at Rs.48,360/-. I find the assessment in this case was reopened on the basis of information obtained from the Investigation Wing, according to which, during the search and seizure operations u/s 132/133A in the case of Mr. Surender Kumar Jain and group of cases and post search enquiries/verification, it is established that the Sh. S.K. Jain, who is known entry provider and also in the business of providing accommodation entries to various beneficiaries companies, had given accommodation entry of Rs.15 lakhs from his company namely M/s Shalini Holdings

Ltd. to the assessee. Accordingly, the case of the assessee was reopened by recording reasons which have been already reproduced in the preceding paragraph. A perusal of the reasons so recorded shows that the AO has reopened the assessment by invoking the provision of clause (b) of Explanation-2 of section 147 of the Act. Before proceeding further, it is necessary to reproduce the clause (b) of explanation 2 of section 147, which reads as under:-

*“Explanation 2. For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely*

*(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax; .*

**(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;**

*(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 9 2EA)*

*(c) where an assessment has been made, but—*

*(i) income chargeable to tax has been underassessed ;  
or*

- (ii) *such income has been assessed at too low a rate; or*
- (iii) *such income has been made the subject of excessive relief under this Act; or*
- (iv) *excessive loss or depreciation allowance or any other allowance under this Act has been computed;]*
- [(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;]*
- [(d) where a person is found to have any asset (including financial interest in any entity) located outside India,]*”

*(emphasis supplied by us)*

17. A perusal of clause (b) of explanation-2 clearly shows that the same is applicable in a case where a return has been furnished by the assessee but no assessment has been made and it is noticed by the AO that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return. However, a perusal of the paper book filed on behalf of the assessee shows that the original assessment has been completed u/s 143(3) on 03.12.2010 by the Income Tax Officer, Ward-13, New Delhi for the impugned assessment year. Therefore, it is clear that the AO without

application of mind and on the basis of report of the Investigation Wing and without verifying the assessment records wherein, the original assessment was completed u/s 143(3), has reopened the assessment. Therefore, the very initiation of proceedings by invoking clause (b) of Explanation-2 of section 147 renders the reassessment proceedings invalid and consequently, such reassessment proceedings have to be quashed on account of non-application of mind before reopening of the assessment.

18. Even otherwise also, we find the AO after analyzing the various details filed by the assessee, passed the order u/s 143(3) of the Act without drawing any adverse inference in respect of amount of Rs.15 lakhs brought from M/s Shalini Holdings Ltd. I find the AO in the reasons recorded had merely stated that there is failure to disclose fully and truly all material facts necessary for the completion of the assessment for the AY 2008-09, However, he has not specifically mentioned which particular has not been disclosed by the assessee. This in my opinion does not satisfy the statutory pre-conditions provided in section 147 of the Act. It has been held in various decisions that the reasons must indicate how and why the

assessee has failed to make the full and true disclosure of all material facts necessary for completion of assessment and mere repetition or quoting the language of the proviso is not sufficient. The basis of the averment or statement should be either stated or should be apparent or explained from the record. However, in the instant case, as mentioned earlier, the reasons do not satisfy which material facts the assessee failed to disclose during the original proceedings.

19. I find the Hon'ble Delhi High Court in the case of Atma Ram Properties (P) Ltd. vs DCIT reported in 343 ITR 141 (Del.) has held as under:-

*"15. The reasons recorded above do state that the appellant assessee had failed to fully and truly disclose the facts but do not indicate why and how the assessee had failed to make full and true disclosure of the material facts. Mere repetition or quoting the language of the proviso is not sufficient. The basis of the averment/statement should be either stated or should be apparent/lucid/ explained from the record."*

20. I find the Hon'ble Delhi High Court in the case of Alcatel Lucent France vs ACIT, reported in 384 ITR 113 has observed as under:-

*“The reasons for reopening merely repeat the words of the statute that there has been a failure by ALF to disclose material particulars. This is certainly not sufficient as far as the legal requirement is concerned. It has been repeatedly held by the court that the mere repeating of the words in the statute is hardly sufficient compliance. Reference in this regard may illustratively be made to the decision dated October 8, 2015 of this court in W.P.(C) 1873 of 2013 (Oracle System Corporation v. Deputy DIT [2016] 6 ITR-OL 543 (Delhi) and the decision dated December 18, 2008 in W.P. (C) No.17719-20 of 2006 (Silver Oak Laboratories Pvt. Ltd. vs Deputy CIT).”*

21. In view of the above discussion and considering the fact that the AO has invoked clause (b) of Explanation-2 of section 147 of the Act, which is not applicable in the instant case and further considering the fact that the AO has merely stated that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment without specifying which material, the assessee has not disclosed, especially when every issue was examined during the course of original assessment u/s 143(3) by calling information u/s 133(6), which was complied with by the investing company, I hold that the reassessment proceedings initiated by the AO and upheld by the Ld. CIT(A) is not in accordance with law. I, therefore, quash the same.

22. Since, the assessee succeeds on this legal ground, the other grounds challenging the addition on merit is not being adjudicated being academic in nature.

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

Order was pronounced in the open court on 11/04/2022.

**Sd/  
[R.K.PANDA]  
ACCOUNTANT MEMBER**

**Delhi;** Dated: 11.04.2022.

Asst. Registrar,  
ITAT, New Delhi