

IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "H" : DELHI ]

BEFORE SHRI G. S. PANNU, PRESIDENT

A N D

SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No. 8148/Del/2019  
निर्धारणवर्ष/Assessment Years : 2015-16

M/s. Vachitra Builders Pvt. Ltd., 111, Vardhman Chamber, Community Centre, Vikas Puri, West New Delhi - 110 018.	बनाम Vs.	Income Tax Officer,  Ward : 26 (1)  New Delhi.
PAN No. AAACV3069R		
अपीलार्थी / Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे /Assessee by :	Shri Rajeev Saxena, Adv., & Shri Shyam Sunder, Adv.;
राजस्वकीओरसे / Department by :	Shri M. Baranwal, Sr. D.R., & Shri Sanjay Kumar, Sr. D. R.

सुनवाईकीतारीख/ Date of hearing :	24/03/2023
उद्घोषणाकीतारीख/Pronouncement on :	20/06/2023

आदेश / O R D E R

PER C. N. PRASAD, J.M. :

1. This appeal is filed by the assessee against the order of the  
ld. Commissioner of Income Tax (Appeals)-9 [hereinafter referred

to CIT (Appeals)] New Delhi, dated 16.07.2019 in sustaining the addition of Rs.4,63,00,000/- under section 68 of the Income Tax Act, 1961 (the Act) for assessment year 2015-16.

2. The assessee in its appeal has raised the following grounds of appeal:-

- “1. That, the Ld. CIT(A) has grossly erred both in law as well as on facts in confirming the addition of Rs. 4,63,00,000/- made by Ld. AO u/s 68 of the Act relating to following loans:
  - (a) Rs.2,00,00,000/-, from Ms Jackpot Dealcom Pvt. Ltd. (Now Shyam Tradex Pvt. Ltd.
  - (b) Rs.45,00,000/- from M/s Marigold Buildcons Pvt. Ltd.
  - (c) Rs.2,00,00,000/- from M/s Rishikesh Barter Pvt. Ltd.
  - (d) Rs.5,00,000/- from Sh. Govind Sharma.
  - (e) Rs.13,00,000/- from Sudhir Chandra main working Director.
2. That the Ld. CIT(A) has failed to notice that AO has issued the notices u/s133(6)/131 three of the aforementioned companies at the wrong/improper address.
3. That both the lower authorities have erred in noticing various addresses provided in the ledger account, confirmation, PAN, Bank Statement, in balance sheet or even in master data of those companies etc. where no notice were ever served.
4. That both the CIT (A) as well as AO have erred in noticing that Shri Govind Sharma is an old friend retired from cabinet secretariat of Government of India whose loan was already accepted in the earlier years while Shri Sudhir Chandra is working Director of the Assessee Company.
5. That both the lower authorities have grossly erred in ignoring the documents confirming identity,

genuineness, and also creditworthiness of persons and also that loan was either returned during the year or in subsequent years which was clearly depicted in the bank statements of the above persons as well as the appellant.

6. That, the Ld. CIT(A) has erred in law as well as on facts in confirming the addition merely on the basis of suspicion and surmises, ignoring the circumstances and the material available on record.
7. That the Ld. CIT(A) has also erred in law as well as on facts in ignoring that provisions of section 68 are not at all applicable in the present case so as to apply section 115BBE of the Act for determining tax in special cases under chapter XII.”

3. Briefly stated the facts are that the assessee company engaged in the business of civil construction filed its return of income on 27.09.2015 for the assessment year 2015-16 declaring loss of Rs.46,247/-. The assessment was completed under section 143(3) of the Act on 12.12.2017 determining the income of the assessee at Rs.4,62,53,753/- by making an addition of Rs.4,63,00,000/- under section 68 of the Act. In the course of assessment proceedings the Assessing Officer noticed that assessee had taken un-secured loans during the year under consideration from the following parties:-

SL.NO.	Name of the Entity/Person	Amount (Rs.)
1.	M/s. Jackpot Dealcom Pvt Ltd.	2,00,00,000/-
2.	M/s Marigold Buildcons.	45,00,000/-
3.	M/s Rishikesh Barter Pvt Ltd.	2,00,00,000/-
4.	Sh. Govind Sharma	5,00,000/-
5.	Vachitra builders	13,00,000/-
	<b>TOTAL :</b>	<b>4,63,00,000/-</b>

4. The assessing officer issued notice under section 133(6) of the Act to the above parties to ascertain the identity, creditworthiness and genuineness of the loans. The notices sent to the parties mentioned at Sl. Nos. 1, 3 and 5 were served but there was no reply from the parties. The notices sent to other two parties appearing at Sl. Nos. 2 and 4 were returned un-served. The Assessing Officer issued summons under section 131 to the parties appearing at Sl. Nos. 1, 3 and 5 but notices returned un-served from parties in Sl. Nos. 1 and 3 and there was no reply from party at Sl. No. 5 even though summons was served. The Assessing Officer confronted this to the assessee and required to prove and satisfy the mandate of section 68 of the Act. The Assessing Officer treated the loans from these parties amounting to Rs.4,63,00,000/- as un-explained credits under section 68 read with section 115BBE of the Act observing that the assessee was provided sufficient opportunity to provide confirmation from the party and to discharge its onus but the assessee completely failed to do so. Therefore, he concluded that the loan transactions by the assessee are not genuine transactions as the lenders did not respond to the notices and, therefore, the identity, creditworthiness and genuineness of the transactions could not be established.

5. On appeal the ld. CIT (Appeals) sustained the addition made by the Assessing Officer. The ld. CIT (Appeals) is of the view that since the notices issued under section 133(6) of the Act and also the summons issued under section 131 returned back un-served. The lenders are merely a bogus creation and had there been an actual lender the notice would never had returned back

un-served. The ld. CIT (Appeals) also observed that the Assessing Officer deputed the Income Tax Inspectors to the premises of the lenders at Sl. Nos. 1 and 3 namely M/s. Jackpot Dealcom Pvt. Ltd. and M/s Rishikesh Barter Pvt. Ltd. and the Income Tax Officer had furnished report stating that these two companies were not available in the address A-8, Jyoti Colony, Loni Road, Delhi and, therefore, he has concluded that these two companies are bogus companies and accordingly the addition made by the Assessing Officer has been sustained by the ld. CIT (Appeals).

6.1 The ld. Counsel for the assessee submits that during the course of assessment proceedings assessee filed confirmed ledger accounts along with confirmation in which PAN details were also provided along with the addresses of the parties, Bank Statement confirming the corresponding entries in the bank account of the assessee and ITR filed by the companies at sr. no. (a) to (c) as stated above at para -1, which are also placed in the PB at S No. 3,4,5 of the Index from pages 22B to 141 and for individuals at pages 142A to 153.

6.2 Ld. Counsel for assessee submits that from the perusal of the bank statement of the assessee which is indisputably on record, it would be seen that names of the lenders are appearing in the bank statement who have granted loan through NEFT/ RTGS, details of the payments received are clearly depicted in the bank statement of the assessee. For the sake of convenience, a chart as Annexure B-1' is prepared to analyse that all the transactions of loans received by the assessee from the companies were through

NEFT/RTGS only and these loans were returned through RTGS by the assessee to these companies within a short span of time much before the assessment proceedings started as stated in Annexure B-2. The payments made by the assessee to the lenders are also depicted in the balance-sheet filed by the assessee in the subsequent years return i.e. for AY 2016-17. Even the loans received from the individuals were through account payee cheques and also returned through account payee cheques only which are also clearly depicted in the bank statement of the assessee. Reference was invited to Annexure B-1 and B-2 along with the bank statement of the assessee referred to at PB Pg 16-22A.

6.3 Ld. Counsel submits that after analysing the documents filed by the assessee it is evident that all the loans were through account payee cheques and confirmed by the lenders giving their PAN details and relevant documents. The Ld. AO did not raise any query from the assessee but sent notice u/s 133(6) of the IT Act on 13.10.2017 to Sl. No. (a) to (e) as stated in para I above, however notices sent to M/s Marigold Buildcons Pvt. Ltd. and Shri Govind Sharma were returned back and did not receive any reply from others. Later on the AO issued summons u/s 131 on 13.11.2017 to Sl. No. (a) (c) and (e) only. It is astonishing to notice from the assessment order that notices sent to (a) and (c) were stated to be returned who were already served notice u/s 133(6) as stated by the AO in the assessment order.

6.4 Ld. Counsel submits that the AO thereafter asked the AR to produce principal officer/persons on 15.11.2017. The director Shri Sudhir Chadha along with all the directors of the company appeared

on 15.11.2017 but the then AO was extremely busy in time barring matters and asked to come later on some other date without giving any date. Subsequently, on 06.12.2017 AR again appeared along with the director of the assessee company along with the directors of the companies but the AO was not willing to attend as he was not well and taking medicines, aggressively engaged in the time barring cases and even the director of the assessee company was present but he was not willing to examine. The Ld. AO informed the AR that he will call him on some other date. Referring to page 154 of paper book the Ld. Counsel submits that on 08.12.2017 the AO called the AR to produce principal persons from the aforementioned three companies. On that date AR filed application seeking weeks time. Thereafter, assessment was completed on 12.12.2017 by making disallowances of all the aforesaid loans without seeking any further query.

7.1 Ld. Counsel for assessee submits that assessee filed appeal before CIT(A) and detailed submissions and reply to AO's reasoning of not serving notice u/s 131 to the companies was submitted before him, explaining various addresses mentioned in the documents placed before the AO which are reproduced by the Ld. CIT(A) at Para 4, Pages 2 to 6 of the order. These addresses were provided in the documents such as ledger confirmation, confirmation, master data obtained from Internet placed also in the PB Bank statement etc., in relation to companies as well to individuals. It was explained that all the documents and entire evidence were furnished before the AO and AO did not opt to examine the facts stated in the documents and casually stated

that notice u/s 131 was returned who himself served notice u/s 133(6) as stated in the assessment order. The Ld. CIT(A) called the assessment records to examine the facts. After filing the PB on 12.04.2019 the Ld. CIT(A) disposed of the appeal after three months vide order dated 16.07.2019. The Ld. CIT(A) at para 5.3 Pg 15 and 16 noticed that appellant provided the AO the Bank statement, Ledger, copy of ITR but after noticing that there is a non-compliance of notice u/s 133(6) the addition made is sustained. It is necessary to state that after filing the PB on 12.04.2019 the matter was finally heard on 08.07.2019 almost after 3 months when written submissions were filed, the Ld. CIT(A) disposed of the appeal after examining the assessment records.

8.1 Ld. Counsel submits that assessee has entered into an agreement with Mrs. Kanta Gugnani through her daughter and General attorney Mrs. Neelu Kapoor to construct and build the residential plot on land at Vasant Vihar, New Delhi after getting it freehold vide conveyance deed on 25.03.2013 for redevelopment/reconstruction of residential building on the said plot of land PB 105A to 105K. The assessee company redeveloped and reconstructed on the said plot of land, comprising of basement, stilt, ground floor, first floor, second floor and third floor at its cost and expenses after getting the building plan sanctioned from MCD on 07.10.2013 (105K). Subsequently entire second floor was sold to M/s Marigold Buildcons Pvt. Ltd. (105G) for Rs.8,35,00,000/- (105L). The entire consideration was settled as full and final settlement with the vendor and rights were handed over to the vendee M/s

Marigold Buildcons Pvt. Ltd. The payments received includes advance received from M/s Marigold Buildcons Pvt. Ltd. which were received on 20.02.2014, 21.04.2014, 30.01.2015, 13.03.2015 relevant to AY 2014-15 and 2015-16. Subsequent payments were also made relevant to AY 2016-17 as can be seen from PB 105U-105V. The sale deed was executed on 10.12.2015 (105X).

8.2 Ld. Counsel submitted that entire construction has been shown in the relevant assessment year as material consumed of Rs.7.31 Crores for which assessee has taken advance from M/s Marigold Buildcons Pvt. Ltd. and also loans from others including M/s Jackpot Dealcom Pvt. Ltd now known as Shyam Tradex Pvt. Ltd. and M/s Rishikesh Barter Pvt. Ltd. as the loans were received in June 2014 from M/s Shyam Tradex Pvt. Ltd. and returned in February 2016 PB 23-27. Likewise, from M/s Rishikesh Barter Pvt. Ltd. in March 2015 which were returned in January-February 2016 as can be seen from PB 106 to 109. The loans and material consumed have been clearly depicted in Balance sheet and P/L in PB 3, 4 and the relevant schedule at PB 6. The small loans were taken from Shri Govind Mohan Sharma also in 2013-14 and 2014-15 which was also returned in March 2016. Shri Govind Sharma friend of the director retired from the cabined secretariat whose PAN was also provided along with Aadhar and PAN at PB 142A and 142B. The documents such as confirmations and ledger accounts were furnished vide letter dated 18.09.2017 vide PB 142.

9.1 In reply to written submissions filed by Ld. DR the ld. Counsel submitted that in the reply filed by the Ld. DR the insistence was that essential ingredients of section 68 were required

to be examined since enquiry by issuing notice u/s 133(6) and 131 through inspector was made but the assessee did not comply. It was stated that CIT(A) observed that the appellant provided AO with Bank Statement, Ledger and copy of ITR at para 5.3 but the CIT(A) also observed that notice u/s 133(6) was not complied and so upheld the additions.

9.2 At para 5 of the written submissions, it was stated that during the course of hearing AR of the assessee informed that documents were filed before the AO pertaining to the lenders such as confirmations, Ledger accounts, Bank statement, ITR, Audited accounts. After receiving the letter from the AO the Ld. DR observed that some of the documents such as bank statements, Certificate of Incorporation, ITR, Company's Master data and audited accounts were not found in the case record in relation to two/ three companies who granted loans. However, confirmed ledger accounts giving PAN and confirmation giving details of payments made and received back were provided along with their addresses.

10.1 It may be appreciated that the Ld. CIT(A) while disposing the appeal at para 4 reproduced the submissions and noticed that company's master data was obtained from the internet and bank statement, ledger confirmation giving PAN, confirmation, tax audit report and balance sheet were filed in the case of M/s Jackpot Dealcom Pvt. Ltd. now M/s Shyam Tradex Pvt. Ltd. It is necessary to submit that the director of this company is close relative of the director of assessee company and was produced by the AR but due to illness as well as being engaged in the time barring matters

the Ld. AO did not have time to attend them. It is necessary to state that bank statement of the assessee clearly depicting these transactions. PAN and confirmed ledger account stated to be on record were sufficient to look into transactions stated in the bank account as details of RTGS were provided in the statement and PAN was available to look into the returns of this company. Copy of latest ITR is enclosed for your kind perusal in which income of Rs.18,91,620/- was declared. Thus, creditworthiness of this company cannot be doubted

10.2 It may be appreciated that documents are filed during the course of hearing and the same in good faith used to be handed over to the assessing officer and so no acknowledgement of those documents is obtained. In this connection it is necessary to submit copy of ITR along with the audited accounts of the assessee company for the AY 2016-17 which was filed on 12.10.2016 was available to the assessing officer during the assessment proceedings as it was on record much before the date of completion of the assessment i.e., 12.12.2017.

10.3 It could be seen that the outstanding loans i.e. long term borrowing have been reduced from 9.63 crores to 1.06 crores and sale proceeds of the flow was clearly depicted in the P/L account. This balance sheet and P/L account were available to the AO and he was fully aware that loan of the aforesaid company was cleared as the same is not appearing in the balance sheet in note 4. Thus identity, creditworthiness and genuineness in this case cannot be doubted after noticing the confirmation, PAN and bank details which could be easily linked with the bank statement of the

assessee company and the AO being satisfied with these details was merely seeking his presence while he was not having time to attend to the director as explained in the affidavits. Copy of latest ITR is enclosed for your kind perusal in which income of 18.91 lakhs was declared and the balance sheet show that more than 39.11 crores are reserve and surplus. Thus, creditworthiness of this company cannot be doubted.

11. Likewise, in the case of M/s Marigold Buildcons Pvt. Ltd. who has granted loan during the period 2013-14 and also in 2014-15 relevant to AY 2015-16. The director of this company is also close relative of director of the assessee co. and at the time of dire need of funds, it has not only assisted the assessee co. but also bailed it out by buying the property of Vasant Vihar which could not be sold due to the recession in the market. The sale deed clearly depicts all the payments made by this company which were adjusted against buying the property. This company has also filed confirmed ledger accounts giving PAN, confirmation, bank statement and master data was downloaded from the internet. It is submitted that bank statement, PAN, confirmed ledger account was stated to be available to the AO and so ITR and audited accounts could have easily be obtained. In fact all these documents were filed by the assessee and affidavit to this effect was filed by the AR The documents filed have also been noticed by the Ld. CIT(A) who examined the assessment records. Due to reshuffling of Wards/Circles and transferring records some error may occur due to which some of the documents are not found on record. In any case this company has purchased the property and also made payment

subsequently which is declared by the assessee in the subsequent return which was already on record. Thus, doubt on this company who advanced the amount through NEFT and adjusted the loan against its purchase, cannot be raised. Specifically, when bank statement of the assessee as well as this company was available on record and this company has invested 8.35 crores which is depicted in the balance sheet of the assessee co. for AY 2016-17. The identity, creditworthiness and genuineness in this case cannot be doubted. Copy of latest ITR is enclosed for your kind perusal in which income of Rs.47.40 lakhs was declared. Thus, creditworthiness of this company cannot be doubted.

12. As regards to loan granted by M/s Rishikesh Barter Pvt. Ltd. the Ld. AO noticed that certificate of incorporation, Master data, bank statement, ITR and audit report were not found in the case record. However, confirmation and confirmed ledger account in which PAN details and addresses were provided showing that payments received through NEFT as well as account payee cheque from this company. The bank details of the assessee company were filed and these payments could easily be linked on which no comments have been given by the AO. It could be seen from the bank statement of the assessee that payments were received through NEFT on 19-03-2015 and 20-03-2015 and this amount was returned through RTGS by the assessee company giving details of cheque numbers dated January/February 2016. This loan was also cleared as no name was appearing in the audited accounts filed by the assessee company for AY 2016-17. As already stated, that this return was filed much before the completion of the assessment and

so the Ld. AO was not having any doubt on the loan received and the same being returned but was insisting to produce the director/financial person for the sake of brevity. It is submitted that the director of this co. is close relative of director of this company and due to which he appeared twice on the insistence of the assessee. In fact, notice u/s 133(6) was received and not returned in the present case as noticed by the AO. The latest ITR is enclosed declaring income of more than Rs.31 Lakhs and the balance sheet shows reserves and surplus of more than Rs.44.75 crores. Thus, identity, genuineness and credit worthiness of this company also cannot be doubted

13.1 As regards to loan granted by Shri Govind Sharma who is a close friend of the director i.e., Shri Sudhir Chadha and also by him through his proprietary concern M/s Vachitra Builders who have filed the documents such as PAN, Aadhar card and bank statement of Vachitra Builders which are not found in the case record. It is submitted that Shri Govind Sharma has filed confirmation placed at PB 144-145 who has granted loans not only during the year through NEFT as depicted in the confirmation but also in earlier year through cheque. Out of the total loans of Rs.9,00,000/- only Rs.5,00,000/- was received during the year and the confirmation submitted clearly shows his PAN number. The Ld. AO could easily examine the details as Shri Govind Sharma is a man of means as he confirmed that he was working in the cabinet secretariat of the Government of India and also confirmed that Shri. Sudhir Chadha is his dear friend since long. PB 143.

13.2 Likewise, no doubt can be raised on Shri Sudhir Chadha who is director of the assessee company and the confirmation filed along with ITR clearly depicts that loan was not granted only during the year as there was opening balance of Rs. 64,76,406/- as on 01.04.2014 while 62,28,442/- was paid in FY 2012-13. He personally appeared several times along with the AR.

14. It is submitted that thrust of the Ld. DR in the written statement was on the factual matrix based on the report of the Ld. AO, who did not found on record some of the documents filed before the Hon'ble Bench in connection with lenders. It may be appreciated that the assessment proceedings were completed five years before i.e. on 12-12-2017 while CIT(A) disposed off the appeal on 16-07-2019 when all the documents filed were available on record as no application under rule 46A was filed and the Ld. CIT(A) accepted the same without pinpointing any error after referring to the assessment record and thereafter disposed off the appeal that too after hearing on several dates. The CIT(A) did not comment that the documents filed before him were not found on record. Infact, hearing was provided to the Ld. AO on all the occasions but the assessing officer did not opt to appear before the Ld. CIT(A). It may be appreciated that, due to reshuffling of the Income Tax Wards and Circle(s) later on some bunch of documents which are kept in open which were filed on several dates, could have been misplaced due to which they were not found in the record

15. Ld. Counsel further submits that there is no evidence whatsoever brought on record by the assessing officer that assessee company has earned any income which has been introduced by it

through the lenders. Infact, in the present case assessee company was not having sufficient capital and has not earned any income for the last so many years. The initial year of business is the year in concern only after taking loans in AY 2013-14 and 2014-15 when merely agreement was entered into by the assessee company but no construction activities could be started due to not getting approval of the sanction plan. Thus, the business activities have commenced in the impugned assessment year. It may be appreciated that whole of the loan received or the capital available with the assessee was invested in the business of construction which was clearly depicted in the profit and loss account as the material consumed. After construction when floor available to the assessee was sold (as shown in the sale deed), the loan was returned to the lenders. Thus, it is not a case where amount is standing in the books of account of the assessee as an investment but it is a case of make-shift arrangement of loans at the dire need of the business received from the close relatives through banking channel i.e. account payee cheques or RTGS/NEFT and the same was returned at the earliest as and when funds were available with the assessee company. From the details filed on record, it may be appreciated that on 09-12-2015 sale deed was completed and immediately thereafter in the month of January and Feb 2016, the amount was returned to the lenders through RTGS i.e. banking transaction which were clearly depicted in the audited accounts submitted to the AO and AO being satisfied did not raise any question on these transactions.

16. In fact, in the present case, AO did not make any enquiry and merely stated that the Directors of the lender companies were

not produced or appeared. In fact, there was no need to ask for physical presence as documents submitted by the assessee were sufficient to examine the genuineness of the loans. Thus, it is a case where the assessing officer did not act or opt to make enquiry on his own and so addition made in such circumstances is not justified. The Ld. CIT(A) also did not appreciate that all the relevant documents once found on record and the loan were returned, it was the duty of the assessing officer to make enquiry and mere presence of the Directors who were not served with the proper notice at the addresses provided may not be necessary unless there is some material on record which show that the amount belonging to the assessee company was introduced through these companies as loan.

17. It may be appreciated that in the present case, there is no iota of doubt that amount received by the assessee company was earned by it and the same was received as loan. The assessee company who was declaring meagre losses due to no active business in the last so many years since inception and for the first time involved in the business of construction has to take loan either from the bank or from the others in order to complete the project of building and construction. In the dire need of factually first year of business, the loan was taken from the companies for a short span of time and was returned to them at the earliest.

18. It is submitted that addition under section 68 of the Income Tax Act, 1961 can be only made when assessee is unable to explain the nature and source of the credit introduced in the books of account. The essential ingredients as held by the courts are identity, genuineness and creditworthiness of the company who has

advanced such a loan or credit in the books of account of the assessee company. The aim and object of this section firstly is that money introduced in the books of account of the assessee company may not be undisclosed income of the assessee itself. But in the present case, there is no such occasion as the assessee company has not earned any income in any of the earlier years and the assessing officer has not raised any objection on this aspect.

19. Secondly, it is to be examined whether the money introduced by the lenders is their undisclosed income. In such a case, it is the duty of the assessing officer to make enquiry on the identity which was furnished in the present case by the assessee by filing their names and addresses as well as PAN details. As regards the genuineness, assessee filed their confirmed ledger account as well as confirmation showing their PAN. The creditworthiness was explained by submitting bank statement of the assessee company as well as the lenders with their ITRS, audited accounts etc. which clearly show that the amount introduced by them with the assessee company was through NEFT/RTGS and details thereof were clearly depicted in the bank statement of the assessee company. The loan was returned also through RTGS which is also clearly depicted in the bank statement of the assessee company and the audited accounts of the assessee company clearly showing about the loan introduced and returned in their accounts filed before the assessing officer, much before completion of the assessment. Thus, onus on the part of the assessee was over after filing such explanation and thereafter it was the duty of the assessment officer to bring any material on record to the contrary by examining their assessment records on the

loans introduced by them. Since no such evidence was brought on record by the AO, in such circumstances no addition can be made in the hands of the assessee company. In case, any addition or enquiry is required to be made that has to be only of the lenders but not, in any stretch of imagination addition made in the hands of the assessee company is justified.

20. Ld. Counsel submitted that once assessee has filed confirmation of loan received and returned from the lenders/ parties which is clearly depicted in the bank statement and payment has been made through banking channels only, their PAN is provided merely because summons u/s 131 could not be served may not be a ground to make addition in the hands of the assessee. In this connection reliance was placed on the decision of Hon'ble Supreme court in the case of CIT Vs. Orissa Corporation (P.) Ltd. [(1986) 159 ITR 78 (SC)]. The relevant observation are reproduced here under :

"In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesses. Their index number was in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the assessee did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on

which a conclusion could be arrived at no question of law as such arises."

21. Further reliance was also placed on the following case laws wherein it has been opined by the Hon'ble Benches that once the assessee had furnished all the material there was a clear lack of inquiry on the part of the assessing officer. In such an eventuality no addition can be made under section 68 of the Act:

- (i) CIT vs. Gangeshwari Metal (P) Ltd. [361 ITR 10 (Del)]
- (ii) CIT vs. Fair Finvest Ltd. [357 ITR 146 (Del)]
- (iii) CIT vs. Goel Sons Golden Estate (P) Ltd. [ITA No. 212/2012 dated 11.4.2012 (Del)]
- (iv) Funnay Time Finvest Ltd. [ITA No. 645/2012 dated 13.1.2015 (Del)]
- (v) CIT vs. M/s Kamdhenu Steel and Alloys Ltd. [361 ITR 220 (Del)]
- (vi) CIT vs. Vrindavan Farms (P) Ltd. [ITA No. 71/2015 dated 12.8.2015 (Del)].

22. Ld. Counsel submitted that it is well-settled law that if no effort is made to controvert the contents of the affidavit, the same has to be accepted as true as held in the case of Mehta Parikh and Co. vs. CIT (1956) 30 ITR 181 (SC).

23. The ld. Counsel for the assessee further submits that in the course of assessment proceedings and also the appellate proceedings before the ld. CIT (Appeals) the following documents were furnished in respect of the lenders to prove the identity, creditworthiness and genuineness of the transactions:-

**“Shyam Tradex Private Limited (formerly known: Jackpot Dealcom Private Limited)”**

1. Certificate of incorporation pursuant to change of name
2. Confirmation
3. Bank statement of Kotak Mahindra Bank
4. Company master data
5. Acknowledgment of return of income
6. Computation of income along-with tax audit report and balance sheet for assessment year 2015-16.

**Marigold Buildcons Pvt. Ltd.**

1. Certificate of incorporation alongwith memorandum of association
2. Confirmation
3. Ledger account of the appellant
4. Bank statement of Union Bank of India
5. Company master data
6. Copy of acknowledgment of return of income along-with computation of income and tax audit report and balance sheet for assessment year 2015-16
7. Sale deed.

**Rishikesh Barter Private Limited**

1. Certificate of incorporation
2. Confirmation
3. Ledger account of the appellant
4. Bank statement of Karur Vysya Bank Ltd
5. Company master data
6. Acknowledgment of return of income
7. Computation of income and tax audit report and balance sheet for assessment year 2015-16.

Copy of reply filed by assessee before assessing officer along with enclosures :

**Govind Mohan Sharma**

1. PAN card
2. Aadhar Card
3. Confirmation - 2.09.2017
4. Confirmation - 8.11.2017.

**Sudhir Chadha**

1. Acknowledgment of return of income
2. Ledger account of the appellant
3. PAN card
4. Aadhar card
5. Confirmation
6. Bank statement

**Vachitra Builders Pvt. Ltd.**

Balance sheet as at 31.03.2013 to 31.03.2014

24.1 The ld. DR submits that the impugned receipts were required to be examined on the touchstone of the three essential ingredients of section 68 i.e. identity of the creditor, the genuineness of the transaction and credit worthiness of the creditors. The assessee was also required to discharge its onus in accordance with proviso to Sec 68 which is applicable to the year under consideration. In the assessment order, the AO has discussed the outcome of the enquiry by issuing notice u/s 133(6), summons u/s 131 and enquiry through ITI. The AO also asked the assessee to produce Principal officers/persons of these creditors which were not complied with by the assessee. It transpires that there is no effort on the part of the assessee to establish any of the three essential ingredients which was on the assessee in accordance with the section 68 as well as Proviso to Sec. 68.

24.2 The Ld. DR submits that Ld. CIT (A) has observed that the appellant provided the AO with bank statement, the ledger and the copy of ITR of the lender Para- 5.3, P/15-16 of appeal order]. However Ld. CIT(A) also observed that the AO is at the complete independence to verify the relevance and authenticity of the

documents by issuing notices u/s 133(6), summons u/s 131Ld. CIT(A) also recorded that the very fact that the notice u/s 133(6) was not been able to be served, itself raises a flag that the lender is merely a bogus creation. The AO has conducted proper enquiry u/s 133(6), 131 and by deputing the ITI also who had furnished his report which have been incorporated in the assessment order. Even in those cases where the notice was served, no reply was received. Further, the AO also asked the assessee to produce the Principal Officers/Persons of the lender companies which was not complied with by the appellant. Ld. CIT(A) has held that the onus is on the appellant to explain the identity and creditworthiness of the lender as also the genuineness of the transactions. Ld. CIT(A) concluded that the AO has carried out extensive investigation through notices u/s 133(6), summon u/s 131 and enquiry through ITI. Sufficient opportunities were provided to the appellant to produce the Principal Officers/Persons of the lender companies and to explain the unsecured loans, but there was complete failure on the part of the appellant to discharge its onus cast u/s 68 of the IT Act. Accordingly, Ld. CIT(A) upheld the additions made in the assessment.

The Ld. DR further submitted as under:-

“5. During the course of hearing on 22.09.2022, the AR of the assessee insisted that he filed all requisite documents pertaining to the lenders viz. confirmation, ledger account, bank statement, acknowledgement of ITR, Tax audit report with balance-sheet & P/L account etc. before the AO. The AR has also filed a paper-book comprising of documents at pages 1 to 193 on 15.09.2022 wherein copy of all such documents have been filed with the certification that these documents were also filed

before the AO as well as Ld. CIT(A). During the course of hearing, Hon'ble Bench observed that since the AO has not given any comments on these documents/ evidences which were provided by the Assessee to the AO, it leads to this conclusion that the AO has no objection w.r.t the veracity of these documents

6. Since there is no discussion in the assessment order whether any such documents/evidences [other than those mentioned in the assessment order] were filed by the assessee before the Assessing Officer, the undersigned requested Hon'ble Bench to allow an adjournment to call for the comments of the AO in this regard and also the assessment records which Hon'ble Tribunal was pleased to allow. A copy of the Index of the P.B. along with the certificate (2 pages) as filed by the AR is enclosed for ready reference.

7. Accordingly the AO was requested to furnish his comments urgently whether the documents/ evidences at Sl. Nos. 1 to 8 (comprising of pages 1 to 176) as per the Index were filed by the assessee before the AO during the assessment proceedings. The Assessing Officer was also requested that the assessment records may also be sent simultaneously

8. In response the AO has provided his comments vide his letter no. ITO/ward-26(1)/2022-23/88 dt. 06.10.2022 (Copy enclosed) wherein the AO has stated as under :-

“From the perusal of the copy of the index along with the certificate (2 pages) and after going through the case record file, it is seen that assessee has filed only ledger account and confirmation from the lenders. No bank statements have been found in the record file except for the M/s Marigold Builders Pvt. Ltd. for which bank statement of Union Bank of India is attached for the period 01.04.2014 to 28.02.2014, 01.04.2014 to 31.04.2014 & 10.01.2015 to 31.03.2015.”

Further details not provided by the assessee as per the record is as follows:

Sl. No.	Name of the Company/Individual	Documents not found in the case record file
1.	Shyam Tradex Private Limited (formerly known : Jackpot Dealcom Private Limited	<ul style="list-style-type: none"> <li>• Certificate of incorporation pursuant to change of name.</li> <li>• Bank statement of Kotak Mahindra Bank</li> <li>• Company master data</li> <li>• Acknowledgement of Return of Income</li> <li>• Computation of income along with tax audit report and balance sheet for assessment year 2015-16.</li> </ul>
2.	Marigold Buildcon Pvt. Ltd.	<ul style="list-style-type: none"> <li>• Certificate of incorporation along with memorandum of association.</li> <li>• Company master data</li> <li>• Copy of acknowledgement of Return of Income along with computation of income and tax audit report and balance sheet for assessment year 2015-16</li> <li>• Sale Deed.</li> </ul>
3.	Rishikesh Barter Private Limited	<ul style="list-style-type: none"> <li>• Certificate of incorporation</li> <li>• Bank statement of Karur Vyasa Bank Ltd.</li> <li>• Company Master Data</li> <li>• Acknowledgement of return of income</li> <li>• Computation of income and tax audit report and balance sheet for assessment year 2015-16</li> </ul>
4.	Govind Mohan Sharma, Govind Sharma, Sudhir Chanda	<ul style="list-style-type: none"> <li>• PAN Card, Aadhar Card, Govind Mohan Sharma/Govind Sharma</li> <li>• PAN Card, Aadhar Card, Bank statement for/of Sudhir Chadha.</li> </ul>
5.	Vachitra Builders Pvt. Ltd.	

Along with his comments, the AO has also submitted the assessment record containing pages 1 to 310 and note-sheet pages 1 to 4 for A.Y 2015-16 which will be produced during the course of hearing for examination before the Hon'ble Bench.”

25. Heard rival submissions perused the orders of the authorities below and the submissions made before us. On perusal of the order of the Assessing Officer we notice that the Assessing Officer records a finding that the lenders have not responded to the notices issued under section 133(6) of the Act and also the summons issued under section 131 of the Act. We observe from the assessment order records a finding that several opportunities were given to the assessee to file the necessary documents to prove the genuineness, creditworthiness and identity of the creditors but the assessee failed to furnish the necessary documents. It is also the finding of the Assessing Officer that the Inspector, who was deputed to verify the addresses of the lenders, namely, M/s. Jackpot Dealcom Pvt. Ltd. and M/s Rishikesh Barter Pvt. Ltd., reported that these two companies never occupied nor conducted any business in the premises A-8, Jyoti Colony, Loni Road, Delhi. The Id. CIT (Appeals) also in his report stated that the occupant of the premises, one Mr. Javed Hussain and no such companies have occupied the address provided by the assessee. On perusal of the order of the Id. CIT (Appeals) we notice that there is no finding by the Id. CIT (Appeals) that the assessee has furnished all the documents said to have been filed before the Assessing Officer. It is the finding of the Id. CIT (Appeals) that the assessee provided bank statement, ledger and copy of ITR of the lender before the Assessing Officer, but he has

not given the name of the lender in whose case these documents were provided by the assessee to the Assessing Officer. However, before us the Id. Counsel submitted that the assessee has furnished various documents in respect of all these lenders has referred to above elsewhere including confirmations, bank statements, copy of Income Tax Returns, PAN card, Aadhar card etc., in the course of assessment proceedings as well as appellate proceedings before the Id. CIT (Appeals).

26. While in the proceedings before us, the Id. DR after calling for comments of the Assessing Officer submitted that the assessee has not provided various details as listed above elsewhere said to have been filed before the Assessing Officer.

27. The Id. Counsel for the assessee filed before us an affidavit of Shri V. K. Dogra, Chartered Accountant, who appeared before the Assessing Officer in the course of assessment proceedings for the assessment year under consideration stating that in the course of assessment proceedings he had filed confirmation of accounts from all the parties, bank statement, ITR, confirmation of ledger account in the books of accounts of the assessee and in the case of Shri Govind Sharma, bank statement was not sought for by the Assessing Officer and, therefore, the same was not obtained. Mr. V. K. Dogra in the affidavit stated that on 15.11.2017 along with all the Directors appeared before the Assessing Officer. However, since the Assessing Officer was not well and was extremely busy was not well to attend on that date. On 6.12.2017 again one Mr. V. K. Dogra appeared along with

some of the Directors including Shri Sudhir Chandra and the Assessing Officer was ill and taking medicines in front of the Chartered Accountant and was not willing to attend for the proceedings and finally it is stated that the assessment was completed on 12.12.2017. Similarly Mr. Sudhir Chandra, Director of the assessee company has furnished an affidavit stating that he along with the Chartered Accountant Shri V. K. Dogra appeared on various dates and filed details and the case was discussed by the Assessing Officer from time to time. He also stated that in the course of assessment proceedings confirmation of account from all the parties, bank statement, ITR, confirmation of ledger account in the books of assessee were filed as asked by the Assessing Officer. It was stated that he has appeared before the Assessing Officer on 15.11.2017 and again on 6.12.2017 along with Chartered Accountant.

28. We observe that it is the claim of the assessee that it had furnished all the relevant documents including confirmations before the Assessing Officer as well as the Id. CIT (Appeals). The assessing Officer gives a finding that the assessee has not furnished the details of the documents called for to prove the identity, genuineness and creditworthiness of the lenders. The assessee has not produced the lenders. The lenders have not responded to the notices issued under section 133(6)/131 of the Act. The Id. CIT (Appeals) failed to give any finding on the documents furnished by the assessee either before the Assessing Officer or in the proceedings before him except stating that:

“The appellant provided the Assessing Officer with the bank statement, the ledger and the copy of ITR of the lender.”

29. The Ld. DR filed brief note along with the observation of the Ld. Assessing Officer who informed vide letter dated 06.10.2022 that some of the documents which were stated to be filed before the AO as well as CIT(A) and now before ITAT are not available or not found in the case record file.

30. The details of controversy of the documents filed before us and not found in the case record is formulated hereunder:

Sl. No.	Name of the Company	Documents not found in the case record file.	Documents stated to be filed by Ld. AR.
1.	Shyam Tradex Pvt. Ltd.	<ul style="list-style-type: none"> <li>• Certificate of incorporation pursuant to change of name.</li> <li>• Bank statement of Kotak Mahindra Bank.</li> <li>• Company Master Data</li> <li>• Ackn. of return of income..</li> <li>• Computation of income along with Tax Audit report and B/S for AY 2015-16.</li> </ul>	<ul style="list-style-type: none"> <li>• Certificate of incorporation pursuant to change of name.</li> <li>• Confirmation PB 23 from creditor giving details of NEFT with dates and return of loan through various cheques giving cheque no. and dates.</li> <li>• PB 24 ledger account confirming by creditor providing PAN (Not disputed) <ul style="list-style-type: none"> <li>• Bank statement of Kotak Mahindra Bank.</li> <li>• Company Master Data</li> <li>• Ackn. of return of income.</li> <li>• Computation of income along with Tax Audit report and B/S for AY 2015-16.</li> </ul> </li> </ul>
2.	Marigold	<ul style="list-style-type: none"> <li>• Certificate of</li> </ul>	<ul style="list-style-type: none"> <li>• Certificate of</li> </ul>

	Buildcon Pvt. Ltd.	<p>incorporation along with MOA.</p> <ul style="list-style-type: none"> <li>• Company Master Data</li> <li>• Ackn. of return of income along with Computation of Income and Tax Audit report and B/S for AY 2015-16.</li> <li>• Sale Deed.</li> </ul>	<p>incorporation along with MOA.</p> <ul style="list-style-type: none"> <li>• Confirmation Pg 60-61 giving details of payment through NEFT with dates. (Not disputed) <ul style="list-style-type: none"> <li>• Ledger account of the appellant</li> </ul> </li> <li>• Pg 61A Confirming by the creditor providing their PAN (Not disputed) <ul style="list-style-type: none"> <li>• Company Master Data</li> <li>• Ackn. of return of income along with Computation of income and Tax Audit report and B/S for AY 2015-16.</li> <li>• Sale Deed (stated to be fresh supporting evidence)</li> </ul> </li> </ul>
3.	Rishikesh Barter Pvt. Ltd.	<ul style="list-style-type: none"> <li>• Certificate of incorporation.</li> <li>• Bank statement of Karur Vyasya Bank Ltd.</li> <li>• Company Master Data.</li> <li>• Ackn. Of return of income.</li> <li>• Computation of income and Tax Audit report and B/S for AY 2015-16.</li> </ul>	<ul style="list-style-type: none"> <li>• Certificate of incorporation</li> <li>• Confirmation Pg 106-107 from creditor giving details of NEFT with dates and return of loan through various cheques giving cheque no. and dates and providing PAN by the creditor (Not disputed) <ul style="list-style-type: none"> <li>• Ledger account of the appellant Pg 107A (Not disputed)</li> </ul> </li> <li>• Bank statement of Kotak Mahindra Bank</li> <li>• Company Master Data</li> <li>• Ackn. of return of income</li> <li>• Computation of income along with Tax Audit report and B/S for AY 2015-16.</li> </ul>
4.	Govind	<ul style="list-style-type: none"> <li>• PAN Card, Aadhar</li> </ul>	<ul style="list-style-type: none"> <li>• PAN Card, Aadhar</li> </ul>

	Mohan Sharma, Govind Sharma (Same person)	Card.	<p>Card, Confirmation dated 08.11.2017</p> <p>PB 143 (Giving account no. Bank details and address on account of return of loan of Rs. 9 lacs on 19.03.2016) Not disputed.</p> <ul style="list-style-type: none"> <li>Confirmation Dated 02.09.2017</li> </ul> <p>PB 144-145 (Giving address details of cheque and NEFT of the loans granted during FY 13-14 and 14-15 of Rs.9 lacs) Not disputed</p>
5.	Sudhir Chadha	<ul style="list-style-type: none"> <li>PAN Card, Aadhar Card, Bank Statement for/of Sudhir Chadha.</li> </ul>	<ul style="list-style-type: none"> <li>Ack. of return of income Pg 145A Declaring income of Rs. 11,38,900/- giving PAN and address in the return</li> <li>PAN Card</li> <li>Aadhar Card</li> <li>Confirmation</li> </ul> <p>Pg 146-Giving details of loan through cheque no and dates and also providing his office address declaring also that he is a director of the assessee company (NOT DISPUTED)</p> <ul style="list-style-type: none"> <li>Bank Statement</li> <li>Confirmation</li> </ul> <p>Pg 147 for FY 2014-15 showing opening balance of Rs4 lacs providing PAN Pg 148 Giving details of loan of Rs. 16,000/by cash on 15.04.2012 as director of the assessee company giving residential address.</p> <p>Pg 149 Confirmation of Rs. 16,000/- as opening balance on 01.04.2014 giving PAN</p>

			<p>and Cheque details Pg 150 Confirmation giving all the loans granted from FY 2012-13 to 2014-15 also mentioning return of loan on 21.03.2016 giving details of cheque no and purpose of loan. Pg 151 Confirmation for the period 01.04.2014 - 31.03.2015 showing closing balance of Rs.77,76,406/- still with the assessee company. (NOT DISPUTED).</p>
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30.1 After analysing the aforesaid chart and synopsis filed by the Ld. DR and rejoinder and synopsis filed by the Ld. AR the Paper-book filed and the assessment order certain factual controversies have emerged.

a) On 11.08.2017 and on 11.09.2017 part details were filed by the office assistant as well as by the Ld. AR.

b) Vide note sheet entry 08.11.2017 the AR was shown the status of notices u/s 133(6) and summon u/s 131 that so far none attended nor any reply was filed. Ld. AO recorded that on 15.11.2017 to 28.11.2017 nobody attended. On the contrary Ld. AR Shri CA VK Dogra and director Shri. Sudhir Chadha filed Affidavits confirming about their appearance on 15.11.2017.

c) AO further recorded that final opportunity cum show cause notice was issued on 04.12.2017 when AR once

again requested for adjournment failing which an addition. of Rs4,63,00,000/- will be made and matter was adjourned to 06.12.2017. On the contrary Ld. AR filed synopsis in which at Pg 1 a letter dated 04.12.2017 was filed in which notings have been made that "letter torned and refused to accept" duly signed by Ld. AR in which assertions was made of filing of all the documents as given in the questionnaire for verification and time was sought for personal appearance and it was also stated that 11 entities were produced on 08.11.2017 when AO was not well

d) AO further recorded on 06.12.2017 AR once again requested for adjournment and on his request, case was adjourned to 08.12.2017. On the contrary In the Affidavits filed it is stated that on 06.12.2017 again AR and the director appeared along with some other directors but AO was ill.

e) AO also recorded that on 08.12.2017 none attended nor any reply filed nor anyone produced. In fact, no one attended or filed reply or produced till the date of order. On the contrary Pg 154 of the PB a letter dated 08.12.2017 was filed before AO in which confirmation of the unsecured loans taken by assessee from Govind Mohan Sharma, M/s Vachitra Builders (Proprietorship of Sudhir Chadha). These confirmations were on record and not disputed by AO hence, observation of the AO that nobody appeared and not filed any reply appears to be

incorrect At para 2 AR further stated that due to non-availability of financial persons of two entities date may be postponed and names of three parties i.e. M/s Marigold Buildcon Pvt. Ltd., M/s Rishikesh Barter Pvt. Ltd and M/s Jackpot Dealcom Pvt Ltd were mentioned and confirmation of these three parties were stated to be attached. The Ld. AO also confirmed that these confirmations are on record and not disputed about the same. Once, confirmations are on record it is found to be incorrect assertion in the assessment order that nobody appeared or filed any reply till the completion of the assessment.

30.2 In the PB Ld. AR high-lighted various documents such as bank statements, ITR, Balance Sheet, Company Master data apart from confirmation giving PAN and payments were made through RTGS/NEFT and explained that most of the loans received from three parties i.e., M/s. Marigold Buildcon Pvt. Ltd. M/s Rishikesh Barter Pvt. Ltd and M/s Jackpot Dealcom Pvt Ltd were either returned in the immediately succeeding year when property was sold or adjusted against the purchase of the property and nothing was outstanding. On the contrary AO informed that Bank Statements and ITR etc. were not found on record.

30.3 It is necessary to observe that Ld. CIT(A) at para 5.3 of his order observed that:-

"appellant provided the AO the Bank Statements, Ledger, copy of the ITR of the lender"

Therefore, it is observed that the assessee indeed furnished Bank Statements, Ledger etc. before the Assessing Officer and further all these documents were filed before CIT(A) and LdCIT(A) accepted these documents without insisting for application under rule 46A nor assessee filed any such application for admission of additional evidence. The ld. CIT (Appeals) without examining the documents filed sustained the addition under section 68 of the Act on the ground that parties have not responded to the notices issued by the Assessing Officer. The ld. CIT (Appeals) also failed to call for a remand report from the Assessing Officer before sustaining the addition.

31. We further observe that the Assessing Officer in the assessment order stated that the AR was shown the status of notices issued under section 133(6) and under section 131 of the Act and so far none attended nor any reply was filed and, therefore, asked to produce principal officers/persons of these entities on 15.11.2017, but on that date nobody appeared. The Assessing Officer also stated that the AR was once again requested to produce principal officers/persons of these entities along with details on 6.12.2017, but on 6.12.2017 the AR once again requested for adjournment. However, in the affidavit filed by the AR of the assessee, who appeared before the Assessing Officer in the course of assessment proceedings and also the Director of the assessee company clearly stated that on 15.11.2017 the AR along with all the Directors of the companies were present, but the Assessing Officer was not willing to attend for hearing on that date due to illness and time barring assessments. Similarly on 6.12.2017 once again the AR along with

some of the Directors appeared before the Assessing Officer, but the AO was not willing to attend for hearing due to illness and time barring assessments. The averments in the affidavit filed by the AR and the Director were not denied by the Revenue. When the Directors were present on several occasions the Assessing Officer chose not to examine them for the reasons known to him. We also observe that the assessee vide letters dated 11.09.2017 and 8.12.2017 filed copies of confirmations of all the creditors along with the ledger copies, bank details and the Assessing Officer has made no enquiries with respect to the documents furnished by the assessee. The Assessing Officer was all along in the assessment order stated that assessee has not furnished replies to the notices sent to the creditors and the creditors have not appeared. However, on the contrary the averments in the affidavit clearly shows that the Directors of all the entities were present on 15.11.2017 and again on 6.12.2017, but the Assessing Officer failed to examine them. In the circumstances we are of the view that the addition cannot be sustained in respect of these creditors on the ground that they were not present, the principal persons/Directors were not responded to the notices nor present before the Assessing Officer.

32. Even on merits the addition cannot be sustained for the following reasons:-

32.1 With regard to loans from M/s Marigold Buildcon Pvt Ltd. is concerned the amount of Rs.45,00,000/- was added by the AO which was received during the assessment year under consideration and apart from this amount Rs.30,00,000/- which was received in

preceding year. The Bank statement of the assessee filed at PB 16-22A and also of this company at Pg 62-65 are clearly depicting these payments received and paid by the assessee. The AO also confirmed and not disputed that confirmation, Bank Statement and Ledger accounts filed by the assessee were on record in which details of PAN were also provided. All these payments were made through account payee cheque and the receipts have been shown in the accounts. The Ld. AO who has accepted the loss declared of Rs.46,247/- as shown in the ITR at Pg 1-2 which is tallying with the profit declared P/L account at Pg 4. Once AO himself accepted the payments by accepting the returned income we do not find any reason for sustaining addition of Rs.45 lacs. Hence this amount is deleted.

32.2 With regard to loan received from Govind Sharma it is found that in the assessment order there is not much discussion and AO also did not raise any objection on the confirmation filed by him which is already on record Shri Govind Sharma is a retired government servant and filed his Aadhar card while PAN was provided in the confirmation filed before him. This person has given loans not only during the year but also in earlier years and the loans given during the year is clearly visible in the bank statement of the assessee on 18.10.2014. Name of Govind Mohan Sharma is visible in the bank statement and Rs. 2,50,000/- is credited in the bank account likewise on 15.11.2014 Rs. 1 lac and on 02.01.2015 Rs. 1,50,000/- is credited in the bank account as confirmed by Shri Govind Sharma in the confirmation filed before the AO. The AO did not make any effort nor made any comment on the confirmation as

well as amount depicted in the bank statements. The Loan was also returned to him on 19.03.2016 as mentioned in the separate confirmation filed before the AO as well as before us. All these transactions were through account payee transaction hence addition of Rs. 5 lac is deleted.

32.3 With regard to loan from director Shri Sudhir Chadha who filed confirmation along with the ITR showing PAN his identity is not in doubt being a director of the assessee company. The ledger account clearly show that he has running account with the assessee company and there was opening balance of Rs 64,76,406/- on 01.04.2014 and on 19.04.2014 Rs. 15 lac was paid which was clearly visible in the bank account of the assessee. The AO did not make any comment or observation on the loan except showing that the loans of Rs 13 lacs was given by Vachitra builders proprietorship concern of the director Shri Sudhir Chadha. Since identity, creditworthiness and genuineness is not in doubt of the director there cannot be any addition in the hands of assessee company. We therefore delete the addition of Rs. 13 lacs.

32.4 With regard M/s Shyam Tradex Pvt Ltd (Formerly known as jackpot Dealcom Pvt. Ltd.) and M/s Rishikesh Barter Pvt. Ltd. of Rs 2 crore each, the AO has not disputed that confirmation giving details of loans received through RTGS/NEFT and also furnishing PAN but observed in the assessment order that at the address provided in the ITR i.e., A8, Main Loni Road, Jyoti Colony, New Delhi 110093, inspector was deputed who did not find that any office of these two companies existing at that address. The Ld. AO however did not notice that there was another address also as

mentioned in the confirmed ledger account i.e., 4B, V-120, 4th floor, A8 Big Jos tower, NSP, Pitampura but he did not make any efforts to make any enquiry on that address. The Ld. CIT(A) in his order reproduced submissions of the assessee and noticed various other addresses provided in the company's master data, bank account.

32.5 We also find that assessee filed its bank statement at PB 16-22A in which all the payment received from these two parties are clearly depicted against each payment details of cheque number, date, RTGS details were mentioned in the description of the bank statement and in the return of loan amount again details of RTGS were mentioned and cheque numbers as mentioned in the confirmation also clearly show that payments received by the assessee through RTGS and was returned through the RTGS. The return of income for AY 2016-17 was also on record, copy of the same filed before us along with the brief synopsis and rejoinder showing that return of income for AY 2016-17 was filed on 12.10.2016, while assessment proceedings were made during the period when Assessing Officer was aware of the audited accounts and ITR filed by the assessee. The Ld. AO in the assessment order mentioned that part details were filed on various dates i.e., 11.08.2017 and 11.09.2017. On 08.12.2017 the assessee also filed confirmation of these two parties though AO record to the contrary while did not raise any objection on the confirmation filed by the assessee showing details of payment received and loan returned can be provided to him which he failed to do. To our understanding the AO did not make any

efforts to analyse these transactions and after having PAN number of these two parties he did not examine the same from the returns of these two companies. These details were also filed before CIT(A) and before us along with the bank statement of these two companies which clearly confirm that these payments were made by them and returned to them which is also clearly mentioned in the for AY 2016-17 which was already on record and available to the AO. We do not have any hesitation or doubt in our mind that the loan was received by the assessee company and returned to them and details by way of PAN, confirmation, Ledger confirmations etc. The master data of these two companies were also provided which were filed before us as well as before CIT(A) which clearly show that these two companies are still existing as also clearly visible from their bank accounts. We further observe that Shyam Tradex Private Limited has reported share capital, reserves and supplies as on 31<sup>st</sup> March, 2015 at Rs.40,29,49,015/- and this company has advanced short term loans only to the extent of Rs.5,22,569/-. Similarly in the case of Rishikesh Barter Private Limited the share capital, reserves and surplus was reported at Rs.45,30,57,453/- and it has provided short term loans and advances to the extent of Rs.39,35,00,000/- as it 31<sup>st</sup> March, 2015 relevant to the assessment year under consideration i.e. 2015-16. As both these companies are having share capital as well as reserve and surplus of more than Rs.40 crores and has advanced only Rs.2 crores each to the assessee. The creditworthiness of these two companies cannot be doubted. Since all these documents goes to prove that loan/credit received in the books of accounts, nature and source which was clearly

visible from the bank statement of the assessee, confirmation through account payee transactions prove the genuineness, identity and creditworthiness of the transactions.

33. In view of the above we hold that the assessee has proved the genuineness, identity and creditworthiness of the creditors and the Assessing Officer is directed to delete the addition made under section 68 of the Act.

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

Order pronounced in the open court on : 20/06/2023.

Sd/-  
( G. S. PANNU )  
PRESIDENT

Sd/-  
( C. N. PRASAD )  
JUDICIAL MEMBER

Dated : 20/06/2023.

\*MEHTA\*

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee
2. राजस्व / Revenue
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI/  
DR, ITAT, DELHI

6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	18.04.2023
Date on which the typed draft is placed before the dictating Member	20.04.2023
Date on which the typed draft is placed before the Other Member	20.06.2023
Date on which the approved draft comes to the Sr. PS/PS	20.06.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	20.06.2023
Date on which the fair order comes back to the Sr. PS/PS	20.06.2023
Date on which the final order is uploaded on the website of ITAT	20.06.2023
Date on which the file goes to the Bench Clerk	20.06.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	