

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"H" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM &  
SHRI N. K. CHOUDHRY, JM**

I.T.A. No. 902/Mum/2023  
Assessment Year: 2012-13)

**Kreteka Investments Pvt.  
Ltd.** Table No.5, Office No.704,  
7<sup>th</sup> Floor, Palm Spring Centre,  
C.S.L. Link Road, Malad (West),  
Mumbai-400064.  
PAN No. **AADCK4316M**

Vs.

**ITO, Ward-12(3)(1)**  
Room No. 147A, 1<sup>st</sup> Floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400020.

**Appellant)**

:

**Respondent)**

**Appellant by**  
**Respondent by**

:  
:

Sh. K. Gopal  
Sh. S.N. Kabra, Sr.DR

**Date of Hearing**  
**Date of Pronouncement**

:  
:

15.06.2023  
28.06.2023

**ORDER**

**Per N. K. Choudhry, JM:**

The Assessee/Appellant herein has preferred this appeal against the order dated 24.01.2023 impugned herein passed by Ld. Commissioner of Income Tax (Appeals)-20 / National Faceless Appeal Centre (NFAC), Delhi {in short 'Ld. Commissioner'} u/s 250 of the Income Tax Act 1961 (in short 'the Act').

**2.** In this case, on the basis of the information received from the Investigation Wing of the Department, the case of the assessee was re-opened under section 147/148 of the Act. The assessee claimed before the AO that that it had received an amount of Rs. 60,00,000/- as share application money during the year, from M/s Vanquish Investment & Leasing Pvt. Ltd. through banking channel, which was refunded back during the year itself and the assessee attached relevant extract/bank statement in support of its contention, however, as per AO the Assessee has not submitted any document to prove the genuineness of the transaction, capacity of the investing company, etc. and therefore, the AO made the addition of such amount of Rs. 60,00,000/-, by observing that the assessee has failed to discharge its onus to prove the following:

- (i) The identity of the creditor/investor
- (ii) The capacity of the creditor/investor to advance money **and**
- (iii) Genuineness of the transaction made the addition of Rs. 60,00,000/- under section 68 of the Act.

**3.** The assessee being aggrieved preferred first appeal before the Ld. Commissioner. Though the Ld. Commissioner issued the notices for hearing on dated 28.01.2021 and 06.01.2023 by fixing the case on 12.02.2021 and 13.01.2023 respectively, however the Assessee except filing an request for adjournment dated on 17.02.2021 neither appeared nor filed any submissions, therefore, on the basis of the material available on record, the Ld. Commissioner decided the appeal of the Assessee and affirmed the addition made by the AO.

**4.** The assessee before us by filing application under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 (in short "Rules") along with certain documents related to M/s Vanquish Investment & Leasing Pvt. Ltd. from whom the assessee had taken a loan of Rs. 60,00,000/- and bank statement etc., claimed that the said documents though are essential for adjudication of the issue involved in the instant case, however, could not be furnished before the authorities below on account of information available during the course of assessment as well as appellate proceedings, as the documents are age old documents and difficult to trace during the course of the proceedings, before the authorities below.

**5.** We have given thoughtful consideration to the documents filed and contention raised by the assessee in support of its application under Rule 29 of the Rules for admission of the additional evidence. Considering the peculiar facts and circumstances and the additional evidence filed by the assessee, in totality, we are of the considered view that the documents filed by the assessee are not only essential but infact goes to the root of the issue involved and therefore, for the just decision of the case and for the ends of substantial justice, we are inclined to remand the instant case to the file of the Ld. Commissioner for decision afresh, suffice to say by affording reasonable opportunity of being heard to the assessee.

We clarify that the assessee shall be at liberty to produce all relevant material in support of its case and shall also appear as and when would be required and file any other document(s) as would be required by the Ld. Commissioner for determination of the issue involved. We also clarify that in case of further default, the assessee shall not be entitled for any leniency.

**6.** In the result, appeal filed by the assessee stands allowed for statistical purposes.

*Orders pronounced in the open court on 28-06-2023.*

*Sd/-*  
**(PRASHANT MAHARISHI)**  
**Accountant Member**

*Sd/-*  
**(N. K. CHOUDHRY)**  
**Judicial Member**

*SK, Sr.PS.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File

BY ORDER,

(Dy./Asstt.Registrar)  
**ITAT, Mumbai**