

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

BEFORE SHRI VIKAS AWASTHY, JM  
AND  
SHRI PRASHANT MAHARISHI, AM

**ITA No. 3685/mum/2023**

(Assessment Year: 2015-16)

P and Y Enterprises Pvt. Ltd.

123, A Wing Mittal Court,  
Nariman Point,  
Mumbai 400021

**(Appellant)**

Vs.

ITO  
Ward 5 (2) 1  
Aayakar Bhavan,  
M K Road, Mumbai 400020

**(Respondent)**

**PAN No. AAHCP2579B**

**Assessee by** : Shri Prakash Jhunjunwala, AR

**Revenue by** : Shri H M Bhatt, Sr. DR

**Date of hearing:** 28.03.2024

**Date of pronouncement :** 12.04.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 3685/MUM/2023 is filed by P and Y Enterprises Pvt. Ltd. for A.Y. 2015-16 against the appellant order passed by National Faceless Assessment Centre, Delhi [the Learned Commissioner of Income-tax (Appeals)] dated 15<sup>th</sup> September, 2023, wherein the appeal filed by the assessee against assessment year passed under Section 143(3) of the Income-tax Act, 1961 (the Act) by the National Faceless Assessment Centre [Id Assessing officer], was dismissed.
02. The assessee aggrieved with the same has raised following grounds of appeal:-



"1. On the facts and circumstances of the case and in law, Learned. CIT(A) erred in confirming the validity of notice under Section. 148, though had been issued in absence of fresh tangible material and on the basis of borrowed satisfaction and without having reason to believe of escapement of income;

2. ON facts and circumstance of the case and in law, Learned. CIT(A), on ignoring the direct evidences, erred in confirming the addition under Section.68 of ₹1,00,00,000/-, though the appellant had proved the identity and credit worthiness of the lender and genuineness of short term loan received from M/s. Sanwaria Investment Consultants Pvt. Ltd;

3. The Learned. CIT(A) erred in confirming the addition of ₹ 1,00,00,000/- under a serious mistaken belief that the appellant had agreed with the addition proposed under Section 68, irrespective of the fact that the appellant had never admitted of any such addition;

4. The Learned. CIT(A), before sustaining the addition under Section 68 of loan received of ₹ 1,00,00,000/-, erred seriously in brushing aside the understated vital facts, being; a) The exhaustive documentary evidences, being Ledger, Confirmation, PAN, CIN, Own bank statement, TDS certificate, I.T return, bank statement and balance sheet of lender and TDS certificate for interest payment to prove the identity, genuineness and credit-worthiness of the lender had not been disproved; b) The bank statements disclosing the repayment of entire loan

*made in subsequent year is filed on record; c) The appellant had made the payment of interest after deducting the TDS under Section 194A of the Act; d) The Learned. Assessing Officer did not carry any investigation and did not issue the notice under Section. 133(6) /131 to disprove the loan transactions.”*

03. Brief fact shows that

- i. Assessee is a company engaged in the business of ship chartering and trading of steel products.
- ii. It filed its return of income on 29<sup>th</sup> September 2019, at total income of ₹Nil. It claimed current year loss of ₹ 4,55,35,869/-.
- iii. Assessment was completed under Section 143(3) of the Income-tax Act, 1961 (the Act) on 29<sup>th</sup> December 2017 at the returned income and current year loss was not disturbed.
- iv. Notice under section 147 and 148 of the Act were issued on 17<sup>th</sup> March 2020. Assessee filled return on 1<sup>st</sup> February 2021, at the same income. Thereafter, notice under section 143(2) of the Act was issued on 27<sup>th</sup> February 2021. Assessee objected to the reopening of assessment, which was disposed off as per order dated 30<sup>th</sup> March 2021.
- v. The reason for reopening states that information is received from the office of the Assistant Director of Investigation, Kolkata as per letter dated 20<sup>th</sup> August

2018 that a search was conducted in case of Mr. Dilip Kumar Gupta on 15<sup>th</sup> December 2016. Statement of Mr. Dilip Kumar Gupta shows that he admitted to involved in the activities of providing accommodation entries, he also facilitates the parties for unsecured loans, bogus billing etc. He also provided list of beneficiaries.

- vi. Assessee was found to be one of the beneficiaries who have been provided the loan from one party Sarwaria Investments Consultants Pvt. Ltd. of Rs.50,00,000 each on 29<sup>th</sup> September, 2014, and 4<sup>th</sup> October, 2014, therefore it was noted that these are the accommodation entries and ₹1,00,00,000/- has escaped the assessment in view of provisions of Sec. 147 of the Act.
- vii. Assessee was asked to explain the identity, credit worthiness of the lender and genuineness of the lender.
- viii. During the course of assessment proceedings assessee submitted
  - a. Permanent Account Number,
  - b. address of the lender,
  - c. copy of the account of lender from the books of the assessee,
  - d. confirmation of the lender,



- e. Bank A/c of the assessee to show the receipt of loan and Bank A/c to show the repayment of the above sum.
- f. The assessee repaid Rs.50,00,000 on 25<sup>th</sup> May 2015, and further ₹50,00,000/- on 1<sup>st</sup> September 2015.
- g. Form No. 26AS of the lender to show that assessee has paid interest to the lender of Rs.3,40,274 on which tax of Rs.34,028 was deducted at source.
- h. Bank A/c of the lender with IndusInd bank to show that the amount of investment made by the lender in the assessee company was available.
- i. Source of loan of Rs.50,00,000 on 29<sup>th</sup> September, 2014 was received from Gujarpur Marcomm Pvt. Ltd. of the same amount and Rs.50,00,000 given on 4<sup>th</sup> October, 2014, as the source of ₹2 Crore received from Paul Tree Deal makers Pvt. Ltd.
- j. Bank account of the lender for repayment of loan by the assessee.
- k. Copy of income tax return filed by the lender on 30<sup>th</sup> March 2016 wherein total income of Rs.5,02,950/- was disclosed.



the credit worthiness and genuineness of the transaction. He dismissed the appeal of the assessee.

06. Assessee aggrieved with that is in appeal before us. On the merits of the addition and objection to the reopening of the assessment assessee furnished a paper book containing 81 pages and also filed a case law compilation of ten judicial presidents objecting to the addition. The learned Authorised Representative reiterated the submission made before the lower authorities.
07. The Ld AR further did not press ground against reopening of the assessment and he wants to press the deletion of addition on its merits. His submission is that Assessee has discharged its initial onus cast up assessee u/s 68 of the Act by showing Identity and creditworthiness of the lender as well as genuineness of the Transactions. Ld AO has not made any inquiry on the same and merely relied on the report of investigation wing. Therefore, no onus is thrown back to the assessee. In absence of any inquiry addition u/s 68 could not have been made.
08. The learned DR supported the order of the lower authorities.
09. We have heard the rival contentions and perused the orders of the lower authorities. The fact clearly shows that there was an information on pursuant to search on Mr. Dilip Kumar Gupta, who is an accommodation entry



provider. He also named the beneficiaries of such accommodation entries. The assessee was also found as beneficiary having received ₹1,00,00,000/- in two trenches from one of the group company of Mr. Dilip Kumar Gupta namely Sarwaria Investments Consultants Pvt. Ltd. of ₹50,00,000/- each. Based on this information received from investigation wing, while recording the reasons, the learned AO categorically mentions that escapement of income has arisen on account of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. However, assessee has already assessed under Section 143(3) of the Act on 29<sup>th</sup> December 2017. However, the search on Mr. Dilip Kumar Gupta, his statement and information about accommodation entries received by the assessee from Sarwaria Investments Consultants Pvt. Ltd. as a result into formation of belief that income of the assessee has escaped assessment cannot be found fault with. The learned Assessing Officer has received a tangible material and therefore, found if the assessment under Section 143(3) of the Act has been made, the reopening of the assessment on receipt of new information cannot be found fault with. As the assessee is also not challenging reopening of the assessment, same stands confirmed. Thus, ground no. 1 of the appeal is dismissed.

010. Ground no. 2 - 5 are on the merit of the case of addition of Rs 1 Crore u/s 68 of the Act. Now the issue arises is that material which is enough for reopening of



Assessment is enough for making an addition u/s 68 of the Act also, where, on the facts and circumstances of this case, assessee produces material to discharge onus cast up on it in reassessment proceedings showing identity and creditworthiness of the lender as well as genuineness of the Transaction. If we hold that such material is enough, it will result in to blurring distinction between reopening of an assessment and reassessment of income. Reopening is door to make a reassessment.

011. Assessee has accepted a loan of ₹1,00,00,000/- from Sarwaria Investments Consultants Pvt. Ltd. To prove the identity of the above company, assessee has submitted the PAN No. of the lender as well as the fact that it is assessed with ITO, ward 2(1), Kolkata. With respect to the credit worthiness of the above loan, assessee has submitted the copy of the bank account of the lender with IndusInd bank. In the bank account when the loans were given to the assessee company, lender had received the sum from other entities. On one of the occasions the sources of fund of loan of ₹50,00,000/- on 4<sup>th</sup> October, 2014 is ₹2,00,00,000/- were received by the lender. Further, source of ₹50,00,000/- given on 29<sup>th</sup> September 2014, also the source of funds from another company, it is reflected in the bank statement of the lender. Assessee has also filed the income tax return of the lender wherein total income of ₹5,02,950/- is disclosed. On verification of the balance sheet and profit and loss account of the lender it is apparent that as per note no. 9 total revenue of the lender is interest



income of ₹33,14,297/-. The total loans and advances given by the lender to various parties including assessee as at 31<sup>st</sup> March, 2015 is ₹4.50 crores and investment made by the lender is ₹3,28,00,000/-. The source of the above investment in the balance sheet of the lender is shareholders' fund of ₹7.5 crores and current liabilities of ₹ 34 lacs. With respect to the genuineness of the transaction, assessee has submitted the copy of account of the lender from the books of the assessee and the confirmation of the lender from the books of lender providing copy of account of the assessee. The bank account of the lender and bank account of the assessee is also shown at the time of taking of the loan and on repayment of the loan. Form no. 26 AS, which is the annual tax statement of the lender, also shows that assessee has paid interest to the lender of ₹3,40,274/- on which tax of ₹37,028/- is deducted. In view of the above information provided before the lower authorities it is clear that assessee has discharged its initial onus to prove the identity, creditworthiness of the lender and genuineness of the transaction as per provision of Section 68 of the Act.

012. On receipt of such information, the learned Assessing Officer did not conduct any enquiry but has merely relied upon the information contained in the reasons for the reopening of the assessment. Such information is valid as far as giving gateway to the Revenue for the reopening of the assessment. For making reassessment, the learned Assessing Officer should have made a fresh



inquiry on the same. Failure of the learned Assessing Officer to make any further inquiry on the document submitted by the assessee and throwing back onus on the assessee is fatal to the addition made in this case. Ld AO is not correct in holding that inquiry made by the Investigation wing is clear-cut. According to us , the Id AO should have conducted inquiry on the evidences submitted during reassessment proceedings either by (i) deputing inspectors (ii) issuing summons u/s 131 or (iii) by issuing inquiry letter u/s 133 (6) , (iv) by asking assessee to produce the directors of the company. If none of the above steps or any other efforts are made by the Id AO on the evidences submitted, the Id AO cannot make addition u/s 68 of the Act. In view of this, we reverse the orders of the Ld. lower authorities and direct the learned Assessing Officer to delete the addition of ₹1 crores under Section 68 of the Act. Accordingly, ground no. 2 to 5 of the appeal of the assessee is allowed.

013. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 12.04.2024.

Sd/-  
(VIKAS AWASTHY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated:- 12.04.2024

Anandi.Nambji, Steno



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai