

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 418/Ind/2023
Assessment Year: 2014-15

Jaya Garg, C-4/5, Shivkripa Colony, Sajan Nagar Road, Indore (Assessee/Appellant)	<u>बनाम/</u> Vs.	ACIT-NFAC, New Delhi (Revenue/Respondent)
PAN: AGTPG 4247 L		
Assessee by	Shri Pankaj Shah CA, Shri Soumya Bumb CA, Ms. Ayushi Garg CA & Ms. Anshika Goyal CA - ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	09.04.2024	
Date of Pronouncement	5.04.2024	

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 30.09.2023 passed by learned Commissioner of Income-Tax (Appeals), NFCA, Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 30.03.2022 passed by learned NFAC, Delhi ["AO"] u/s 147 read with section 144B the of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2014-15, the assessee has filed this appeal.

2. The background facts leading to present appeal are such that the assessee-individual filed original return of income of AY 2014-15 on 12.12.2014 declaring a total income of Rs. 10,29,670/- which was duly assessed. Subsequently, based on an information received from DDIT(Inv), Unit-2(1), Kolkata, the AO recorded reason that the assessee had taken accommodation entries of Rs. 65,00,000/- during the relevant year from 3 lenders, viz. (i) M/s Jay Jyoti Pvt. Ltd. – Rs. 5,00,000/-, (ii) M/s Jayant Security and Finance Ltd. – Rs. 20,00,000/- and (iii) M/s Ziya Merchandise Pvt. Ltd. – Rs. 40,00,000/-, which had escaped assessment and re-opened assessment u/s 147 vide notice dated 26.03.2021 u/s 148. In response to notice, the assessee re-filed return on 25.11.2021 repeating the original income of Rs. 10,29,670/-. Thereafter, notices u/s 143(2)/142(1) were issued and served upon assessee to which the assessee filed replies. At assessee's request, the AO also supplied reasons of re-opening to assessee. After examining reasons, the assessee filed objection against re-opening of assessment vide letter dated 17.03.2022. The AO disposed of assessee's objection vide order dated 22.03.2022 wherein he turned down objection raised. Ultimately, the AO completed re-opened assessment vide order dated 30.03.2022 u/s 147 r.w.s. 144B of the Act after making an addition of Rs. 65,00,000/- on account of unexplained cash credit u/s 68. Aggrieved, the assessee carried matter in first appeal but could not get any success. Now, the assessee has come in next appeal before us assailing the orders of lower-authorities.

3. The assessee/appellant has raised following grounds:

- “(1) The Ld. CIT(A) has erred in making confirmation of the addition made by LAO on account of unsecured loan taken of Rs. 65.00 lakh from M/s. Ziya Merchandise Private Limited of Rs. 40,00,000/-, M/s. Jayant Securities Private Ltd, of Rs. 20,00,000/- and M/s. Jay Jyoti India Pvt. Ltd. of Rs. 5,00,000/-.*
- (2) The actual amount of loan was taken of Rs. 25,00,000/- from M/s. Ziya Merchandise Private Limited of Rs. 10,00,000/-, M/s. Jayant Securities Pvt. Limited of Rs. 10,00,000/- and M/s. Jay Jyoti India Private Limited of Rs. 5,00,000/-.*
- (3) After repetitive request to LAO, no evidence for loan of Rs. 65.00 Lakh was given to me and addition of Rs. 65.00 Lakh was made in spite of the fact that it was only Rs. 25.00 lakhs. The same fact was brought into the knowledge of the Ld. CIT(A) who has even not bothered to consider my request that without any basis and no transaction, additional Rs. 40.00 lakhs of addition was confirmed.*
- (4) The assessee has submitted all necessary documents to prove identity, creditworthiness of the lender and genuineness of transactions for loan taken of Rs. 25 lakhs, the LAO has erred in its addition treating it as unexplained cash credit u/s 68 of the act without considering the facts and circumstances of the case and the assessment needs to be deleted.*
- (5) It was proved before the Ld. AO that the assessee has not taken loan of Rs. 65.00 lakhs factually it was only Rs. 25.00 lakhs. The addition made is bad in law and without application of mind. The addition upheld in the hands of the assessee is bad in law and hence be deleted.*
- (6) The Ld. AO has made addition of Rs. 65.00 Lakhs however the loan taken is of Rs. 25.00 lakhs, to make the case assessable u/s 149 of the Income-tax Act, 1961, and cover under the limit of above Rs. 50 Lakhs as the time limit of 3 years has expired while issuing notice u/s 148 of the Act and hence the LAO has made addition of Rs. 65.00 Lakhs. Even the Ld. CIT(A) has not gone into the matter and confirmed the addition.”*

4. Ld. AR for assessee pointed out that the Ground No. 6 is a legal ground challenging the re-opening of assessment and Ground No. 1 to 5 are on merits challenging the addition made/upheld by lower-authorities. Thereafter, the Ld. AR made mixed submissions covering all grounds.

5. Ld. AR straightaway drew our attention to the reasons recorded by AO before issuing notice u/s 148, the said reasons read as under:

“During the F.Y. 2013-14, it is noticed that the assessee in question has obtained accommodation entries from the aforesaid various bogus companies as per the chart given below. The company as mentioned below have been controlled and operated by Shri Sharad Darak, Indore.

S.No.	Name of the bogus companies in which alleged accommodation was getting into	PAN	Amount
01.	M/s. Jay Jyoti India Pvt. Ltd. renamed as Jay Ganga Exim India Pvt. Ltd.	AAACJ8822E	5,00,000/-
02.	M/s. Jayant Security and Finance Limited	AAACJ4848G	20,00,000/-
03.	M/s. Ziya Merchandise P. Ltd. renamed as Zyka Merchandise Pvt Ltd.	AAACZ3842Q	40,00,000/-

*During the F.Y. 2013-14, the assessee has received accommodation entries from the various companies like **M/s. Jay Jyoti India Pvt. Ltd. renamed as Jay Ganga Exim India Pvt. Ltd. PAN - AAACJ8822E**, **M/s. Jayant Security and Finance Ltd. PAN - AAACJ4848G** and **M/s. Ziya Merchandise Pvt. Ltd. renamed as Zyka Merchandise Pvt.Ltd. - PAN AAACZ3842Q** which are found to be bogus company whose one of the directors is Shri Sharad Darak, who is an Indore-based accommodation entry operator residing at H.No.9, Bhojnagar, Indore. He has formed several companies in which his family members and self are directors. Shri Sharad Darak is actual controller of this company. Some of these companies are registered as Non-Banking Financial Companies (NBFCs). However, these company is engaged purely in malpractice to provide accommodation entries to prospective beneficiaries and issue and return the money through cheques. NEFT, RTGS etc. For this facilitation, a commission at a pre-decided rate is charged to the beneficiary. The accommodation entry can be in the form of share capital, loans & advances or sale-purchase of goods and services. Where the entry is taken as share capital of loans and advances, the beneficiary shows it as liability in its balance sheet. However, in truth, such liability does not exist as equivalent cash is already given to the entry operator. In cases where the entry is of sale/purchase of goods and services, the beneficiaries receive bogus bills/invoices from the entry operator to inflate expenses and thereby deflating profit/taxable income. Some companies are also involved in providing accommodation entries of Long-Term Capital Gain or Short-Term Capital loss on sale of shares”.*

6. Ld. AR submitted that the AO has recorded wrong reason that the assessee had taken loans of Rs. 65,00,000/- whereas the assessee took loans only of Rs. 25,00,000/- from those 3 lenders. Ld. AR submitted the details of wrong amounts recorded by AO vis-à-vis the correct amounts actually taken by assessee as under:

S.No.	Name of the bogus companies in which alleged accommodation was getting into	Wrong amount recorded by AO	Correct amount actually taken by assessee
01.	M/s. Jay Jyoti India Pvt. Ltd. renamed as Jay Ganga Exim India Pvt. Ltd.	5,00,000/-	5,00,000/-
02.	M/s. Jayant Security and Finance Limited	20,00,000/-	10,00,000/-
03.	M/s. Ziya Merchandise P. Ltd. renamed as Zyka Merchandise Pvt Ltd.	40,00,000/-	10,00,000/-
	Total	65,00,000/-	25,00,000/-

Ld. AR also carried us to various pages of Paper-Book where copies of Ledger A/cs and Bank statements are filed to prove the above-detailed correct amounts taken by assessee.

7. Ld. AR submitted that the assessee informed this serious mistake in the reasons to AO at the initial stage itself and therefore filed an objection-letter dated 17.03.2022 to AO against the proceeding u/s 147 but the AO turned down assessee's objection vide order dated 22.03.2022. The AO's order turning down assessee's objection reads as under:

"In the instant case was reopened by the ITO 4(3), Indore by issuing notice u/s 148 of the Income-tax Act, 1961 dated 26/03/2021 through ITBA and delivered to the assessee on her e-account at departmental website www.incometaxindiaefiling.gov.in. based on the Information received from DDIT(Inv), Unit-2(1) Kolkata During the F.Y.2013-14, it is noticed that the assessee in question has obtained accommodation entries from the aforesaid various bogus companies as per the chart given below. The company as mentioned below have been controlled and operated by Shri SharadDarak, Indore.

S. no	Name of the bogus companies in which alleged accommodation was getting into	PAN	Amount
01	M/s Jay Jyoti India Pvt Ltd renamed as Jay Ganga Exim India Pvt Ltd,	AAACJ8822E,	5,00,000/-
02	M/S Jayant Security and Finance Ltd,	AAACJ4848G	20,00,000/-
03	M/s Ziya Merchandise Pvt Ltd renamed as Zyka Merchandise Pvt Ltd	AAACZ3842Q	40,00,000/-
		Total	65,00,000/-

The assessee has received accommodation entries from the various companies like **M/s Jay Jyoti India Pvt Ltd renamed as Jay Ganga Exim India Pvt Ltd, PAN-AAACJ8822E, M/S Jayant Security and Finance Ltd, PAN: AAACJ4848G and M/s Ziya Merchandise Pvt Ltd renamed as Zyka Merchandise Pvt Ltd, PAN- AAACZ3842Q** which are found to be bogus companies whose one of the directors is Shri Sharad Darak, who is an Indore-based accommodation entry operator residing at H.No.9, Bhojnagar, Indore. He has formed several companies in which his family members and self are directors. Shri SharadDarak is actual controller of these companies. Some of these companies are registered as Non-Banking Financial Companies (NBFCs). However, these companies are engaged purely in malpractice to provide accommodation entries to prospective beneficiaries. A person engaged in providing accommodation entry receives unaccounted cash from beneficiaries and issue and returns the money through cheques, NEFT, RTGS etc. For this facilitation, a commission at a pre-decided rate is charged to the beneficiary. The accommodation entry can be in the form of share capital, loans & advances or sale-purchase

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of goods and services. Where the entry is taken as share capital or loans and advances, the beneficiary shows it as liability in its balance sheet. However, in truth, such liability does not exist as equivalent cash is already given to the entry operator. In cases where the entry is of sale/purchase of goods and services, the beneficiaries receive bogus bills/invoices from the entry operator to inflate expenses and thereby deflating profit/taxable income. Some companies are also involved in providing accommodation entries of LongTerm Capital Gain or ShortTerm Capital Loss on sale of shares.

2. In view of the above and having regard to the information received, proceeding u/s 147 was initiated after obtaining prior approval as required u/s 151 and accordingly notice u/s 148 dated **26/03/2021** was issued and delivered to the assessee

3. In response, the assessee filed return of income on 25/11/2021 declaring total income at Rs. 11,39,667/-. Upon compliance to the notice u/s 148, the reasons recorded for initiation of the proceedings u/s 147 was made available to the assessee. Statutory notice u/s 143(2) of the Act has also been issued and duly served on the assessee.

4. Subsequently, the assessee vide her letter dated 13/01/2022 has objected to the initiation of the proceedings u/s 147, the gist of which are reproduced as under:

"I have filed the return of income in which I have disclosed all my income . Nothing was omitted to disclose. The department has not produced any new fact which was not disclosed with the Income Tax Return filed. Accordingly the Notice issued U/s 148 of the Act itself is bad in law and needs to be quashed.

Further at the outset, we submit that reassessment proceeding have been initiated on the basis of surmises and conjectures and without any cogent material on record. Without prejudice to above legal ground, we submit that there was no "information" direct or even otherwise to issue notice u/s 148 of the income tax Act, 1961 to reassess the income.

The reasons recorded for reopening of assessment are vague cryptic unsubstantiated and are not based on any tangible material on record. That the reasons grossly fail to mention specifically, what are the new material/information available on record against the assessee on the basis of which a reopening is initiated u/s 148.

The CBDT has laid down the standard operating procedure (SOP) in No.247/140/2017-A&PC-1 dated 10.01.2018 this instruction which was in force as on the date of issue of notice

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u/s 148 in the present the case, provides for recording of reasons to be divided in 8 paragraphs as below:

1st Paragraph: Brief details of the assessee.

2nd Paragraph: Brief details of the information collected/ received by the AO

3rd Paragraph: Analysis of information collected/received by the AO

4th Paragraph: Enquiries made by the AO as sequel to information collected/received

5th Paragraph: Finding of the AO

6th Paragraph: Basis of forming the reason to and details of escapement of income

7th Paragraph: Details of escapement of income chargeable to tax in relation to any asset located outside India

8th Paragraph: applicability of provisions of section 147/151 to the facts of the case"

While reopening in my case, the above set procedure has not followed at all. The reopening is done just on the basis of the information provided by the Investigation wing.

I am reproducing herewith the Judicial Case Laws in Support of assessee contention: -

A. In the case of SFIL Stock Broking Ltd. V. Commissioner of Income-tax(2010] 325 ITR 285 (Delhi) it was held by the Hon'ble Delhi High court "Held that, in the present case, the first sentence of the so-called reasons recorded by the Assessing Officer was mere information received from the Deputy Director of Income-tax {Inv.}. The second sentence was a direction given by the very same Deputy Director of Income-tax {Inv.} to issue a notice under section 148 and the third sentence again comprised a direction given by the Additional Commissioner of Income-tax to initiate proceedings under section 148 in Respect of cases pertaining to the relevant ward.

It was clear that the Assessing Officer referred to the information and the two directions as 'reasons' on the basis of which he was proceeding to issue notice under section 148. These could not be the reasons for proceeding under section 147/148. From the so-called reasons,

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it was not at all discernible as to whether the Assessing Officer had applied his mind to the information and independently arrived at a belief that, on the basis of the material which he had – before him, income had escaped assessment.

Therefore, the reassessment was not valid."

In case of *PCIT vs. RMG Polyvinyl (I) Ltd* [2017] 83 taxmann.com 348 (Delhi) it was held by the Hon'ble Delhi High court that where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by Assessing Officer, said information could not be said to be tangible material per se and, thus, reassessment on said basis was not justified.

In view of the above facts, the assessee humbly submits that the Reassessment proceedings being illegal, without jurisdiction and being in contravention of established law laid down by courts and in violation of CBDT Instructions deserves to be dropped".

5. Submission of the assessee are consider carefully, now coming to the issue of objections which has been filed vide letter dtd. 13/01/2022 are rebutted as follows.

5.1 The assessee has raised objection that, reassessment proceeding have been initiated on the basis of surmises and conjectures and without any cogent material on record. Without prejudice to above legal ground, we submit that there was no "information" direct or even otherwise to issue notice u/s 148 of the income tax Act, 1961 to reassess the income.

The reasons recorded for reopening of assessment are vague cryptic unsubstantiated and are not based on any tangible material on record. That the reasons grossly fail to mention specifically, what are the new material/information available on record against the assessee on the basis of which a reopening is initiated u/s 148.

in this regard, it is hereby clarified that, a search action u/s 132 on various premises in the case of Shri Sharad Kumar Darak was conducted on 16.05.2018 by the investigation Wing,. In consequence to the search conducted, post-search enquiry was carried out and the facts emerged which depicts the true picture of the business activity performed by Shri Sharad Kumar Darak.

5.2 In the circumstances, after considering the information provided by the DDIT(Inv), Unit-2(1) Kolkata and after due verification of the facts and circumstances of the case, the case has been reopened after following the due procedure as per Income Tax Act, 1961.



(copy of approval u/s 151 is attached herewith)

5.3. It needs to be stated that reopening has been done after concrete information received from DDIT(Invt), Unit-2(1) Kolkata who is competent investigative authority wherein they have found out that you are involved in the circle of accommodation entry. It is hereby clarified that this office has sufficient material on record and on the basis of the said material and information received from the Investigation Wing, proceedings u/s 147 has been initiated as per law and notice has been issued u/s 148 of the Income Tax Act, 1961 which has been duly served upon you. The notice u/s 148 has been issued after following the due procedure and it is within the jurisdiction of law. The information received from the DDIT(Invt), Unit-2(1) Kolkata is nothing but the concrete material which has been co-related with transactions made by you. After verifying the facts and circumstances of the case and the evidences on record it has been specifically noted in reasons for reopening that 'reasons to believe' that income chargeable to tax has escaped assessment for the Asst. Year 2014-15. It is not the case that the A.O. has not applied his mind before recording the reasons for reopening but also has come to the satisfaction that the income chargeable to tax has escaped assessment in your case. The reasons recorded are very specific and all issues has been discussed in respect of the information received from DDIT(Invt), Unit-2(1) Kolkata in respect of accommodation entry providers. After going through all these material this office has come to the conclusions that you have failed to disclose fully and truly all the material facts in the return of income for the year under consideration and there is escapement of income in your case. These facts has been duly discussed in the reasons for reopening therefore, it cannot be said that the reasons are based merely on information received from DDIT(Invt), Unit-2(1) Kolkata or on the basis of mere suspicion only.

5.4. The expression "has reason to believe" is wider than "is satisfied". Reasons must have a live link with the formation of belief. It may come from external sources or even from materials already on record or may be derived from the discovery of new and important matter or fresh facts - Word "information" would also include true and correct state of law derived from relevant judicial decisions either of the I.T. authorities or Courts of law - Whether the ground on which the original assessment is based is held to be erroneous by Supreme Court in some other case, even that will also amount to a fresh information which comes into existence subsequent to the original assessment - Taxpayer would not be allowed to take advantage of an oversight or mistake committed by the taxing authority. Such was the finding of the **Hon. Apex Court in the case of Kalyanji Mavji & Co. Vs CIT (SC) 102 ITR 287.**

5.5 Sufficiency of reason is not open to question in a court of law but the existence of belief can only be challenged. Court can examine whether the reasons are relevant and have a bearing on the matters with regard to which he is required to entertain the belief before he can issue notice. Reliance is placed on the following judicial pronouncements:

Reliance is placed in the case of **CIT vs. Nova Promoters & Finlease (P) Ltd. [2012] 342 ITR 169 (Delhi)**. In this case the question as to whether at stage of issuing notice under

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section 148 merits of matter are not relevant and the Assessing officer at that state is required to form only a prima facie belief or opinion that income chargeable to tax has escaped assessment? The answer was given in affirmative.

As per the provisions of section 147, the assessing officer is not required to establish escapement of income at the time of re-opening the assessment. The only requirement is to have a reason for belief that there is a possibility of escapement of income as per information on record. This view is supported by the following decisions:

Sri Krishna (P) Ltd. Vs CIT (SC) 221 ITR 538

Central Provinces Manganese Ore Co. Ltd. Vs ITO (SC) 191 ITR 662

Held in the case of **Ram Prasad V ITO 82 Taxman 199(All)** that there is nothing in section 147 to suggest that an assessing officer cannot re-open an assessment where he had dialed to investigate and find out truth at initial stage.

Held by the Hon. Supreme Court in the case of **ITO Vs Purshottamdas Bangur & Another 224 ITR 362 (SC) and ITO VS Selected Dalurband Coal Co (P)Ltd (SC) 217 ITR 597** that communication received from assessing officer in discharge of official duties is information for issue of notice u/s. 148.

Held by the Hon. **ITAT Delhi Bench in the case of ITO Vs Gaurinder Kaur 102 ITR 189** that letter of CIT wing constitute material for reopening assessment and issue of notice u/s. 148.

Held by the Hon. Delhi High Court in the case of **AGR Investments Ltd Vs Addl. CIT & Anar 333 ITR 146 (Del) and by the Hon ITAT Jaipur Bench in the case of Shalimar Buildcon (P) Ltd Vs ITO 136 TTJ 701** that communication received from investigation wing is sufficient information for issue of notice u/s. 148 of the Income Tax Act, 1961.

6. Further, the quality of the reason recorded is not to be questioned or analysed by the assessee in the guise of such an objection. The very jurisdiction under section 147 of the Act is open for challenge by the assessee in the regular appellate channels. Therefore, the assessee's present objection seeking a judicial review of the issue which is yet to hatch through the re-assessment proceedings cannot be accepted. I may refer to the following decisions of the Hon. Supreme Court in regard to the point at issue as under:

a. In **Chhugmal Raj Pal v. S.P. Chaliha&Ors. (1971) 79 ITR 603 (SC)**, which was decided against the Revenue, the Apex Court has held that "AO must give reasons for issuing a notice under section 148. In other words, AO must have some prima facie grounds before him for taking recourse action under section 148."

b. In **ITO v. Selected Daluv Band Coal Co. (P) Ltd. (1996) 217 ITR 597 (SC)**, the Apex Court observed that at the stage of issuance of notice under section 148, the only question is whether there was relevant material, on which a reasonable person could have

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formed the requisite belief.

c. Again in **Raymond Woolen Mills Ltd. v. ITO & Ors. (1999) 236 ITR 34 (SC)**, the Apex Court while refusing to interfere with the reassessment proceedings, observed "we have only to see whether there was prima facie some material on the basis of which the department could reopen the case."

7. It is hereby clarified that the ratio decided laid down by Apex court in **GKN Driveshaft (2003) 259 ITR 19** has been adhered to in your case. The Hon'ble Supreme Court has held that the objections filed by the assessee have to be disposed of by passing a speaking order which is being done in this order. As discussed in earlier paragraphs, it is evident that there is escapement of income in your case and this office has perfectly justified in reopening the assessment.

8. In view of the above, I hold that the Assessing officer has rightly invoked the provisions of section 147 and issued of Notice u/s. 148. The action of the Assessing Officer is well within the purview of these sections and squarely covered by the above judicial pronouncements relied upon.

9. Further, if the assessee has sufficient materials on hand to prove the genuineness of the said transactions, then the assessee should come to the platform of re-assessment set by the Assessing Officer to prove that there is no escapement of income on account of introduction of capital. Hence, there is no case for the assessee at this stage to object the reopening process, which is done strictly in accordance with the law.

10. In the light of discussion in foregoing paragraphs, your objection in respect of the proceedings initiated u/s 147 is hereby rejected and there is no question of dropping notice issued u/s 148. Therefore, the application dated 13/01/2022 filed by you stands disposed off. **Please note that multiple objection will not be entertained".**

8. Referring to above order dated 22.03.2022 passed by AO, Ld. AR submitted that the AO has simply repeated the original version of his recorded reasons and that too with incorrect figures and thereby rejected assessee's objection. This clearly shows that the AO has committed a serious mistake firstly in recording reasons and secondly in rejecting objection of assessee. Therefore, not only there is a mistake in the action undertaken u/s 147 on the basis of wrong reasons but also there is another mistake in rejecting assessee's objection and continuing the proceeding u/s 147. Ld. AR submitted that the AO's approach clearly shows that he just proceeded, acted and executed the information received from Investigation Wing and without application of his own mind. Ld. AR strongly contended that such an approach is clearly illegal, unsustainable and deserves to be quashed.

9. Then, Ld. AR drew us to the order of first-appeal passed by CIT(A) and submitted that although the CIT(A) has passed order running over as many 46 pages yet the operative part of his order is a very small para just confirming the AO's action as under:

"It needs to be stated that reopening has been done after concrete information received from DDIT(Inv), Unit-2(1), Kolkata who is competent investigative authority wherein they have found out that you are involved in the circle of accommodation entry. It is hereby clarified that office of investigation has sufficient material on record and on the basis of the said material and information received from the investigation Wing, proceedings u/s 147 has been initiated as per law and notice has been issued u/s 148 of the Income-tax Act, 1961, which has been duly served upon you.

In view of the above, assessment proceedings were completed treating the transaction of the appellant as unsecured loan of Rs. 65,00,000/- which is taken by the appellant from the accommodation entry providers as unexplained cash credit u/s 68 and added to the returned income of the appellant, assessing the income at Rs. 75,29,670/-.

8.0 In result the action of AO is upheld and his action is justified as per provisions of income tax act."

10. Then, Ld. AR submitted that before AO as well as CIT(A), the assessee also filed numerous documents to show that the loans taken by assessee from those 3 lenders were genuine. Those documents were in the shape of A/c confirmations, ITRs, Bank Statements and Audited financial statements of the lenders, etc. copies whereof are also placed at Page 8-69 of Paper-Book. However, neither the AO nor the CIT(A) has paid any attention to assessee's documents in their respective orders. Ld. AR submitted that the documents submitted by assessee are sufficient enough to establish the ingredients of section 68, namely the identity and creditworthiness of the lenders and the genuineness of transactions. Ld. AR went on submitting that all 3 lenders have already been tested by ITAT, Indore Bench in a catena of decisions whereby the lenders have been held to be genuine. Ld. AR cited the decisions of *Global Realcon Pvt. Ltd. Vs. ACIT IT(SS)A No. 170 to 174/Ind/2020* and *ACIT Vs. Shri Krishan Devcon Ltd. IT(SS)A No. 8 to 10/Ind/2022* in this regard. Ld. AR further submitted a fact that out of 3 loans, the loans taken from first two parties, namely M/s Jay Jyoti India Pvt. Ltd. and M/s. Jayant Security and Finance Limited, have been repaid by assessee.

11. With above submissions, Ld. AR made two-fold prayers, namely (i) the action taken by AO u/s 147 itself was invalid being based on wrong reasons and wrong disposal of assessee's objection, hence the same must be quashed and (ii) in the alternative, the addition made by AO while passing assessment-order is not tenable on merit, hence the addition must be deleted.

12. Per contra, Ld. DR for revenue strongly defended the orders of lower-authorities. Ld. DR, however, agreed that the AO has not taken into account the mistake in the amounts of loans, whether Rs. 65 lakh or Rs. 25 lakh as pointed out by assessee, while disposing of objection. Ld. DR also agreed to Ld. AR's submission that in certain decisions, the ITAT has held the lenders as genuine parties. But Ld. DR went on submitting that the financial transactions of every assessee are unique, even if made with the same lenders, and have to be looked aptly.

13. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the material held on record to which our attention has been drawn. Basically, the AO has conducted proceeding u/s 147 and made addition of Rs. 65,00,000/- on account of unexplained loans alleged to have been taken by assessee from 3 lenders. Now, the grievances raised by assessee are two folds, namely (i) the proceedings done by AO u/s 147 were not valid, and (ii) the addition made by AO is also not tenable on merit. So far as the first grievance is concerned, the assessee is harping on the point that although she has taken loans of Rs. 25,00,000/-

only, the AO has wrongly recorded that she had taken loans of Rs. 65,00,000/-. Therefore, when the reasons are wrong, the entire assessment-proceeding is wrong. We do not agree with such a submission of assessee because at the time of recording reasons, the AO has considered an information received from DDIT(Inv), Unit-2(1), Kolkata informing that the assessee had taken loans of Rs. 65,00,000/-. Therefore, the reason recorded by AO has a basis or material. However, the assessee has a point that despite specific intimation by her in the objection-letter filed to AO informing correct loan amount of Rs. 25,00,000/- in place of Rs. 65,00,000/-, the AO has turned down assessee's objection re-mentioning the incorrect amounts of loans at Rs. 65,00,000/-. On a careful reading of the order dated 22.03.2022 passed by AO turning down assessee's objection, re-produced in earlier para, we find that the AO has not considered assessee's categorical submission of correct loan amount of Rs. 25,00,000/-. Therefore, we agree that although the AO has disposed of assessee's objection but without considering assessee's submission with due care and hence there is an infirmity in the order passed by AO. Now, in such a situation, what would be the proper remedy at this stage? We believe that it would be most appropriate to remand this issue to AO for re-consideration of assessee's objection. Needless to mention that the assessee shall be given opportunity to explain the facts and figures from relevant record. At this stage, we may also mention that in Ground No. 6, the assessee has also mentioned that the AO has made addition of Rs. 65.00 lakhs against actual amount of Rs.

25.00 lakhs only to make the case assessable u/s 149 of the Income-tax Act, 1961 and cover under the limit of Rs. 50 Lakhs as the time limit of 3 years has expired while issuing notice u/s 148 of the Act. But, however, during hearing neither Ld. AR nor Ld. DR has made any submission on the point of time limit. We are not sure whether the assessee is serious about this time-limit part or not. However, since we are remanding this issue back to AO, the AO shall consider time-limit point also if raised or pressed by assessee. The second part of assessee's grievance is such that additions were not sustainable even on merits but the lower-authorities have not discussed the contemporary documents filed by assessee to explain the ingredients of section 68 in their orders. When it is so, there is again a necessity to remand this case to AO for due consideration of the documents filed by assessee in the light of decisions of ITAT, Indore narrated by Ld. AR as mentioned in earlier part of this order. Thus, looking from all angles, we feel it most appropriate to remit this matter back to the file of AO for consideration afresh. Needless to mention that the AO shall make a proper adjudication after giving sufficient opportunity to assessee, in accordance with law and without being influenced by earlier order.

14. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 15.04.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 15.04.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore