IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI

BEFORE MS. MADHUMITA ROY, JUDICAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.1731/DEL/2016
(ASSESSMENT YEAR: 2012-13)

Asst. Commissioner of Income Tax, Central Circle-2, New Delhi.	Vs.	M/s. Sea Point Trading & Builders Pvt. Ltd. B-4/43, 2nd Floor, Safdarjung Enclave, New Delhi-110029. **PAN: AABCS0741C**
(Appellant)		**(Respondent)**

Assessee by	Dr. Rakesh Gupta, Adv., Shri Somil Agarwal, Adv. and Shri Deepesh Garg, Adv.
Department by	Shri Virender Kumar Singh, Sr. DR
Date of Hearing	07/05/2025
Date of Pronouncement	18/06/2025

O R D E R

PER MANISH AGARWAL, AM:

This appeal is filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals)-23, New Delhi [Ld. CIT(A), in short], dt. 29.01.2026 in Appeal No. 16/2015-16 for Assessment Year 2012-13 passed u/s 250 of the Income Tax Act, 1961 (the Act, in short).

2. The Revenue has taken the following grounds of appeal:

"1. The order of Ld. CIT(A) is not correct in law and on facts.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in laws in deleting the addition of Rs.6,35,00,000/- made by AO on account of unexplained cash credit u/s 68 of the Act received from M/s Manan Merchandise Pvt. Ltd."

3. The solitary grievance of the assessee is with regard to the deletion of Rs.6,35,00,000/- made by AO on account of unexplained cash credit u/s 68 of the Act.

4 Brief facts of the case are that search and seizure operation was carried out u/s 132 of the Act on 08.02.2013 in S.S. Group of cases, of which assessee is one of the member. Accordingly, the case of the assessee was also chnnelized in terms of the order passed u/s 127 of the Act. The AO has observed that assessee h as received Rs.6,36,00,000/- from M/s Manan Merchandise Pvt. Ltd., a group company who in tern received money from Kolkata based paper companies. Therefore, the AO opined that the source of funds in the hands of the assessee remained unexplained and, therefore, he initiate the proceedings u/s 148 after recording the reasons and after the necessary approval from competent authority issued the notice u/s 148 on 06.02.2015. In response, the assessee stated that the return of income filed on 27.09.2011 declaring the loss of Rs.4,237/- may be treated as the return filed u/s 148 of the Act. Thereafter, the AO examined the credits in the bank account and the lender company and further on the basis of the inquiry conducted during the pre and post search proceedings concluded that the loan taken of M/s Manan Merchandise Pvt. Ltd. is unexplained credit and made the addition of Rs.6,35,00,000/- of the Act in the hands of the assessee company.

5. Against such order, the assessee had filed the appeal before Ld. CIT(A) who vide impugned order dated 29.01.2016 has allowed the appeal by holding that reassessment proceedings u/s 147 of the Act is not sustainable and, further on merits and deleted the addition of rs.6,35,00,000/-. Against such order Revenue has filed the present appeal before the Tribunal wherein the Revenue has challenged the action of the Ld. CIT(A) in holding the addition made on merits. However, the Revenue has not challenged this action of the Ld. CIT(A) in holding the proceedings initiated u/s 147 as bad in law and not sustainable. The relevant observations as made by Ld. CIT(A) in para 4.1.7 to allowing the appeal of the assessee on the ground of reopening u/s 147 is as under:

"4.1.7 As regards reopening of assessment u/s 147 of the Act and recording of reasons therefor, it is settled law as held by various Courts including the Hon'ble Supreme Court that the belief of the A.O. should not be a product or imagination or speculation; the belief must be of an honest and reasonable person based upon reasonable grounds; that the belief must not be based on mere suspicion; the belief must not be vague and there must be material, having live nexus with the belief of escapement of income; the belief entertained must not be arbitrary or irrational and it must be reasonable and be based on reasons which are relevant and material; there should be facts before the A.O. that reasonably give rise to such belief that income has escaped assessment and the formation of belief is possible only on the basis of certain material and if there was no such material, reason to believe cannot be entertained; certain facts, specific in nature and reliable in character, have to exist to show that assessment can be reopened and the existence of such reasons and a direct nexus between those reasons and the alleged evasion is a condition precedent for reopening of assessment; and in the absence of application of mind to the facts alleged to have been found the decision arrived at that income escaped assessment is not maintainable in law, Further, in Lupin Ltd. v. Assistant Commissioner of Income-tax (LTU), Mumbai [2014] 46 taxmann.com 396 (Bombay) it has been held that " the reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons are the manifestation of the mind of the Assessing Officer and therefore, should be self-explanatory and should not keep the Assessee guessing for the reasons. AO must disclose in the reasons as to which fact or material was not disclosed by the Assessee fully and truly necessary for assessment for that assessment year, so as to establish the vital link between the reasons and the evidence, and that this vital link is the safeguard against arbitrary re-opening of a concluded assessment: in CIT vs SFIL Stock Broking Ltd. (2010) 325 ITR 285 (Del), Signature Hotels Pvt. Ltd. Vs ITO 338 ITR 51 (Del), (Pr.CIT v India Business Network Ltd.) and Pr. CIT v G&G Pharma India Ltd. (ITA No. 545/2015) Delhi High Court order dated 08.10.2015 it has been held that 'mere information received from DDIT(Inv) cannot constitute valid reasons for initiating reassessment proceedings in the absence of anything to show that A.O. had independently applied his mind to arrive at a belief that the income had escaped assessment and that "an assessment cannot be reopened without the AO having made necessary enquiry before initiating of the assessment proceeding to arrive at his own independent satisfaction regarding the escapement of income". The appellant has cited quite a few judgments on this account and further reliance is placed on Commissioner of income-tax-V v. Orient Craft Ltd. [2013] 29 taxmann.com 392 (Delhi), Commissioner of Income-tax, Delhi v. Kelvinator of India Ltd. [2010] 187 TAXMAN 312 (SC), Commissioner of Income Tax -Central I v Indo Arab Air Services [2015] 64 taxmann.com 257 (Delhi), Income-tax Officer v. Varshaben Sanatbhai Patel [2015] 64 taxmann.com 179 (Gujarat). Therefore, the reopening of assessment by issuance of notice u/s 148 of the Act is not sustainable and cannot be held legally valid in terms of the various pronouncements in this regard. As such, considering the circumstances of reopening of the assessment together with the observations at para-4.1.4 herein above, the reassessment order u/s 147 of the Act is not sustainable. I hold accordingly. This ground is therefore allowed.

4.2 Even in respect of the merits of the addition of Rs.6.35 crore, taken in ground no. 03, the AO has overlooked and ignored the reply dated 09.03.2015 of the assessee submitted to him during the assessment

proceedings though referred by him at para-5.13 of the assessment order. In this reply the assessee had stated that the above amount was received through proper banking channel and had submitted. the statement of account of MMPL in appellant's books, submitted that MMPL is a genuine company registered with Ministry of Company Affairs vide CIN U51909WB2009PTC138431, and that MMPL duly filed its return of income and submitted copies of its income tax return and audited balance sheet (para 5.13 of assessment order). The AO, in spite of these documents having been filed before him, held that the identity of the MMPL and the genuineness of the transaction is not established. The AO relied upon the report dt. 29.05. 2013 and 07.06.2013 of the Dy Director of Income Tax (Inv.) Unit-1(4) Kolkata that MMPL, as also all the companies which had given share premium/advances to MMPL, could not be traced by the department inspector and just based on this it was concluded that these are paper companies, that too without confronting the appellant with the findings of such enquiries.

4.2.2 The AO had issued summons u/s 131 of the Act to MMPL on 15.01.2015 (ref. page 4 para 5.4 of assessment order) although the notice u/s 148 of the Act was Issued on 06.02.2015 when the AO assumed jurisdiction over the case of the assesse, and summons u/s 131 of the Act issued to a person based at Kolkata at his Kolkata address though the AO was not competent to issue summons to the person as far as in Kolkata. Yet MMPL sent reply to the AO on 16.03.2015 which was received in AO's office on 25.03.2015 which was received in AO's office on 25.03.2015, enclosed at pages 43-103 of the PB submitted on 12.08.2015 during the appellate proceedings, but the AO had-hurriedly already passed the assessment order on 20.03.2015, in less than a month from the date of reopening of assessment, though the limitation was on 31.03.2016. The AO has not considered this reply of MMPL forwarded to her by me as mentioned above and has not commented upon the reply of MMPL enclosing therewith ledger of the appellant in its books, copy of acknowledgment of ITRS for AYs 2011-12 to 2013-14, copy of bank statement of current account no. 95001010010511 with Syndicate Bank, N.S. Road, Kolkata for the period 01.05.2011 to 31.12.2011 which indicated the moneys transferred by cheque to the appellant from different persons, and the audit report and account statements for the years 2010-11 to 2012-13. These documents, also submitted to the AO on 09.03.2015 as mentioned above, are in itself indicative of the identity of MMPL. On perusal of the assessment folder the confirmation of account of MMPL in the books of the appellant, with PAN of MMPL and duly signed by the director of MMPL, and other details relevant to MMPL submitted by the appellant during assessment proceedings on 09.03.2015 are available on AO's file. Besides, the bank statement of MMPL indicates that the Immediate source of money transferred to the appellant are different companies which have been mentioned by the AO at pages 2-6 of the assessment order while the AO has himself observed in the satisfaction note that the source of the advances from MMPL are share premiums received in the preceding year, thus giving a finding contradictory to the conclusion arrived at in the reasons recorded for reopening the assessment. The AO has failed to bring on record any material evidence that the moneys received from these companies/persons and credited in the accounts of MMPL, though deposited through proper banking channels, were not received from these companies/persons and the AO, or the Investigation Wing which conducted the initial and post-search investigations/enquiries which formed basis for reopening of assessment and reassessment, has not carried out any enquiry beyond issue of notices and spot enquiry by

inspector to find out the financial/money trail of the source of money deposited in the above bank account of MMPL so as to come to a definitive conclusion that the moneys advanced by MMPL to the appellant was in fact cash generated by the appellant and re-routed into its account. Even if at all the advances to the appellant from MMPL were doubtful, the receipts in the account of MMPL could have been considered in the hands of MMPL after appropriate enquiries and considering the advances as bogus in the hands of the appellant is far-fetched and not borne out of facts and evidences brought on record, least that the appellant has routed its own funds through MMPL without a shred of evidence brought on record that the source of deposits in MMPL is the money of the appellant itself. Thus, on merits too the AO has not been successful in establishing that the impugned amount is in fact the undisclosed income of the appellant. Therefore, the addition cannot be sustained on merits as well.

4.2.3 It is settled law that in a case of reopening of assessment u/s 147/148 of the Act the AO has to first discharge the burden of showing that income has escaped assessment and the initial burden of proof rests on the AO. Even otherwise, the appellant had submitted all the relevant information and documents relating to the advances received from MMPL as mentioned above, which were also submitted by MMPL vide its reply dated 16.03.2015 mentioned above, and under these circumstances it is settled law that the appellant's onus regarding credits in its accounts stands discharged and the latter is not further required to prove the source from which the creditors could have acquired the money deposited with him either in terms of s.68 or on general principle and merely because the depositors explanation about the source of money was not acceptable to the AO, the investment owned by such persons maybe subjected to proceedings for inclusion of the amounts as their income from undisclosed sources, or if they are found benami the real owner can be brought to tax and in the absence of anything to establish that the sources of the creditors' deposits flew from the assessee, the cash credits. cannot be treated as unexplained income of the assessee It has also been held that the assessee cannot be presumed to have special knowledge about the source of source or origin of origin and once the assessee points out a depositor from whom he has received money and if the depositor owns the advancement of money to the assessee, the further enquiry into the source of source or failure to explain source of source cannot result in invoking the provisions of section 68 and it will not, therefore, be for the assessee to explain further as to how or in what circumstances the third party obtained the money or how or why he came to make an advance of the money as a loan to the assessee, and once such identity is established and the creditors accepted that they have advanced the amounts in question to the assessee, the burden immediately shifts on to the department to show as to why the assessee's case could not be accepted and the entry still represented the income of the assessee from a suppressed source which has to be based on sufficient and adequate materials.

4.2.4 Furthermore, though the AO has observed that MMPL had meager income in the relevant year he has apparently ignored the audited accounts of MMPL filed by the appellant before him as also received in his office on 25.03.2015 and forwarded to him vide this office letter dated 20.08.2015 which indicate that the total revenue receipts of the appellant during FY 2009-10 was Rs.25 15 crore, Rs. 28.62 crore in FY 2010-11 and Rs.23.47 crore in FY 2011-12. Moreover, the moneys received by MMPL appearing in its bank account were also available with

it for advancing the loans. The AO has not given any finding in the assessment order that assets and income reflected in MMPL's account is false. Under these facts and circumstances, it is apparent that the AO has failed in bringing on record sufficient and reasonable material evidence to come to the conclusion that the advances received by the appellant are bogus, least that these are appellant's own cash re-routed through MMPL, and, therefore, the addition of Rs 6.35 crore made is not sustainable. I hold accordingly. This ground is accordingly allowed.

Thereafter, the Ld. AO has deleted the additions on merits also.

5. Before us, the Ld. Sr. DR vehemently supported the order of the AO and submitted that when there were sufficient evidence collected during the post search investigation and further by inquiries conducted by the AO during the course of reassessment proceedings. The action of Ld. CIT(A) in deleting the additions deserves to be reversed and addition of Rs.6.35,00,000/- u/s 68 deserves to be restored.

6. On the other hand, the Ld. AR of the assessee submitted that the Ld. CIT(A) has allowed the appeal of the assessee on two occasions (i) by holding the reassessment proceedings initiated u/s 147 as bad in law and (ii) by holding the addition of Rs.6,35,00,000/- on merits. He further submitted that since that the Revenue has not challenged the action of the Ld. CIT(A) in quashing reassessment proceedings initiated u/s 147 and, therefore, the issue had attended finality, thus, there is no requirement to decide the issue of addition on merits which were made in the reassessment order. For this, he placed reliance on the judgments of Co-ordinate Bench of ITAT in the case of ACIT vs. Green Gem Estate Pvt. Ltd. in Appeal No.1732/Del/2016 order dated 01.02.2024, the Co-ordinate Bench identical circumstances has dismissed the appeal of the Revenue. Such order was confirmed by the Hon’ble Jurisdictional High Court in the appeal of the Revenue in ITA No.365/24 vide order dated 03.09.2024.

7. After perusing the material and submissions putforth by the parties, we find that Ld. CIT(A) has held that reopening of the assessee proceedings is not sustainable in the eyes of law and thereby quashing the reassessment order which has not been challenged by the Revenue before us. Thus, the findings of the Ld. CIT(A) attend finality. This being so we do not find any reason to interfere in the findings of Ld. CIT(A) as once the reassessment proceedings are quashed. There is no necessary to consider and decide the additions made therein. In view of the above discussion and by respectfully following the decision of the Co-ordinate Bench in the case of ACIT vs. Green Gem Estates Pvt. Ltd. (supra), grounds of appeal of the Revenue are dismissed.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in open court on 18.06.2025.

Sd/-	Sd/-
(MS. MADHUMITA ROY)	**(MANISH AGARWAL)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated:18/06/2025
PK/Sr. Ps
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI