IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.316 OF 2016

M/S. Pratham Telecom India Pvt. Ltd. .... Appellant
Vs.
Deputy Commissioner of Income Tax,
Range-9(2), Mumbai .... Respondent

Mr. Kunal Bhanage with Ms Vidhi Thaker i/by Juris Matrix for the Appellant.
Mr. Akhileshwar Sharma for the Respondent.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : SEPTEMBER 17, 2018

P.C:

1. This appeal of the assessee challenges an order passed by the Income Tax Appellate Tribunal, "C" Bench at Mumbai, dated 25-3-2015, for Assessment Year 2009-10.

2. During the year under consideration, the assessee's return showed total loss of Rs.77,01,919/-. That was processed and an order was made on 28-12-2011, assessing the total

income at Rs.1,02,16,950/-. The six entities from whom the assessee borrowed sums without security were selected for scrutiny. It was found that though the Assessing Officer issued notices to these entities under Section133(6) of the Income Tax Act, 1961 (for short, "the I.T. Act"), he found there were no reply, or the notices returned unserved. Only one party confirmed the loan of Rs.5,00,000/-. It is in these circumstances, the Assessing Officer doubted the transactions and made a very pertinent observation. He added back Rs.1,45,00,000/- to the total income of the appellant under Section 68 of the I.T. Act. This assessment so framed by him was confirmed by the First Appellate Authority. Even the Tribunal has confirmed it.

3. The assessee has brought this appeal urging that there are substantial questions of law and which are proposed by the assessee at page 19 of the paper-book.

4. After having heard Mr. Bhanage at great length and with his assistance perusing the order under appeal, we do not agree with him. The Tribunal has extensively referred to the

entities and the details in relation thereto provided by the assessee. It concurred with the First Appellate Authority that the burden on the assessee has not been discharged by it. The assessee cannot simply provide some details such as Permanent Account Number, business address, the account which was maintained and a Bank Statement, or a Company's Master Data maintained by the Registrar of Companies. The assessee is obliged to explain the surrounding circumstances and the backdrop in which the transactions took place. In the case of five entities, the Tribunal referred to these details and concluded that the assessee has failed to discharge the burden. More so, when three out of the five assessees could not be served. The rest did not either give a reply, or gave a reply which was not at all satisfactory. The reasons assigned from paras 5.2 to 5.5 of the order under challenge do not suffer from such legal infirmity or perversity as would enable us to entertain this appeal. The concurrent findings of fact, therefore, are based on appreciation and appraisal of the evidence before the authorities. We cannot take a different view. All the more, when there are no errors of law apparent on the face of the record, particularly in understanding the ambit and scope of Section 68 of the I.T. Act. Resultantly, this appeal fails and is dismissed but without any order as to costs.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)