आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'SMC', JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 259/JP/2017
निर्धारण वर्ष/Assessment Year : 2007-08.

M/s. S.L.G.K. Cera India (P) Ltd., B-609, Shiv Marg, Bani Park, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 7(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAICS 9872 M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Manish Agarwal (CA)

राजस्व की ओर से/ Revenue by: Smt. Runi Pal (JCIT)

सुनवाई की तारीख/ Date of Hearing : 20.09.2019.
घोषणा की तारीख/ Date of Pronouncement : 24/09/2019.

आदेश/ ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 25th January, 2017 of ld. CIT (Appeals)-5, Jaipur for the assessment year 2007-08. The assessee has raised the following grounds of appeal :-

1. On the facts and in the circumstances of the case learned ITO has erred and learned CIT (A) sustain the addition of Rs. 25,00,000/- on account of unexplained cash credit u/s 68 which is unjustified and liable to be deleted.

2. The assessee prays your indulgence to add, amend, modify or delete any of all ground of appeal.

2. The assessee is a company engaged in the business of manufacturing of Ceramics Grinding Media and H.T. Porcelain Insulator. The assessee filed its return

of income on 1st November, 2007 declaring total income at Rs. 14,66,320/- which was processed under section 143(1) of the IT Act. Subsequently the AO reopened the assessment by issuing a notice under section 148 on 28th March, 2014. The assessment was reopened based upon the information received from the Investigation Wing, Mumbai regarding the companies controlled and operated by Shri Praveen Kumar Jain indulged in the activity of providing accommodation entries. Since the assessee received an amount of Rs. 25,00,000/- as share capital from three companies, therefore, the AO wanted to assess the said income to tax. The AO passed the reassessment order whereby the addition of Rs. 25,00,000/- was made under section 68 of the Act treating the same as unexplained cash credit. The assessee challenged the action of the AO before the ld. CIT (A) but could not succeed.

3. Before us, the ld. A/R of the assessee has submitted that during the year under consideration the assessee raised the capital through private placement of its shares. The capital raised by the assessee to the extent of Rs. 25,00,000/- from three entities were treated by the AO as non-genuine. He has contended that the assessee produced all relevant details as well as documentary evidence to prove the identity, creditworthiness of the share applicants and genuineness of the transactions. He has referred the Certificate of Registration of these companies as well as status of these companies as per Registrar of Companies and submitted that the identity of these companies is otherwise not in dispute. He has then referred to the bank statements of these three companies and submitted that the share application money paid by these companies is duly reflected in the bank statement. He has also referred to the financial statement as filed with the ROC and submitted

that when the payment is reflected in the bank statement and in the financial statements, then doubting the genuineness of the transaction without any other material is not justified. The ld. A/R has further contended that the assessee has also produced the share applications, Board Resolutions and the money was received through banking channel, thus the creditworthiness as well as genuineness of the transaction was established. Apart from this, the assessee also produced the confirmations from investing companies, resolution by those companies permitting the investment and copies of Form no. 23AC/23ACA filed before the ROC along with Balance Sheets, Profit & Loss accounts etc. The ld. A/R has further contended that the AO has relied upon the report of the Investigation Wing and particularly the statement recorded by the Investigation Wing of Shri Praveen Kumar Jain without giving an opportunity of cross examination to the assessee. He has referred to the assessment order and submitted that the assessee has specifically demanded cross examination of Shri Praveen Kumar Jain, however neither the AO nor the ld. CIT (A) has afforded the opportunity of cross examination. Therefore, the statement recorded at the back of the assessee by Investigation Wing cannot be used against the assessee without giving the opportunity of cross examination. In support of his contention, he has relied upon the decision of Hon'ble Supreme Court in case of Andaman Timber Industries vs. CCE, 62 taxmann.com 3 (SC) as well as decision of the Coordinate Bench of this Tribunal dated 31st December, 2018 in case of Kota Dal Mill vs. DCIT in ITA Nos. 997 to 1002/JP/2018 & 1119/JP/2018.

4. On the other hand, the ld. D/R has submitted that once Shri Praveen Kumar Jain has accepted the fact that he indulged in providing the accommodation entries relating to share capital etc. through his companies and these companies are also

belonging to Shri Praveen Kumar Jain Group, then the AO was having sufficient material to hold that the transactions are not genuine. She has relied upon the orders of the authorities below and submitted that the assessee has failed to discharge the primary onus to prove the identity, genuineness and creditworthiness of these three entities.

5. I have considered the rival submissions as well as the relevant material on record. The assessee has received the share capital from the three companies as under :-

S.No.	Name of the subscriber	Amount (Rs.)	Date
1.	M/s. Alka Diamond Industries Ltd.	10,00,000/-	09.03.2007
2.	M/s. Javda India Impex Ltd.	10,00,000/-	24.03.2007
3.	M/s. Venguard Jewells Ltd.	5,00,000/-	28.03.2007

There is no dispute that the amount of Rs. 25,00,000/- was received by the assessee through cheques and it was also reflected in the bank accounts of these companies as well as in the bank account of the assessee. The AO has not disputed these facts as reflected from bank accounts statements of these three companies as well as of the assessee. However, the AO has doubted the transactions based upon the admission of Shri Praveen Kumar Jain during the search and seizure operation carried out by the department that he was indulging in the activity of providing accommodation entries. The said observation of the AO is recorded in para 2 of the assessment order as under :-

" 2. Share application money :

During the year under consideration, the assessee company has raised funds from the following parties along with other parties through share application money :

S.No.	Name of the party	Amount	Date	Through Bank a/c
1.	M/s. Alka Diamond Industries Ltd.	10,00,000/-	09.03.2007	UTI Bank Ltd.
2.	M/s. Javda India Impex Ltd.	10,00,000/-	24.03.2007	UTI Bank Ltd.
3.	M/s. Venguard Jewells Ltd.	5,00,000/-	28.03.2007	P N Bank
	Total :	25,00,000/-		

The above companies has run, controlled and operated by Shri Pravin Kumar Jain and Shri Pravin Kumar Jain was indulged in the activities of providing accommodation entries and this fact has been accepted by him during search and seizure operation conducted by the department at business premises of Shri Praveen Kumar Jain. The assessee has beneficiated itself by obtaining accommodation entries as per above details.

Therefore, during assessment proceedings, the assessee was required to furnished confirmation, copies of ITR/Balance Sheet/Profit and loss, copies of bank account, and other related details of the above mentioned companies from whom entry obtained. In response, the assessee has furnished copy of bank accounts, copy of cheques and copy of memorandum and articles of association. But the assessee has not furnished confirmation, copy of ITR/Balance Sheet/Profit and loss/Audit Reports and source of income of these three parties. Therefore, the identity of these parties, genuineness of the transactions and creditworthiness of these parties have not been proved, hence vide order sheet entry dated 20.03.2015, the assessee company was required to show cause as to why addition of Rs. 25,00,000/- may not be made in its income under section 68 of the Income Tax Act, 1961."

In response the assessee has explained the source and also produced the documents to prove the identity and creditworthiness of these three companies as well as genuineness of the transactions. The AO did not accept the said reply as well as the documentary evidence produced by the assessee on the ground that Shri

Praveen Kumar Jain in his statement recorded during the investigation carried out by the Department has accepted his indulgence in providing the accommodation entries. It is pertinent to note that the entire reasoning of the AO is his own version of the alleged statement of Shri Praveen Kumar Jain. Even the AO has not reproduced the relevant part of the statement of Shri Praveen Kumar Jain. Thus it is clear that the AO has presumed that the amount of Rs. 25,00,000/- is nothing but an entry provided by these companies controlled by Shri Praveen Kumar Jain without conducting any independent enquiry during the assessment proceedings. There is no dispute that the AO has not conducted any enquiry of the fact of genuineness of the transactions. On the contrary the assessee has produced the documentary evidence in support of the claim. If the AO has the reason to doubt the genuineness of the transactions then a further investigation was required to be conducted to establish that the documentary evidence produced by the assessee is not reflecting the correct state of affairs and transactions. It is also pertinent to note that the assessee has asked for the cross examination of Shri Praveen Kumar Jain whose statement is relied upon by the AO while making the addition but the AO has not allowed the cross examination. Therefore, if the assessment order is based only on the statement of Shri Praveen Kumar Jain which was recorded at the back of the assessee, then in the absence of giving an opportunity of cross examination, the order passed by the AO based on such statement is not sustainable. The Coordinate Bench of this Tribunal in the case of Kota Dal Mill vs. DCIT in ITA Nos. 997 to 1002/JP/2018 and 1119/JP/2018 dated 31.12.2018 has decided the issue in para 11.1 as under :-

" 11.1. Even otherwise, the assessment order is solely based on the report of the Investigation Wing Kolkata which in turn is nothing but the narration of the statements recorded during the investigation and the AO was having in possession the statement of only Shri Anand Sharma. Therefore, all these proceedings conducted by the Investigation Wing Kolkata were at the back of the assessee and hence the statement which is the foundation of the report of the Investigation Wing Kolkata as well as the assessment order cannot be accepted in the absence of giving an opportunity of cross examination to the assessee. We find that the assessee has insisted for cross examination during the assessment proceedings and further during the appellate proceedings. The ld.CIT(A) even called for a remand report and directed the AO to allow cross examination to the assessee. However, the AO has expressed his inability to allow the assessee cross examination of the witnesses due to the reason that the witnesses belong to Kolkata and it is not possible for AO to make such arrangement. The ld. CIT(A) has finally denied the cross examination to the assessee by giving his finding in para 5.11 at page 188 already reproduced in the earlier part of this order and, therefore, the only reason for denial of cross examination by the ld.CIT(A) is that the statements are so vocal and undeniable that cross examination of such accommodation entry provided by thousands of beneficiaries across India is neither practicable nor viable and therefore uncalled for. We find that the assessee has demanded the cross examination only in respect of the alleged transactions of loans and not for the entire business of the entry providers providing the bogus entries. Undisputedly, the statement of Shri Anand Sharma was recorded by the Investigation Wing Kolkata at the back of the assessee, even the proceedings by the Investigation were conducted at the back of the assessee, therefore, the said statement of Shri Anand Sharma cannot be the sole basis of assessment without giving an opportunity of cross

examination to the assessee. The Hon'ble Supreme Court in the case of Andaman Timber Industries vs. CCE (supra) while dealing with the issue of violation of principles of natural justice for not providing the opportunity of cross examination of the witnesses whose statements were relied on by the AO has held in para 6 to 9 as under :-

> 6. "*According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them".*
>
> *7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the adjudicating authority simply relied upon the price list as maintained at the depot to determine the price for the purpose oflevy of excise duty. Whether the goods were, in fact, sold to the said dealers.witnesses at the price which is mentioned in the price list itself could be the subject-matter of cross-examination. Therefore, it was not for the adjudicating authority to presuppose as to what could be the subject-matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came up before this court in CCE v. Andaman Timber Industries Ltd., order dated 17.3.2005 waws passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.*

8. In view of the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show-cause notice.

9. We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal. No costs."

Once the assessee has disputed the correctness of the statement and wanted to cross examine the witness which was not given by the AO as well as ld. CIT (A), then the orders passed based on such statement are not sustainable in law. The Hon'ble Delhi High Court in case of CIT vs. Ashwani Gupta, 322 ITR 396 (Delhi) while dealing with the issue of not providing the opportunity to cross examine the witnesses has held in para 5 to 7 as under :-

"**5.** Secondly, in fact, a rectification application being MA 264/Delhi/2008 under section 254(2) of the Income-tax Act, 1961 had been filed by the revenue before the said Tribunal. In that also, in paragraph (*g*) of the Miscellaneous Application, the revenue had submitted as under:—

"(*g*)Because, *although findings of the Tribunal are factually correct but the decision of the Tribunal is not acceptable because violation of the canons of natural justice in itself is not fatal enough so as to jeopardize the entire proceedings.* In the interest of justice, the Tribunal could have set aside the assessment order with the limited purpose of offering assessee an opportunity to cross-examine Shri Manoj Aggarwal before completing the proceedings." [Emphasis supplied]

6. A reading of the said paragraph (*g*) makes it clear that the revenue had accepted the findings of the Tribunal on facts as also the position that there had been a violation of principles of natural justice. However, the revenue's plea was that the violation of principles of natural justice was not fatal so as to jeopardize the entire proceedings. The said miscellaneous application was also rejected by the Tribunal by its order dated 28-11-2008.

7. In view of the foregoing circumstances, we feel that no interference with the impugned order is called for. The Tribunal has correctly understood the law and applied it to the facts of the case. Once there is a violation of the principles of natural justice inasmuch as seized

> material is not provided to an assessee nor is cross-examination of the person on whose statement the Assessing Officer relies upon, granted, then, such deficiencies would amount to a denial of opportunity and, consequently, would be fatal to the proceedings. Following approach adopted by us in *SMC Share Brokers Ltd.'s* case (*supra*), we see no reason to interfere with the impugned order. No substantial question of law arises for our consideration."

Thus the Hon'ble High Court has held that once there is a violation of principles of natural justice inasmuch as seized material is not provided to the assessee nor is cross examination of the person on whose statement the AO relied upon, granted, then, such deficiencies would amount to denial of opportunity and consequently would be fatal to the proceedings. The Hon'ble Bombay High Court in the case of H.R. Mehta vs. ACIT, 387 ITR 561 (Bombay) has also considered the issue of not providing opportunity of cross examination in para 11 to 17 as under :-

> "**11.** We have therefore proceeded to hear and decide the matter unassisted by the revenue. In the course of his submissions Mr. Tralshawala had pressed into service inter alia the decision of the Calcutta High Court in *Mather & Platt (India) Ltd.*(*supra*) and submitted that merely because a person is not found at an address after several years it cannot be held that he is non existent and that the assessee had discharged his primary onus by identifying the source of the amount paid. The Court observed that once the primary onus is discharged, the onus shifted to the revenue to verify genuineness of the transaction. In the present case no such effort was made by the revenue. We find that in *S. Hastimal* (*supra*) the Madras High Court observed that after a lapse of several years the assessee should not be placed upon the rack and called upon to explain not only merely, the origin and source of his capital contribution but the origin of origin and the source of source as well. In yet another case of *Bahri Brothers (P) Ltd.* (*supra*) the Division Bench of Patna High Court observed that where the assessee upon whom the initial burden lies, produces bank certificate to establish that the transaction was carried out through account payee cheques thus disclosing the identity of the creditors as also the source of income, the burden shifts on to the department and the department cannot add the cash credits to his income from undisclosed source.

12. The Hon'ble Supreme Court in *Nemi Chand Kothari* (*supra*) observed that in order to establish the receipt of a cash credit, the assessee must satisfy three conditions i.e. identity of the creditor, genuineness of the transaction and creditworthiness of the creditor. In the instant case by virtue of the fact that the transaction was completed by cheque payments, the appellant has contended that it had satisfied all the three tests.

13. In *Kishanchand Chellaram* (*supra*) wherein the Supreme Court observed that the revenue authorities had not recorded the statement of the Manager of the bank and it was difficult to appreciate as to why it was not done and why the matter was not probed further by the revenue.

14. The Delhi High Court in *Ashwani Gupta* (*supra*)held that once there is a violation of the principles of natural justice inasmuch as when its seized material was not provided to an assessee nor was he permitted to cross examine a person on whose statement the Assessing Officer relied, it would amount to deficiency, amounting to a denial of opportunity and therefore violation of principles of natural justice. In that case CIT (A) had deleted addition made by the Assessing Officer since the Assessing Officer had failed to provide copies of seized material to the assessee nor had he allowed the assessee to cross-examine the party concerned. The Division Bench held that once there is violation of the principles of natural justice inasmuch as seized material was not provided to the assessee nor was given opportunity of cross examining the person whose statement was being used against the assessee the order could not be sustained.

15. In *Andaman Timber Industries* (*supra*) the Supreme Court found that the Adjudicating Authority had not granted an opportunity to the assessee to cross examine the witnesses and the tribunal merely observed that the cross examination of the dealers in that case, could not have brought out any material which would not otherwise be in possession of the appellant-assessee. The Supreme Court set aside the impugned order and observed that it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross examination and make the remarks such as was done in that case.

16. In the instant case although the appellant assessee has called upon us to draw an inference that the burden shifted to the revenue in the present case once it was established that the payments were made and repaid by cheque we need not hasten and adopt that view after having given our thought to various issues raised and the decisions cited by Mr.Tralshawalla and finding that on a very fundamental aspect, the revenue was not justified in making addition at the time of reassessment without having first given the assessee an opportunity to cross examine the deponent on the statements relied upon by the ACIT. Quite apart from denial of an opportunity of cross examination, the revenue did not even provide the material on the basis of which the department sought to conclude that the loan was a bogus transaction.

> **17.** In our view in the light of the fact that the monies were advanced apparently by the account payee cheque and was repaid vide account payee cheque the least that the revenue should have done was to grant an opportunity to the assessee to meet the case against him by providing the material sought to be used against assessee in arriving before passing the order of reassessment. This not having been done, the denial of such opportunity goes to root of the matter and strikes at the very foundation of the reassessment and therefore renders the orders passed by the CIT (A) and the Tribunal vulnerable. In our view the assessee was bound to be provided with the material used against him apart from being permitting him to cross examine the deponents. Despite the request dated 15th February, 1996 seeking an opportunity to cross examine the deponent and furnish the assessee with copies of statement and disclose material, these were denied to him. In this view of the matter we are inclined to allow the appeal on this very issue."

Thus the denial of opportunity to cross examine was considered by the Hon'ble High Court which goes to the root of the matter and strikes at the very foundation of the assessment and, therefore, renders the assessment order passed by the AO not sustainable. The ld. A/R has submitted that Coordinate Bench of this Tribunal in the case of DCIT vs. Shri Prateek Kothari vide order dated 16th December, 2012 in ITA No. 159/JP/2016 has considered this issue in para 2.8 to 2.11 as under :-

> *"2.8 We have heard the rival contentions and perused the material available on record. The transaction under question relates to unsecured loans taken by the assessee amounting to Rs 1 Crores from M/s Mehul Gems Pvt Ltd during the impunged assessment year and not accepting the said loan transaction as a genuine transaction by the Assessing officer and the resultant addition made under section 68 of the Act. Undisputedly, the primary onus to establish genuineness of the loan transaction is on the assessee. In the instant case, the assessee has provided the necessary explanation, furnished documentary evidence in terms of tax filings, affidavits and confirmation of the Directors, bank statements of the lender, balance sheet of the lender company, and an independent confirmation has also been obtained by the Assessing officer to satisfy the cardinal test of identity, creditworthiness and genuineness of the loan transaction. However, the Assessing officer has not given any finding in respect of such explanation, documentary evidence as well as independent confirmation. Apparently, the reason for not accepting the same is that the Assessing officer was in receipt of certain information from the investigation wing of the*

tax department as per which the transaction under consideration is a bogus loan transaction. The said information received from the investigation wing thus overweighed the mind of the Assessing officer. The Assessing officer stated that the primary onus is on the assessee to establish the genuineness of the transaction claimed by it and if the investigation done by the department leads to doubt regarding the genuineness of the transactions, it is incumbent on the assessee to produce the parties alongwith necessary documents to establish the genuineness of the transaction. In response, the assessee submitted that Shri Bhanwarlal Jain is not known to him and regarding various incriminating documentary evidences seized during the course of search and statements recorded of Shri Bhanwarlal Jain and other persons, he specifically requested the AO to provide copies of such incriminating documents and statement of all various persons recorded in this regard and provide an opportunity to the assessee to cross examine such persons. However, the AO didn't provide to the assessee copies of such incriminating documents and statements of various persons recorded and allow the cross-examination of any of these persons. While doing so, the AO stated that "in his statements, Bhanwarlal Jain had described that they are indulged in providing accommodation entries of bogus unsecured loans and advances through various Benami concerns (70) operated and managed by them. This admission automatically makes all the transactions done by them as mere paper transactions and in these circumstances, further as per the information name and address of assessee and the Benami Concern through which accommodation entry of unsecured loans was provided is appearing in the list of beneficiaries to whom the said Group has provided. This admission is sufficient to reject the contentions of the asseesse." Further, regarding cross examination, the AO stated that "the right of cross examination is not an absolute right and it depends upon the circumstances of each case and also on the statute concerned. In the present case, no such circumstances are warranted as in the list of beneficiaries to whom accommodation entries were provided by the said group categorically contains the name and address of the assessee. Further the group has categorically admitted to providing of accommodation entries of unsecured loans through various benami concerns." The AO further relied upon the decision of Hon'ble Supreme Court in the case of C. Vasantlal & Co. Vs. CIT 45 ITR 206(SC) and Hon'ble Rajasthan High Court in case of Rameshwarlal Mali vs. CIT 256 ITR 536(Raj.) among others. In this regard, it was submitted by the assessee that if the entries and material are gathered behind the back of the assessee and if the AO proposes to act on such material as he might have gathered as a result of his private enquiries, he must disclose all such

material to the assessee and also allow the cross examination and if this is not done, the principles of natural justice stand violated.

2.9 In light of above discussions, in our view, the crux of the issue at hand is that whether the principle of natural justice stand violated in the instant case. In other words, where the AO doesn't want to accept the explanation of the assessee and the documentation furnished regarding the genuineness of the loan transaction and instead wants to rely upon the information independently received from the investigation wing of the department in respect of investigation carried out at a third party, can the said information be used against the assessee without sharing such information with the assessee and allowing an opportunity to the assessee to examine such information and explain its position especially when the assessee has requested the same to the Assessing officer.

2.10 In this regard, the Hon'ble Supreme Court in the case of Dhakeswari Cotton Mills Ltd. v. CIT (1954) 26 ITR 775 (SC) **(Copy at Case Law PB 812-818)** *has held that "The rule of law on this subject has been fairly and rightly stated by the Lahore High Court in the case of Seth Gurmukh Singh where it was stated that while proceeding under sub-section (3) of section 23, the Income-tax Officer, though not bound to rely on evidence produced by the assessee as he considers to be false, yet if he proposes to make an estimate in disregard of that evidence, he should in fairness disclose to the assessee the material on which he is going to find that estimate; and that in case he proposes to use against the assessee the result of any private inquiries made by him, he must communicate to the assessee the substance of the information so proposed to be utilized to such an extent as to put the assessee in possession of full particulars of the case he is expected to meet and that he should further give him ample opportunity to meet it." It was held in that case that "In this case we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the company to rebut the material furnished to it by him, and lastly, it declined to take all the material that the assessee wanted to produce in support of its case. The result is that the assessee had not had a fair hearing."*

The Hon'ble Supreme Court in case of C. Vasantlal & Co. Vs. CIT 45 ITR 206 (SC) has held that "the ITO is not bound by any technical rules of the law of evidence. It is open to him to collect material to facilitate assessment even by private

enquiry. But, if he desires to use the material so collected, the assessee must be informed about the material and given adequate opportunity to explain it. The statements made by Praveen Jain and group were material on which the IT authorities could act provided the material was disclosed and the assessee had an opportunity to render their explanation in that regard."

The Hon'ble Supreme Court in case of Kishinchand Chellaram v. CIT (1980) 125 ITR 713 (SC) **(Copy at Case Law PB 585-591)** *has held that "whether there was any material evidence to justify the findings of the Tribunal that the amount of Rs. 1,07,350 said to have been remitted by Tilokchand from Madras represented the undisclosed income of the assessee. The only evidence on which the Tribunal could rely for the purpose of arriving at this finding was the letter, dated 18-2-1955 said to have been addressed by the manager of the bank to the ITO. Now it is difficult to see how this letter could at all be relied upon by the Tribunal as a material piece of evidence supportive of its finding. In the first place, this letter was not disclosed to the assessee by the ITO and even though the AAC reproduced an extract from it in his order, he did not care to produce it before the assessee or give a copy of it to the assessee. The same position obtained also before the Tribunal and the High Court and it was only when a supplemental statement of the case was called for by this Court by its order, dated 16-8-1979 that, according to the ITO, this letter was traced by him and even then it was not shown by him to the assessee but it was forwarded to the Tribunal and it was for the first time at the hearing before the Tribunal in regard to the preparation of the supplemental statement of the case that this letter was shown to the assessee. It will, therefore, be seen that, even if we assume that this letter was in fact addressed by the manager of the bank to the ITO, no reliance could be placed upon it, since it was not shown to the assessee until at the stage of preparation of the supplemental statement of the case and no opportunity to cross examine the manager of the bank could in the circumstances be sought or availed of by the assessee. It is true that the proceedings under the income-tax law are not governed by the strict rules of evidence and, therefore, it might be said that even without calling the manager of the bank in evidence to prove this letter, it could be taken into account as evidence. But before the income-tax authorities could rely upon it, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for an opportunity to cross examine the manager of the bank with reference to the statements made by him."*

2.11 In light of above proposition in law and especially taking into consideration the decision of the Hon'ble Supreme Court in case of C. Vasantlal & Co. (supra) relied upon by the Revenue and which actually supports the case of the assessee, in the instant case, the assessment was completed by the AO relying solely on the information received from the investigation wing, statement recorded u/s 132(4) of Shri Bhanwarlal Jain and others, and various incriminating documentary evidence found from the search and seizure carried out by Investigation Wing, Mumbai on the Shri Bhanwarlal Jain group on 03.10.2013. It remains undisputed that the assessee was never provided copies of such incriminating documents and statements of Shri Bhanwarlal Jain and various persons and an opportunity to cross examine such persons though he specifically asked for such documents and cross examination. On the other hand, the burden was sought to be shifted on the ITA No. 159/JP/16 The ACIT, Central -2, Jaipur vs. M/s Prateek Kothari, Jaipur 21 assessee by the A.O. It is clear case where the principle of natural justice stand violated and the additions made under section 68 therefore are unsustainable in the eye of law and we hereby delete the same. The order of the ld CIT(A) is accordingly confirmed and the ground of the Revenue is dismissed."

Thus when the assessee has specifically asked for cross examination of the witnesses whose statements were relied upon by the AO, then the denial of the opportunity to cross examine would certainly in violation of principles of natural justice and consequently renders the assessment order based on such statement as not sustainable in law. Hence in view of the facts and circumstances of the case where the assessee has repeatedly requested and demanded the cross examination of the witnesses whose statements were relied upon by the AO in the assessment order and further the report of the DDIT Investigation Kolkata is also based on the statement of such person then the denial of cross examination by the AO as well as ld. CIT (A) despite the fact that the assessee was ready to bear the cost of the cross examination of the witnesses is a gross violation of principles of natural justice. Thus the additions made by the AO on the basis of such statement without any tangible material is not sustainable in law and liable to be deleted. Accordingly the addition made by the AO is

also deleted on merits apart from the legal issue decided in favour of the assessee."

Therefore, the documentary evidence brought by the assessee on record cannot be negated merely on the basis of the allegations made in the report or in the statement recorded at the back of the assessee without giving an opportunity of cross examination. The AO has not brought any material on record to show that the assessee's own unaccounted money has been brought back in the shape of share capital. Even the AO has not indicated anything to show that the chain of transactions of movement of money from one entity to another entity is finally established. Therefore, in the absence of any enquiry and finding by the AO, the addition made merely on the basis of suspicion and on the statement recorded by the Investigation Wing wherein a general statement has been made by Shri Praveen Kumar Jain is not sustainable. Accordingly in the facts and circumstances of the case as discussed above and in view of the decision on this point of non granting of cross examination, the addition made by the AO and sustained by the ld. CIT (A) is not justified and the same is deleted.

6. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 24/09/2019.

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur
Dated:- 24/09/2019.
Das/

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. The Appellant- M/s. S.L.G.K. Cera India Pvt. Ltd., Jaipur.
2. The Respondent – The ITO Ward 7(3), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 259/JP/2017)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar