

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'F': NEW DELHI
(Through Video Conferencing)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.2465/DEL/2017
[Assessment Year: 2006-07]**

Rishipal Investments and Finance (P) Ltd. 25/31, Ambros House, East Patel Nagar, New Delhi-110008	Vs	ITO, Ward-15(4), New Delhi
PAN-AABCR5971K		
Assessee		Revenue

Assessee by	Sh. V.K. Tulsian, CA & Sh. Kanhaiya Lal, Adv.
Revenue by	Sh. Parikshit Singh Sr.DR

Date of Hearing	13.12.2021
Date of Pronouncement	04.03.2022

ORDER

PER R.K. PANDA, AM,

This appeal filed by the assessee is directed against the order dated 23rd February, 2017 of the CIT(A)-7, New Delhi, relating to the assessment year 2006-07.

2. Facts of the case, in brief, are that the assessee is a company and had filed its return of income on 20.11.1006 declaring nil income. The return was processed u/s 143(1) of the Act on 02.07.2007. Subsequently, the AO reopened the

assessment as per the provisions of section 147 of the Act by recording the following reasons:-

*The assessee filed return of income for the A. Y. 2006-07 on 20.11.2006 declaring total income of Rs.Nil. The return **was** processed u/s 143(1) on 28.06.2007.*

*DIT(Inv.) during the Investigation in the case of Mukesh Gupta group along with its close confidants Shri Rajan Jassal and Shri Surinder Pal Singh found that the group have operated multiple accounts in various branches to plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc. in the form of gifts, share application money loans etc. During the investigations it **was** seen that the Bank Accounts held by the assessee was used by the above person for providing accommodation entries. During the course, of investigations by the DIT(Inv.) it was discovered that the assessee who have unaccounted money (hereinafter called as entry takers or beneficiaries) and want to introduce the same in the books of accounts without paying tax approach another person (entry operator) and hand over cash (plus commission) and take cheques/DDs/Pos. The cash is deposited by the entry operator in a bank account either in his own name or in the name of relative/friends or other person hired by him, for the purpose of opening bank account. The entry operator thereafter issues cheque/DD/PO in the name of beneficiary from the same account (in which the cash is deposited) or another account in which funds are transferred through clearing in two or more stages. The beneficiary in turn deposits these instruments in his bank accounts and the money comes to his regular books of account in the form of gifts, share application money, loan etc. through banking Channels and the transaction looks genuine.*

It is noticed from the list of entries that the assessee M/s Rishipal Investment & Finance P. Ltd. has taken following accommodation entries from the following persons (beneficiary) as per details hereunder:

Amount	Name of the entry provider	Ch. No. PO/DD Ch. and Date	Date of entry in books	conduits companies through which cheque issued	Bank
5,00,000	KAPOOR	CH NO 294280 DTD 22.11.05	24.11.05	DHAMAKA TRADING	OBC
5,00,000	KAPOOR	CH NO 280405 DTD 21.11.05	01.12.05	AGM HOLDINGS LTD.	OBC
4,50,027	KAPOOR	CH NO 754666 DTD 16.05.05	12.05.05	CENTRAL GUMS REGAL	SIB
5,00,000	KAPOOR	CH NO 754668 DTD 16.05.05	17.05.05	CENTRAL GUMS REGAL	SIB
1,00,000	KAPOOR	CH NO 239010 DTD 22.6.05	25.06.05	CHANDERPRABHU	OBC
3,00,000	KAPOOR	CH NO 239012 DTD 29.6.05	01.07.05	CHANDERPRABHU	OBC

In view of the reports received from the Investigation Wing and the above facts and findings, it is clear that the assessee company has not disclosed fully and truly all material facts necessary for its assessment for the assessment year under consideration. I am in possession of material that discredits and impeaches the particulars furnished by the assessee company and also establishes the link with the self-confessed "accommodation entry providers", whose business is to help assesseees bring into their books of account their unaccounted money.

I have therefore, reason to believe that income to the extent of Rs. 23,50,000/- has escaped assessment. Thus, the same is to be brought to tax under Section 147/148 of the I. T. Act, 1961.

Notice u/s 148 may be issued, if approved."

3. Accordingly, notices u/s 148 of the Act was issued on 29.11.2012 which was duly served on the assessee. The assessee,

in response to the same, submitted that the return already filed u/s 139 of the Act be treated as the return filed in response to notice u/s 148 of the Act. Subsequently, the AO issued notice u/s 143(2) in response to which the assessee filed certain details as asked for.

4. The assessee filed objection to the reopening of the assessment which was disposed of by the AO by passing a speaking order.

5. During the course of assessment proceedings, the AO asked the assessee to substantiate the amount received from share applicants by proving their identity and credit worthiness and the genuineness of the transaction. The assessee filed the copy of the income-tax returns, their bank statements, share application forms, certificate of incorporation of new business, PANs, Board Resolutions for investments, etc. The AO asked the assessee to produce the principal officers of the above companies who have invested in the shares of the assessee company. However, the assessee failed to produce the said persons. Summons issued u/s 131 to the alleged share applicants were returned unserved in some cases and in certain other cases, the concerned persons did not comply to the summons. The AO, therefore, asked the

assessee to produce the directors of the alleged share applicants. However, the assessee failed to produce them.

6. Similarly, the Inspector was deputed along with summons u/s 131 to make an inquiry at the latest address given by the assessee and as shown on latest confirmations purportedly signed by these alleged share applicants themselves. However, the Inspector reported that no such companies exists. Even on local enquiry, it was gathered that no such company existed at this address. The AO, therefore, confronted the same to the assessee. The request of the assessee for cross-examination of Shri S.K. Gupta, who has stated earlier that he himself maintains the bank accounts of the companies mentioned in the question was rejected by the AO. He noted that around 40 companies are registered at his office address having no infrastructure, resources, employees and having no real business activities are created for providing accommodation entries. The AO, therefore, rejected the claim of the assessee that it has no transaction with Shri S.K. Gupta on the ground that the same cannot absolve him from his onus u/s 68 of the Act. The AO further held that the request of the assessee for cross-examination is not acceptable and there is no need for it because there is no other statement of

Shri S.K. Gupta which retracts from his earlier statement given on 20.11.2007. In view of the above and relying on the decisions of the Hon'ble Delhi High Court in the case of CIT vs. N.R. Portfolios (P.) Ltd., CIT vs. Nipun Builders and Developers 350 ITR 407(Del.), CIT vs. Nova Promoters and various other decisions, the AO made addition of Rs.55,85,000/- to the total income of the assessee being the share capital/share application money received by the assessee. The AO further made addition of Rs.83,775/- to the total income of the assessee on the ground that the assessee must have paid commission @ 1.5% for arranging such accommodation entry. He accordingly determined the total income of the assessee at Rs.56,68,775/-.

7. Before CIT(A), the assessee, apart from challenging the addition on merit, challenged the validity of the reassessment proceedings. However, the Id.CIT(A) was also not satisfied with the arguments advanced by the assessee and upheld the validity of the reassessment proceedings. Similarly, he also upheld the addition made by the AO on merit.

8. Aggrieved with such order of the CIT(A), the assessee is in appeal by raising the following grounds:-

“1. Whether the Ld. CIT(A) was justified in sustaining the Assumption of Jurisdiction under section 147/148

by holding that it is based on definite information / material as well as notice issued u/s 148 after taking proper Approval

2. *Whether the Ld. CIT (A) was justified in upholding the reasons recorded by the Ld. A.O. ,after application of judicial mind , are according to the law, however it is not so, because at the time of recording the reasons, he has only piece of information and not a single evidence in any form/manner.*

3. *Whether the Ld. CIT (A) was justified in upholding that Approval u/s 151(2) was well as per law whereas the approval obtained in a hassled manner as appeared from the copy of Approval.*

4. *Whether the Ld. CIT (A) was justified in treating the disposal of objection raised by the appellant in a manner in which they were objected as a valid exercise. However, the disposal order is contrary to the settled law .*

5. *Whether the Ld. CIT (A) was justified by holding the actions of Ld. A.O. in not allowing an opportunity to cross examine the alleged witness of the Revenue nor made any efforts even to call the witness despite of the fact that statement does not make out any allegation against the company.*

6. *Whether the Ld. CIT (A) was justified in upholding the contention of the Ld. A.O. by treating the statement of Shri S.K. Gupta as on oath while the statement is not on oath rather it was recorded during the Survey Operation. Therefore, in the absence of any supporting evidence it has no eventual value particularly when the appellant categorically denied.*

7. *Whether the Ld. CIT (A) was justified by upholding the Additions of Rs.55,85,000/-where as the inference drawn by Ld. A.O., without Application of judicial mind w.r.t version drawn from the statement, whereas few person and straight forward treated Kapoor means Kapoor as per reasons without any statement of Kapoor, S.K. Gupta to show any transaction with the Appellant.*

8. *Whether the Ld. CIT (A) was justified by upholding Additions of Rs.55,85,000/- in law by not appreciating the facts/evidence on record where entire possible details of shareholder were provided by the appellant and also by direct confirmation of the shareholders in term of section 133(6).*

9. *Whether the Ld. CIT (A) was justified in sustaining the issuance of summon were not in arbitrary manner even after collecting entire details u/s 133(6) upon the shareholders as a valid exercise, despite of the fact that there was no adverse material available on record against the appellant.*

10. *Whether Ld. CIT (A) was justified in not appreciating the facts that evidences already filed during the assessment proceeding A.O. has not brought on record any adverse material and his view based on suo-moto interpretation of Bank details of the shareholders, without any explanation asked from the appellant.*

11. *Whether the Ld. CIT (A) was justified in upholding the view taken by the Ld. A.O., based on the presumption that Rs. 83,775 being commission paid for obtaining accommodation entry where as nothing were in the reasons.*

12. *Whether Ld. CIT (A) is justified by upholding A.O. direction in charging the interest u/s 234A and 234B of the Act, treating it as mandatory and consequential.*

13. *Whether the Ld. CIT (A) is justified by upholding A.O. direction in initiating penalty proceeding u/s 271(1)(c)of the Act, 1961 .”*

9. The ld. Counsel for the assessee strongly challenged the order of the ld. CIT(A) in upholding the validity of the reassessment proceedings as well as the addition on merit. The ld. Counsel for the assessee submitted that the AO has alleged

that the assessee has received accommodation entry of Rs.23.50 lakh from these concerns as per the reasons, namely, Rs.5 lakhs from Dhamaka Trading Rs.5 lakh from AGM Holdings Ltd. Rs.4.5 lakh and Rs.5 lakh respectively from Central Gums Regal and Rs.1 lakh and Rs.3 lakh respectively from Chanderprabhu. However, the ld. Counsel submitted that the assessee has not received any accommodation entry, but, share application money was received and subsequently shares were allotted which resulted in all the companies becoming shareholders of the assessee company. Therefore, it is clear that there is no occasion for application of independent judicial mind and the reasons were recorded based upon information obtained from the Investigation Wing. The ld. Counsel, referring to the reasons, submitted that the AO has mentioned that DIT (Inv.) during the investigation in the case of Mukesh Gupta group and Rajan Jassal and Sh. Surinder Pal Singh had found that they were operating multiple accounts in various branches to plough back unaccounted black money for the purpose of business or for personal needs. However, the statements were recorded during the survey of someone else, copy of which is placed at pages 236 to 244 of the paper book and therefore, it has got no evidentiary value. He

submitted that the entire addition made by the AO was based on the statement of one Shri S.K. Gupta whose statement was recorded during the course of survey operation on 20.11.2007. Relying on various decisions, he submitted that the statement recorded u/s 133A is not on oath and is not based on any evidence and therefore the same has no evidentiary value. The Id. Counsel for the assessee, referring to various decisions filed in the case law compilation submitted that the AO in the instant case has mistaken reasons based upon the information received from the Investigation Wing. Such information is erroneous and based on wrong facts. He submitted that the assessee during the course assessment proceedings has duly filed evidences like share application forms, confirmation of Board Resolution, bank statement, financial statement, certificate of commencement, copy of Memorandum, Form No.18, Form No.32, PAN Card details, copy of income-tax returns, etc. Therefore, the assessee has discharged onus cast on it.

10. Further, the Id. Counsel submitted that the assessee had specifically requested for the cross examination of Shri S.K. Gupta which is the basis for making the addition in the instant case. However, despite repeated reminders and requests, the AO

did not allow the cross examination. Referring to the decision of the coordinate Benches of the Tribunal in the case of TRN Impex Pvt. Ltd. vide ITA No.7991/Del/2019, order dated 17th February, 2021, he submitted that the Tribunal has deleted the addition in absence of allowing the cross-examination to the assessee of the person whose statement were recorded at the back of the assessee and which was adverse in nature to the interests of the assessee.

10.1. Referring to the decision of the coordinate Bench of the Tribunal in Vijayshree Food Products Pvt. Ltd. in ITA No.587/Del/2019, order dated 06.12.2021 for AY 2014-15, he submitted that here also the Tribunal deleted the addition on the ground that no opportunity of cross-examination of the person was allowed to the assessee whose statement was the basis for making the addition. Referring to the decision of the Hon'ble Supreme Court in the case of Kishan Chand Chellaram Vs. CIT, (1980) 125 ITR 713 (SC) Andaman Timber Industries vs CCE reported in 281 CTR 214 and the decision of the Delhi Co-ordinate Bench of the Tribunal in the case of Magan Behari Lal vs DCIT in ITA No.4558/Del/2019, order dated 16.09.2019, he submitted that it has been held in these decisions that the statement recorded in the back of the assessee cannot be relied

upon against the assessee without giving opportunity of cross explanation. Referring to the decision of the Hon'ble Bombay High Court in the case of RW Promoters Pvt. Ltd. vide ITA No.1489/2013, order dated 13th July, 2015, he submitted that the Hon'ble High Court in the said decision has held that the right to cross-examination is a part of *audi altrem partem* principle and the same cannot be denied. He submitted that similar view has been taken by the Nagpur Bench of the Hon'ble Bombay High Court vide order dated 23.07.2019 in ITA No.30/2018, and the Hon'ble Gujarat High Court in Laxman Bhai S. Patel reported in 327 ITR 291 where it has been held by the Hon'ble Courts that in absence of giving an opportunity of cross-examination if the addition is made, the same is required to be deleted. He accordingly submitted that both legally and factually the addition made by the AO and sustained by the CIT(A) is not in accordance with the law. Therefore, the reassessment proceedings should be quashed and the addition made by the AO and sustained by the CIT(A) should be deleted.

11. The ld. DR, on the other hand, heavily relied on the order of the AO and the CIT(A). He submitted that the assessee, in the instant case, has failed miserably to substantiate with

evidence to the satisfaction of the AO regarding the identity and credit worthiness of the share applicants and the genuineness of the transaction. The so-called companies from whom the assessee has received the alleged share application money are non-existent and they do not have credit worthiness to extend such huge share application/share capital. Further, Shri S.K. Gupta, who is the person controlling all these companies, has clearly admitted that he is involved in arranging accommodation entries for a commission. Therefore, the ld.CIT(A) was justified in upholding the addition. So far as the grounds challenging the validity of the reassessment proceedings are concerned, he submitted that the AO, after recording the reasons and after obtaining proper approval from the competent authority has issued notice u/s 148 of the Act. After receiving the objections from the side of the assessee he had disposed of the same by passing a speaking order. The reasons recorded are not mechanical in nature and the AO has duly applied his independent mind before recording the reasons. Therefore, the same is in accordance with the law. So far as the argument of the ld. Counsel that no opportunity of cross-examination was given is concerned, he submitted that the AO has clearly mentioned why

the same is not required under the facts and circumstances of the case. Therefore, he relied on the order of the AO on this issue.

12. We have, considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, reopened the assessment on the basis of the report of the Investigation Wing that the assessee has received accommodation entry of Rs.23,50,000/- from four companies, the details of which are given in the reasons recorded. We find, the AO after going through the various statements filed by the assessee from time to time, made addition of Rs.55,85,000/- being the share application money/share capital received by the assessee by invoking the provisions of section 68 of the Act and made further addition of Rs.83,775/- being 1.5% of the above amount which the assessee incurred as commission for arranging the accommodation entries. We find, the Id.CIT(A) dismissed the ground challenging the validity of the reassessment proceedings as well as the addition on merit. It is the submission of the Id. Counsel that the assessee during the assessment proceedings had categorically asked for the corss-examination of Shri S.K.

Gupta, whose statement was the basis for making the addition of Rs.55,85,000/- to the total income of the assessee. However, we find from the assessment order that the AO rejected the request for cross-examination by observing as under:-

4.1 On 11.3.2014, another Counsel, Sh. V.K. Tulsian, CA attended on behalf of the assessee company but filed no details. He was informed that the name of the assessee company is very much visible at page 5 of the statement given by S K Gupta mentioned above. On the next date of hearing on 18.3.2014, the Counsel of the assessee again reiterated his objection to the reopening of the case which was not warranted as the same was already disposed off through a speaking order as mentioned earlier. He also objected to the name of the assessee and amount appearing in the statement of S K Gupta. It is an accepted fact that recording of reason is only the preliminary stage of initiating the assessment or re-assessment. What is relevant and to be taken here is the income and also any other income chargeable to tax which has escaped assessment and which comes to the notice of the AO subsequently in the course of the proceedings u/s 147. The assessee's request for cross-examination is also not acceptable and there is no need for it because there is no other statement of Sh. S.K."Gupta which retracts from his earlier statement given on 20.11.2007. The original sworn statement of Sh. S.K. Gupta holds good till today which itself stands as the corroborating evidence of the escapement of income of this assessee. In reply to Q.No.16, Sh. S.K. Gupta acknowledged that he himself maintained the bank accounts of the companies mentioned in the question out of which Dhamaka Trading & Construction (P) Ltd, ChanderPrabhu Financial Services Ltd, Central Gum & Chemicals Ltd, AGM Holdings Ltd were some of them. These paper companies were also functioning at the office premises of Sh.S.K. Gupta. In reply to Q.No.7, Sh.S.K. Gupta also acknowledged that around 40 companies,

registered at his office address, having no infrastructure, resources, employees and having no real business activities are created only for providing accommodation entries. The assessee's denial that it has no transaction with Sh.S K. Gupta has not absolved him from its onus u/s 68. It is reiterated here that Sh.S.K. Gupta is the entry operator, who through several dummy companies floated by him and controlled by him directly or indirectly, has given the accommodation entries to this assessee through the companies mentioned earlier. Till the last stage of proceedings, the assessee's counsel vide letter dtd.27.3.2014 again challenged assumption of jurisdiction u/s 147/148 stating that the name of entry provider was mentioned in the reason as 'Sh. Kapoor'. It may be clarified here that Sh. Kapoor mentioned in the form for recording reason is the middleman engaged by Sh. S.K. Gupta and he is a team of the entry provider, Sh.S.K. Gupta. To say that the name of Kapoor has not appeared except in the reason is factually wrong because this name has appeared as one of the intermediaries at page 8 of the sworn statement of S.K. Gupta, This trifling objection does not effect the nature of transactions, done by the assessee using the mode of accommodation entries to bring back its unaccounted income to its books. The assessee's has not discharged its onus cast u/s 68 as required. To say that the assessee has no control over the share applicants with whom it had many dealings is nothing but an admission of the fact that the entries taken by it are its own money shown in the garb of share application money and has no concern for those paper companies because his purpose has been served. Moreover, this office has already issued summons u/s 131 to the alleged share applicants on 15.10.2013 but some were returned back unserved and others did not comply with these summons. It is surprising to note that some confirmations were sent by post from the same address even in cases which were received back unserved from postal authorities. The fact is that in the course of assessment proceedings, the assessee's counsel was aware about non-service of notices/summons to alleged share subscribers. It appears that the so-called

confirmations were got arranged and sent by the assessee himself. The papers arranged by the assessee and filed by its Counsel are nothing but paper trails which have no evidentiary value.”

13. From the above, it is clear that despite the request of the assessee for cross-examination of Shri S.K. Gupta, whose statement is the basis of addition made by the AO, the AO has not provided the opportunity of cross-examination to the assessee.

14. We find, identical issue had come up before the coordinate Bench of the Tribunal in the case of TRN Impex Pvt. Ltd. (supra) where the Tribunal deleted the addition on the ground that the AO did not grant the opportunity of cross-examination despite being asked for by the assessee. The relevant observation of the Tribunal from para 6 onwards reads as under:-

6. We have considered the rival submissions and perused the material on record. It is not in dispute that reopening of the assessment was made on the basis of the search conducted in the cases of Shri Deepak Agarwal and Shri Mukesh Kumar. Their statements were also recorded which were adverse in nature against the interests of the assessee. Certain documents were also found during the course of search from their premises to reveal that they have been providing accommodation entries. However, the details of the same have not been mentioned in the assessment order. Thus, the basis for reopening of the assessment and making addition against the assessee was on the basis of statement recorded by Investigation Wing of Shri Deepak Agarwal and Shri Mukesh Kumar implicating the assessee company of providing

accommodation entries to the assessee company. The assessee made a specific request before A.O. to provide an opportunity to cross examine the statements of Shri Deepak Agarwal and Shri Mukesh Kumar, but, it were denied by the A.O. vide his letter Dated 05.11.2018 PB-75-76. The A.O. in his letter has mentioned that primary onus is upon assessee to prove its case and under such circumstances by asking for cross examination, the assessee is trying to shift the burden of proof on the Department. Therefore, request of assessee was declined. The Ld. CIT(A) instead of deciding the issue in proper perspective as per Law has also held that right of cross-examination to the statements of witnesses used against the assessee is not an absolute in nature. However, it is well settled Law that any material collected at the back of assessee or statement recorded at the back of assessee cannot be used in evidence against the assessee, unless the same is confronted to the assessee at assessment proceedings and right of cross-examination have been granted to assessee to such statements. We rely upon the Judgments of Hon'ble Supreme Court in the cases of Kishan Chand Chellaram (supra) and Andaman Timber Industries 281 CTR 214 (SC) and Judgment of Hon'ble Delhi High Court in the case of CIT vs., SMC Share Broker Ltd., (supra). In view of the above, it is clear that right of assessee have been denied by the authorities below in not allowing the assessee to cross-examine the statements of Shri Deepak Agarwal and Shri Mukesh Kumar. Thus, these statements recorded at the back of the assessee which were adverse in nature to the interest of assessee cannot be relied upon against the assessee and no addition could be made on that basis. The decisions relied upon by the Learned Counsel for the Assessee above also apply to the facts and circumstances of the case. Thus, there is no material left on record with the Department to justify the addition of Rs.10 lakhs against the assessee. It may also be noted here that assessee has produced the above documentary evidences noted above which clearly shows that the Investor company has made investment in assessee company which is confirmed by the Investor in

their confirmation and affidavit of the Director. The balance-sheet of the Investor shows that they have made investment in assessee company and they have sufficient balance to make the investment in assessee company which was made through banking channel. No cash was found to have been deposited in the account of the Investor before making investment in assessee company and actual shares were also allotted to the Investor by the assessee company. Thus, documentary evidences on record have not been rebutted by the A.O. through any evidence or material on record. No independent enquiry has been made against these documentary evidences. Therefore, such documentary evidences clearly supports the explanation of assessee that genuine investment have been made in the assessee company. We rely upon Judgments of Hon'ble Delhi High Court in the cases of CIT vs. Fair Investment Ltd., 357 ITR 146 (Del.); CIT vs. Kamdhenu Steel and Alloys Ltd., & Ors. 361 ITR 220 (Del.); CIT vs. (i) Dwarakadhish Investment P. Ltd., (2011) 330 ITR 298 (Del.); CIT vs. Winstral Petrochemicals P. Ltd., 330 ITR 603 (Del.); CIT vs. Value Capital Services Pvt. Ltd., (2008) 307 ITR 334 (Del.) and CIT vs., Kureli Papers Mills P. Ltd., 380 ITR 571 (Del.).

6.1. Considering the totality of the facts and circumstances of the case and that there is no adverse material available on record against the assessee so as to make the impugned addition of Rs.10 lakhs and that no investigation have been made by the A.O. on the documentary evidences submitted by assessee, we are of the view that addition of Rs.10 lakhs is wholly unjustified. We, accordingly, set aside the Orders of the authorities below and delete the addition of Rs.10 lakhs. In view of the above, there is no need to decide the issue of reopening of the assessment which is left with academic discussion only. Accordingly, appeal of the Assessee is allowed.

7. In the result, appeal of the Assessee allowed.”

15. Similar view has been taken by the coordinate Bench of the Tribunal in the case of Vijayshree Food Products Pvt. Ltd. (supra) where the Tribunal, following the decision of the Tribunal in the case of Kuber Khan Paan Udyog (P) Ltd. and Kuber Food Products India Pvt. Ltd. vide ITA Nos.580/Del/2019 and 322/Del/2019, order dated 22nd October, 2019 for AY 2011-12 has deleted the addition on account of non-granting of opportunity of cross-examination to the assessee of the person whose statement was the basis for making the addition and which has been recorded behind the back of the assessee. Since, in the instant case also the reopening was made on the basis of the report of the Investigation Wing in the case of Mukesh Gupta group along with its close confidants Sh. Rajan Jassal and Sh. Surinder Pal Singh, but the addition was made on the basis of the statement of Shri S.K. Gupta recorded during the course of survey on 20.11.2007 in the case of M/s Sino Credits & Liasing Limited, M/s Rapid Packaging Limited, Girisho Company (P.) Limited, M/s Mitsu Securities Management (Pvt.) Ltd., M/s Sino Securities and M/s Anila Industries and since even after repeated requests of the assessee, the AO has not provided the opportunity of cross-examination of Shri S.K. Gupta to the assessee,

therefore, respectfully following the decisions cited supra, we hold that the addition made by the AO and sustained by the CIT(A) is not in accordance with the law. We, therefore, delete the addition.

16. So far as the grounds challenging the validity of the reassessment proceedings are concerned, the ld. Counsel for the assessee did not seriously argue these grounds for which we dismiss the grounds challenging the validity of the reassessment proceedings.

17. Since we have deleted the addition of Rs.55,85,000/- made by the AO u/s 68 of the IT Act, therefore, the addition of Rs.83,775/- being commission @ 1.5% for arranging accommodation entry of Rs.55,85,000/- is deleted.

18. In the result, the appeal filed by the assessee is partly allowed.

Order was pronounced in the open court on 04/03/2022.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(R.K. PANDA)
ACCOUNTANT MEMBER**

Delhi/Dated- 04th March, 2022

DK/Shekhar

Copy forwarded to: -

1. Appellant
2. Respondent

3. CIT
4. CIT(A)
5. DR, ITAT

By Order

Assistant Registrar,
ITAT, Delhi