

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA Nos. 1919 & 1920/MUM/2023**  
**Assessment Years: 2015-16 & 2016-17**

DCIT-22(1),  
Room No. 322, 3<sup>rd</sup> floor,  
Piramal Chamber, Lalbaug,  
Mumbai-400012.

**Appellant**

**Vs.** Prakash Chandumal Rohra,  
15/17, Diwan Bldg., 1<sup>st</sup> floor,  
Matka Gully, Vithalwadi  
Kalbadevi Road,  
Mumbai-400002  
**PAN No. AAAPR 9175 M**  
**Respondent**

**CO. No. 94 & 93/Mum/2023**  
**(Arising out of ITA Nos. 1919 & 1920/MUM/2023)**  
**Assessment Years: 2015-16 & 2016-17**

Prakash Chandumal Rohra,  
15/17, Diwan Bldg., 1<sup>st</sup> floor,  
Matka Gully, Vithalwadi  
Kalbadevi Road,  
Mumbai-400002.

**PAN No. AAAPR 9175 M**  
**Appellant**

**Vs.** DCIT-22(1),  
Room No. 322, 3<sup>rd</sup> floor,  
Piramal Chamber, Lalbaug,  
Mumbai-400012

**Respondent**

**Assessee by** : Mr. Mani Jain/Pratik Jain  
**Revenue by** : Mr. H M Bhatt, DR

Date of Hearing : 25/10/2023  
Date of pronouncement : 02/11/2023



## **ORDER**

### **PER BENCH**

These appeals by the Revenue and cross-objections by the assessee are directed against two separate orders, both dated 28.03.2023, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment years 2015-16 and 2016-17 respectively. As common issue in dispute, permeating from same set of facts is involved in these appeals , therefore same were heard together and disposed off by way of this consolidated order for convenience.

2. The grounds raised by the Revenue in ITA No. 1919/Mum/2023 for assessment year 2015-16 are reproduced as under:

*1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 16,67,41,120/-made by the AO on account of cash loan and interest income earned on such cash loan, only on the ground that no opportunity of cross examination was provided to the assessee during the course of assessment proceedings when the reliable and sufficient material was available on record and alternatively the CIT(A) himself could have provided the opportunity of cross examination to the assessee as per the ratio laid down by the Hon'ble Apex Court in the case of Kanpur Coal Syndicate 1965 AIR 325,1964 SCR (6) 85.*

*2. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the facts that the information regarding cash loan and interest thereon was received from the Hon'ble Income Tax Settlement Commission, which has accepted the content of the information.*

*3. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that the AO had all the materials on record*



*and the same were corroborated with the financials of the assessee for the corresponding year and made the addition on merit.*

*4. The appellant prays that the order of the CIT (Appeals) on the above ground be set aside and that of AO be restored.*

*5. The appellant craves leave to amend or alter any ground or submit additional ground which may be necessary.*

3. The cross-objections raised by the assessee for assessment year 2015-16 are reproduced as under:

*1. On the facts and circumstances of the cross-objector's case and in law, the Ld. AO erred in passing an impugned assessment order u/s 147 of the Act which is bad in law and liable to be quashed.*

*2. On the facts and circumstances of the cross-objector's case and in law, the Ld. AO erred in relying on the information received from the third party, without any evidence on record, for the reasons mentioned in the impugned order or otherwise.*

*3. On the facts and circumstances of the cross-objector's case and in law, the Ld. AO erred in not providing the opportunity of cross-examination to the assessee, for the reasons mentioned in the impugned order or otherwise.*

*4. On the facts and circumstances of the cross-objector's case and in law, the Ld. AO erred in making an addition of Rs.14,81,00,000/- on account of alleged unsecured loan given to Wadhwa Group, ignoring the fact that the assessee had not entered into any such transaction, for the reasons mentioned in impugned order or otherwise.*

*5. On the facts and circumstances of the cross-objector's case and in law, the Ld. AO erred in making an addition of Rs.1,86,41,120/- on account of alleged interest income, for the reasons mentioned in impugned order or otherwise.*

4. Briefly stated, facts of the case are that the assessee filed return of income for the year under consideration on 24.08.2015 declaring total income at Rs.44,61,910/-. The return of income was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act') on 08.03.2016. Thereafter, on receipt of information from the Dy. Commissioner of Income-tax that the assessee had given cash loans



to M/s Wadhwa Group and also received interest income in cash, the Assessing Officer after recording reasons to believe that income escaped assessment, he issued notice u/s 148 of the Act on 19.03.2020 .Thereafter, he completed the assessment u/s 147 r.w.s. 144B of the Act and made addition of Rs.14,81,00,000/- for loan advanced in cash and addition on account of interest income of Rs.1,86,41,120/-.

4.1 On further appeal, the Ld. CIT(A) deleted both the additions. Aggrieved, the Revenue is in appeal challenging the deletion of the addition on merit whereas assessee is aggrieved for not adjudicating the grounds of appeal challenging the validity of the reassessment.

5. Before us, the Ld. Counsel of the assessee has filed a Paper Book containing pages 1 to 68.

6. Before us, the Ld. Departmental Representative (DR) relied on the order of the Assessing Officer and submitted that the Ld. CIT(A) is not justified in deleting the addition for the reason that no opportunity for cross-examination was provided by the Assessing Officer. He submitted that the Assessing Officer has clearly mentioned in the order that he had relied on the circumstances evidences and therefore, providing cross-examination was not mandatory in the case of the assessee.



7. On the contrary, the Ld. Counsel for the assessee relied on the finding of the Ld. CIT(A) and also submitted that no addition could be made on the basis of the third party evidence unless copy of the same is provided to the assessee. In support of contention, he relied on the decision of the Hon'ble Delhi High Court in the case of **CIT v. Ashwani Gupta [2010] 322 ITR 396 (Delhi)**.

8. We have heard rival submissions of the parties on the issue in dispute and perused the relevant material on record. As far as ground of appeal of the Revenue is concerned, we find that Revenue is aggrieved with the finding of the Ld. CIT(A) that in absence of providing material relied upon by the Assessing Officer and failure in providing opportunity of the cross-examination, the addition being made in violation of principal on natural justice, was not sustainable. The relevant finding of the Ld. CIT(A) is reproduced as under:

**“5. FINDING & DECISION:**

*5.1 I have gone through the Assessment Order and submissions of the appellant. The learned AO has carried out addition u/s 69A of the I.T. Act for sum of Rs. 14,81,00,000/- on account of cash loan given to Wadhwa Group and addition on account of interest there to for sum Rs. 1,86,41.120/-All the grounds of appeal are related to the addition carried out on account such cash loan and therefore, disposed off collectively as under.*

*The learned AO carried out this adjustment based on information received from office of DCIT, CC5(4), Mumbai. Apparently search and seizure proceedings were carried out at the premises of Wadhwa Group on 16-12-2015 and as per information retrieved from cloud based software which was maintained by a third party Shri. Arun Nagar. Pursuant to such data the learned AO contested that appellant's name was*



*revealed by Wadhwa group before settlement commission for accepting cash loan of Rs. 14.81 crores.*

*5.2 In view of the above the learned AO reopened the assessment proceedings u/s 147. In response to the same the appellant denied any cash dealings with Wadhwa Group and requested learned AO to provide material available within and relied by him for alleged cash loan of Rs. 14.81 crores. The appellant also requested for opportunity to cross examination. However, the appellant was neither provided material available basis which such addition carried out nor he was provided opportunity of cross examination. In this regard the extract from AO's order is reproduced as under:*

*"The next contention raised is that the assessee should be given opportunity to cross-examine the third party. In this regard, it is pointed out that since the additions are mainly being made on the basis of circumstantial evidence against the assessee and not on the basis of submissions of third-party, the contention raised by the assessee is not accepted.*

*The assessee has material and requested to provide him a copy of seized exact submissions made by Wadhwa Group. However, it is again reiterated that the assessee has relied upon in number of the case laws to contend that no addition can be made on the basis of seized material found from the premises of the third party. In this regard it is reiterated that the additions are not being made on the basis of material seized from the third party but on the basis of circumstantial evidence against the assessee as discussed above.*

*Therefore, all the contentions made by the assessee as discussed above are not justified and are accordingly rejected."*

*5.3 Having regard to the contention of AO that he has passed the order based on circumstantial evidences without disclosing such evidences is very much against the principle of natural justice. In this regard reliance can be placed on the following judicial pronouncements Hon'ble Supreme Court in case of Anadaman Timber industries vs. Commissioner of Central Excise (2015) 281 CTR 241 (SC) has held as under:-*

*"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."*

*Further, reliance can be placed on following judicial precedents wherein it has been upheld those additions based on seized material found from premises of third party cannot be considered for making additions unless the AO has carried out independent finding based on such material.*

- Add. CIT Vs Lata Mangeshkar (97 ITR 696)
- CBI VS V. C. Shuka (3 SCC 410)DEPARTMEN
- Shri Mustafamiya H. Sheikh (Vide ITA NO. 2588/Ahd/2012)
- DCIT Vs H.S. Chadramouli (ITA No. 1551/Bang/2012)
- M/s Mohd. Ayub Mohd. Yakub Perfumers Pvt. Ltd (ITA NO.388/LKW/2013)
- DCIT Vs Pawan Kumar Agarwal (ITA 413 LKW/2012)
- MIs Bhola Nath Radha Krishan 9ITA 5149/Del/2012)
- Pradeep Amrutial Runwal (149 | TR 548).

*5.4 In view of the above facts of the case and judicial pronouncement by Honourable Supreme Court it is observed that the learned AO has grossly erred in passing an order which is against principle of natural justice by not granting opportunity of cross examination and by not sharing the material available with him basis which he has carried out the addition. Therefore, the order of learned AO is bad in law and the addition on account of cash loan (Rs.14,81,00,000/-) and interest (Rs. 1,86,41, 120/-) thereto carried out is liable to be deleted."*

8.1 On the contrary, the Ld. Assessing Officer has referred that he has relied on the circumstances evidences. The Assessing Officer has analyzed the financial statement of the assessee and concluded that assessee was engaged in the extending loans to various parties for earning interest. After analysis of the financial statement, the Assessing Officer was of the view that the household withdrawal



shown by the assessee of Rs.60,000/- was not sufficient to meet the house hold expenditure of family of assessee and the assessee accumulated his capital balance and earned interest on advancing cash loan. In response, the assessee explained that the total house withdrawals of his family were of the tune of Rs.14.35 crores for the assessment year. The relevant explanation of the assessee, reproduced by the Assessing Officer, is extracted as under:

*“The next contention raised is that low amount of cash withdrawals by the assessee is not a valid basis for making the addition since other family members have also contributed towards household expenses. To support his contentions, the assessee has furnished a simple chart showing total withdrawals by the family for the year at Rs.14.35 lakhs. However, this submission is not supported with any further details or evidence, such as total number of members of the family, their age, amount of expenses on major items of expenditure, such as house rent, vehicle running and maintenance expenses, expenses on education and hostel of children, amount spent on household expenses, electricity bill expenses, amount invested out of cash withdrawals etc. In the absence of complete details and evidence, there is no basis for the contentions of the assessee and, therefore, the same are not acceptable.”*

8.2 In view of the above explanation, the contention of the Assessing Officer that cash loan would had been extended out of accumulated cash balance by way of showing low house withdrawals , can't withstand. Further, it is not understandable as how the cash loan are unexplained, when the Assessing Officer has not indicated any source of cash accumulation as from undisclosed sources, thus, even otherwise extending of such cash loans out of accumulated cash balance (presumably out of cash saved by way not showing full household withdrawal) does not justify for addition under section 68 of the Act. Thus, in our opinion, there no



circumstantial evidences , which indicate or establish that the assessee would have extended cash loan to ‘Wadhwa group’ except the statement of ‘Wadhwa group’ but no such documents in support of contention have been supplied to the assessee. The Hon’ble Delhi High Court in the case of CIT v. Ashwani Gupta (supra), held as under:

*“7 In view of the foregoing circumstances, we feel that no interference with the impugned order /s 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.*

*The appeal is dismissed.”*

8.3 Therefore, in view of the decision of the Hon’ble Delhi High Court in the case of CIT v. Ashwani Gupta (supra), the action of the Assessing Officer being in violation of principle of natural justice, the deletion of the addition by the Ld. CIT(A) is justified. In view of the above discussion, we do not find any infirmity in the order of the Ld. CIT(A) in deleting the addition. The grounds of the appeal of the Revenue are accordingly dismissed.

9. The grounds raised by the assessee in cross-objection challenging the validity of the reassessment have not been decided by the Ld. CIT(A). Since, the addition deleted by the Ld. CIT(A) has



been upheld by us and therefore, adjudication of the said ground challenging the validity of the reassessment are merely rendered academic, therefore, we are not required to adjudication upon same at this stage.

10. In assessment year 2016-17, the Ld. Assessing Officer has made addition for interest paid in respect of cash loans given to Wadhwa Group in assessment year 2015-16. Since, we have already deleted the addition of the cash loan advanced in assessment year 2015-16 and therefore, the issue of cash interest accrued on those cash loans does not survive. Accordingly, the grounds of appeal of the Revenue for AY 2016-17 are decided. The grounds of the assessee in cross-objection for AY 2016-17 are therefore rendered only academic ,thus, we are not required adjudication upon the same.

12. In the result, the appeals of the Revenue and cross-objections of the assessee are dismissed.

**Order pronounced in the open Court on 02/11/2023.**

**Sd/-**  
**(RAHUL CHAUDHARY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 02/11/2023  
Rahul Sharma, Sr. P.S.



**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**