INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE

SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 7309/Del/2017
Astt. Year: 2011-12
AND
ITA No. 7282/Del/2017
Asstt. Year: 2012-13

ACIT, Central Circle-13, New Delhi.	Vs.	Lizer Cylinders Ltd. 205, 2nd Floor, Samarpan, Chakala Link Road, Andheri East, Mumbai Maharashtra. PAN AABCL3501H
(Appellant)		(Respondent)

Assessee by:	Shri Salil Aggarwal, Sr. Advocate Shri Madhur Aggarwal, Advocate
Department by:	Shri P.N. Barnwal, CIT-DR
Date of Hearing:	25.09.2023
Date of pronouncement:	23 .11.2023

O R D E R

PER ASTHA CHANDRA, JM

The appeals filed by the Revenue are directed against separate identical orders dated 01.09.2017 of the Ld. Commissioner of Income Tax (Appeals)-XXVI, New Delhi **("CIT(A)")** pertaining to Assessment year **("AY")** 2011-12 and 2012-13. Since common issue is involved in both the appeals, these were heard together and are being disposed of by this common order.

2. The Revenue has taken the following grounds:-

"I. The Ld. CIT(A) has erred on facts and in law in deleting the addition made u/s. 68 of the I.T. Act, 1961 on account of receipt of unsecured loan aggregating to Rs. 16,60,00,000/- in AY 2011-12 **(Rs. 12,00,00,000/- in AY 2012-13)** *by the assessee company.*

II. The Ld. CIT(A) has erred on facts and in law in observing that the statement recorded u/s. 131 of the I.T. Act, 1961 has no evidentiary value despite the fact that specific details and corroborative banking transactions were identified by the entry operator.

III. The Ld. CIT(A) has erred on facts and in law in observing that requisite details and evidences filed by the assessee were sufficient to prove the genuineness of the transaction related to share capital/premium where as the assessee failed to discharge the primary onus cast upon it u/s 68 of the IT act 1961 of proving identity, satisfactorily explaining the creditworthiness and genuineness of these transactions. This is compounded by the fact that the assessee company failed to produce the directors of the investing companies in spite of opportunities given.

IV. The Ld. CIT(A) has erred on facts and in law in not even considering the statements of directors of the investing companies admitting that the investing companies in which they are directors, are actually paper companies meant for providing accommodation entries.

V. The Ld. CIT(A) has erred on facts and in law in observing that opportunity of cross examination was not being provided to the assessee without appreciating that a show cause notice was issued to the assessee giving details of the admission of a cash-for- entry transaction in the statement of the entry provider and assessee miserably failed to submit any plausible explanation as to why such a statement/ admission should not be used against him. Without prejudice Ld.CIT(A) was well within his powers u/s 250(4) of the Act to permit a cross examination before deciding the matter as held by Hon'ble Delhi High court in the case of CIT-II v/s M/s Jansampark Adv. & marketing (P) Ltd.

vi. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.

3. In brief, the common facts are that it is a case of search. Search & seizure operation under section 132(1) of the Income Tax Act, 1961 **(the "Act")** was conducted on 20.09.2013 in J.P. Minda Group of cases. The assessee was also covered in search action. Notice under section 153A was issued on 08.06.2015 in response to which the assessee filed a letter on

03.07.2015 along with copy of return declaring NIL income for AY 2011-12 and 2012-13. Notices under section 143(2)/142(1) of the Act along with questionnaire were issued on 08.09.2015 which were complied with. Requisite information/details were filed.

4. During the course of assessment proceedings the Ld. AO alleged that the assessee along with its other group companies had received unsecured loans through various Kolkata based entry providing companies. To counter the Ld. AO's allegation the assessee made submissions supported by documentary evidence but the Ld. AO found them as not satisfactory for the reasons recorded by him in para 9 and 10 of his order held in para 11.1 that the amount of Rs. 16,60,00,000/- and Rs. 12,00,00,000/- received by the assessee in AY 2011-12 and 2012-13 as unsecured loan are unexplained cash credits under section 68 of the Act which he added to the income of the assessee in assessments framed by him on 30.03.2016 for both the AYs 2011-12 and 2012-13 respectively under section 143(3) r.w.s. 153A of the Act.

5. The assessee appealed before the Ld. CIT(A) who relying on the judgment dated 01.08.2017 in PCIT, Delhi-2 vs. Best Infrastructure India Ltd. in ITA No. 13/2017 which according to him is on identical factual matrix deleted the impugned addition in AY 2011-12 and 2012-13 holding the same to be unsustainable on various legal grounds and on facts of the case finally concluding in last para 5.4.8 of his appellate order as under:-

"Respectfully following the above judgment which is on identical factual matrix, it can be reasonably inferred that material found during the search in respect of the equity received by the assessee cannot lead to the conclusions drawn by the AO. Further, Statement of Shri Rajesh Aggarwal was recorded at the back of the assessee and no opportunity of cross examination was provided to the appellant. Further, no corroborative evidence is brought on record by Assessing Officer to prove that share capital/ share premium/ share application money/ unsecured loan is accommodation entry. Besides appellant has discharged its onus and submitted all the documentary evidence in respect of share capital/share premium/share application money

in support of the genuineness of the investment. The details submitted in this regard by the appellant have also been made part of order by Assessing Officer. It is also undisputed fact that the director of the appellant companies have never any statement regarding the share capital/ share premium / share application money and no surrender have been made with regard to share capital/share premium / share application money/unsecured loan.

6. The Revenue is dissatisfied and is in appeal before the Tribunal in both the years and all identical grounds relate thereto.

7. The Ld. CIT-DR drew our attention to para 3.1 of Ld. AO's order wherein he mentioned about the investigation/enquiry conducted by the Investigation wing in J.P. Minda Group of cases revealing that the investing entities did not have any real income and therefore their creditworthiness was in doubt. He further submitted that the Ld. AO has clearly recorded the finding that the source of investment in the form of unsecured loan has not been explained to his satisfaction which made him to make the impugned addition in both the years.

8. The Ld. AR submitted that similar issue came up for consideration by the co-ordinate Bench of Delhi ITAT in a bunch of cases belonging to JP Minda Group wherein the Revenue filed appeals against the CIT(A)'s orders and the decision of the ITAT rendered on 23.12.2021 finds place at page 142-209 of the Paper book. He pointed out that the ITAT dismissed the appeals of the Revenue on merits. The Ld. AR further pointed out that the Revenue challenged the ITAT's order (supra) before the Hon'ble Delhi High Court which dismissed the appeals of the Revenue vide decision rendered on 26.09.2022 holding that no substantial question of law arises for consideration in present batch of appeals. The copy of Hon'ble Delhi High Court's decision (supra) is available at page 210-222 of the assessee's Paper Book.

9. The Ld. CIT-DR submitted that each case is different. He strongly relied on Ld. AO's order. In rebuttal the Ld. AR submitted that in the

absence of any fresh material brought on record by the Revenue, the decision (supra) rendered by the Co-ordinate Bench of the Tribunal and the decision (supra) rendered by the Hon'ble Delhi High Court may be followed. The Ld. AR also pointed out that it will be seen from the copy of assessment order dated 30.03.2016 for AY 2012-13 and copy of Ld. CIT(A)'s order dated 25.08.2017 in the case of M/s. Jay Auto Component's Ltd. at pages 1-141 of the Paper Book that these are verbatim the same as that in the case of the assessee at hand. Therefore, even if the assessees are different, the factual matrix is identical in all.

10. We have carefully considered the submissions of the parties and perused the records. It is not in dispute that the assessment in all the cases of the group is based upon the search and seizure operation conducted on 20.09.2013 under section 132(1) of the Act in J P Minda Group. It is also not in dispute that the assessee at hand belongs to J P Minda Group due to which the assessee was also subjected to search operation. Like the assessee, M/s. Jay Auto Components Ltd., is also one such J P Minda Group case and the parties have admitted before the co-ordinate bench during the course of hearing that findings of both Ld. AO/CIT(A) are similar in all the appeals (page 179 of the Paper Book). Therefore, the case of the assessee at hand is no different and the decision of the Co-ordinate bench of ITAT and the Hon'ble Delhi High Court referred to above will mutatis mutandis apply to it as well.

11. We have perused the order of the Co-ordinate bench of Delhi ITAT rendered on 23.12.2021 in Revenue's appeal in the case of M/s. Jay Auto Components Ltd. & Others (copy at page 142-209 of Paper Book). In paras 25 to 28 of its order (supra) the ITAT recorded the arguments advanced by the Ld. CIT-DR on merits of the case followed by the submissions of the assessee in paras 29-34 thereof. The ITAT in its order (supra) dismissed the

bunch of 16 appeals of the Revenue by observing and recording its findings as under:-

> *"37. At the outset, we have noticed that one of the main allegation of the Assessing Officer is that the notices sent u/s 133 (6) were not received by the respective parties but still replies were received from all the subscriber companies. In fact, all the notices were ultimately duly complied by the parties who have sent all the requisite details as required by the Assessing Officer in his notices u/s.133(6). In fact, we have gone through the assessment order, and notice that all the subscribing companies were amalgamated with three companies and the said three companies have duly complied with all the notices so issued by AO under section 133(6) of the Act by filing necessary details. The said fact has also duly been noted by AO in his order of assessment at page 42 and 43 of the order.*
>
> *38. Thus, the reason assigned by the Assessing Officer does not have much credence to dislodge the evidences filed by these parties to corroborate the assessee's explanation and the documents submitted by the assessee to prove the nature and source of credit. Regarding various observations and allegations of the Assessing Officer, the ld. counsel has given a very detailed rebuttal based on documents on record as incorporated above in the foregoing paragraphs. From bare perusal of the explanation duly supported by the documents, we find that whatever so called inquiry which was conducted by learned AO has not lead to any iota of adverse material so as to hold that the transactions are not genuine. Further, we find that nowhere Assessing Officer has made any effort or conducted any investigation to rebut the documentary evidences so filed by the assessee in order to support the genuineness of share capital received from subscribers and even in response to the replies received from subscriber companies to the notices u/s.133 (6) and what extra he wanted to examine, has not been mentioned.*
>
> *39. Another allegation by the Assessing Officer was that these companies have received funds from other companies before issuance of cheques through the assessee company and also tried to analyze fund trail to assume that assessee company had ploughed back its own money in the books of account in the garb of share application money. The said allegation itself is based on erroneous assumption of facts which has been demonstrated by the ld. counsel, as we have noticed that in the entire assessment order the learned AO has only at one place tried to analyze the fund trail, which is at pages 14 to 16 of the AO's order, which too was with regards to unsecured loan taken by M/s Jay Ace Technologies Pvt. Ltd. for which no addition was made by AO on account of share capital. Nowhere in the so called alleged cash trail there is an element of cash or anything has been brought on record that any of the trails, assessee's undisclosed cash or income has been routed. Thus, the said finding of learned AO is bereft of merit and even the reliance so placed by learned CIT DR on the same is without appreciation of material available on record.*
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> *40. In so far as the source of the fund and the creditworthiness of the parties, it is seen from the financial statements so produced by learned counsel of the assessee, that these parties had sufficient own funds to invest in the form of net – worth and the finding of the learned AO that the subscribing companies have nominal income is in complete ignorance of the fact that income is not the sole criterion to make investment, even the net worth or past savings can be used to make investments, which have not been appreciated by learned AO. As stated above the learned counsel of the assessee was required to furnish the details of fund position in the respective balance sheets of the subscribing companies and to see the net worth of*

subscribers and the investments made by them in M/s Jay Auto Components Ltd. The details are being tabulated below (similar is the position in all the 16 assessee's):

Subscribing Company	*Net Worth as per Balance Sheet (in Rs)*	*Investment made in share capital (in Rs)*
M/s Festino Agencies Pvt. Ltd.	*2,83,00,000/-*	*15,00,000/-*
M/s Eversite Commodities Pvt. Ltd.	*2,65,84,000/-*	*15,00,000/-*
M/s Gajanand Agrotech Ltd.	*7,81,98,000/-*	*15,00,000/-*
M/s Gajeshwar Sales Pvt. Ltd.	*3,88,61,942/-*	*5,00,000/-*
M/s Matribhumi Commodities Pvt. Ltd.	*4,15,90,000/-*	*5,00,000/-*
M/s Monalisa	*3,74,35,000/-*	*16,00,000/-*

Commercial Pvt. Ltd.		
Lambodar Commercial Pvt. Ltd.	*2,96,25,000/-*	*8,00,000/-*
Bhavtarani Sales Pvt. Ltd.	*3,76,50,000/-*	*18,00,000/-*
M/s Mukul Mills Pvt. Ltd.	*2,22,33,000/-*	*18,00,000/-*
M/s Mayur Vanijya Pvt. Ltd.	*3,32,99,907/-*	*5,00,000/-*
M/s Octal Commodities Pvt. Ltd.	*3,03,42,000/-*	*15,00,000/-*
M/s Vandana Designs Pvt. Ltd.	*1,65,05,000/-*	*8,00,000/-*
M/s Exotica Commodities Pvt. Ltd.	*1,81,73,303/-*	*7,00,000/-*
M/s Kushal Infotech Pvt. Ltd.	*4,47,41,466/-*	*17,00,000/-*

M/s Mupnar Trexim Pvt. Ltd.	*2,62,78,000/-*	*33,50,000/-*
M/s Ranisati Apartments Pvt. Ltd.	*1,58,89,000/-*	*14,00,000/-*
M/s Festino Agro Pvt. Ltd.	*3,89,58,000/-*	*24,00,000/-*
M/s Frost Traders Pvt. Ltd.	*2,30,68,113/-*	*18,00,000/-*
M/s Trimline Vyapaar Pvt. Ltd.	*2,91,44,889/-*	*4,00,000/-*

41. From the above, it is apparently clear that the subscribing companies had sufficient net worth to make investments in the assessee group companies and as such, we have no hesitation in holding that income is not the sole criterion, whereas, a holistic view needs to be taken, as to investee companies can also make investments out of its past savings or its net worth and the said fact has not been appreciated/ rebutted by AO in the impugned assessment orders. We have even gone through the remand report which was filed by AO before the CIT (A), therein; also the AO has not been able to rebut the fact that the subscribing companies had sufficient funds available in their books of account, which is evident from the net worth as emanating from the financial statements of the subscribing companies. Even the ld CIT DR has failed to rebut the finding so recorded by CIT (A) at page 61 of his order, wherein, he has recorded that the subscribing companies had sufficient net worth available in the balance sheet to make investments in the assessee companies and income is not the sole criterion to make investments. While recording the aforesaid finding, we would like to rely on the judgment of Hon'ble High Court of Delhi in the case of PCIT vs Good View Trading Pvt. Ltd. reported in 77 taxmann.com 204, wherein, it has been held as below:

> *"8. It is quite evident from the CIT (A)'s reasoning in paragraph 4.3, that the materials clearly pointed to the share applicants' possessing substantial means to invest in the assessee's company. The AO seized certain material to say that minimal or insubstantial amounts was paid as tax by such share applicants and did not carry out a deeper analysis or rather chose to ignore it. In these circumstances, the inferences drawn by the CIT (A) are not only factual but facially accurate.*
>
> *9. Having regard to these circumstances, the Court discerns no question of law, least a substantial question, having regard to the fact that the judgment in Lovely Exports (supra)was cited and applied.*
>
> *10. For these reasons, there is no merit in the appeal; the same is accordingly dismissed."*

42. Further, the learned AO and Ld. CIT DR have also drawn heavy support from the investigation report of the Kolkata Investigation Wing and the statement of Sh. Rajesh

Agrawal. On going through the assessment order and the remand report, we find that the statement of Sh. Rajesh Agrawal was provided to the assessee at the fag end of assessment, i.e., on 11.03.2016 and immediately thereafter the assessee vide reply dated 21.03.2016 had sought for the cross examination of Sh. Rajesh Agarwal, which could not be provided to the assessee. The said issue of cross examination was also raised before ld CIT (A) vide written submission which was accepted by ld CIT (A), wherein, the matter was remanded to the file of AO, even then the learned AO failed to provide cross – examination of Sh. Rajesh Agarwal to the assessee company. Thus, after going through the record, we have no hesitation in holding that it was incumbent upon the learned AO to have provided opportunity to cross examine the person or atleast issued commission to Revenue Authorities at Kolkata to summon and specifically inquire about alleged entry operator, because heavy reliance has been placed on the statement. It is an elementary principle of law that, if any adverse inference is drawn against the assessee based on statement of a third party and no opportunity is provided to cross examine, then such a statement loses its credibility as primary evidence. Thus, in absence of cross – examination of Sh. Rajesh Agarwal, the said statement needs to be excluded and cannot be relied upon as a piece of evidence to make any addition. On this point, reliance is placed on the judgment of Hon'ble Apex Court in the case of M/s Andaman Timber Industries vs. CCE (SC) reported in 127 DTR 241 has held as follows:

> *"According to us, not allowing the assessee to crossexamine 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 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 of levy 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 before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was 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. In view 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 We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal."

43. We have further, noticed that the AO in the order of assessment has relied on report and observations of the Investigation wing, which otherwise does not implicate any of the assessees, whereas, no concrete enquiry or investigation had been carried out by the assessing officer in the order of assessment to dislodge the explanation or rebut the documentary evidence placed and recorded by AO at page 14 of the order and at page 61 of CIT (A) order. Thus, when no appropriate investigation has been carried out by the learned AO and as such the burden which lay upon the learned A.O. has not been discharged, the addition so made is unsustainable and deserves to be deleted.

44. In view of the aforesaid facts and materials available on record, we have also noticed that that the Revenue has failed to controvert the findings so recorded by learned CIT (A) which is based on documentary evidences as have been discussed above, wherein, substantial relief on merits was provided to assessee by CIT (A). 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 except issuing notices under section 133(6), which were also replied by the subscribing companies. Therefore, such documentary evidences clearly support the explanation of assessee that investments made in the assessee companies are genuine.

45. That at this juncture, we seek to place reliance on the judgment of Hon'ble jurisdictional Delhi high court in the case of ***CIT vs M/s Surendra Buildtech Pvt. Ltd. in ITA No. 141/2012*** *on the proposition that:*

"Revenue has failed to rebut the findings so recorded by learned CIT (A) by bringing any contrary material on record, as such, the finding so recorded by lower authority based on documentary evidences need be upheld":

"8. Revenue, when they preferred the appeal before the tribunal, did not file requisite papers and documents to support their contention that the finding recorded by the CIT(Appeals) was factually incorrect. In case, Revenue wanted to contend and show that payment was made by the respondent assessee to brokers etc., then evidence/material should have been filed. This was not done.

9. The tribunal, examined the factual matrix and has upheld the findings recorded by the CIT(Appeals).

10. We do not think that the aforesaid findings are perverse or require any interference in exercise of our jurisdiction under Section 260A of the Act. The factual finding as recorded by the first appellate authority and the tribunal is that the payments were made by the purchasers who had booked plots/flats. While making payment, discounted price was paid by the buyers. In these circumstances, we do not think that Section 194H of the Act can be invoked. Therefore, no substantial question of law arises on the first aspect."

46. We have also noticed that the assessee apart from submitting the various documents related to receipt of share capital and share premium as listed hereinabove, also furnished

the workings for share valuations using discounted cash flow method and furnished explanation for issuing shares at a premium taking into account the future growth in the business of the assessee and also considering the future prospects of the assessee business coupled with the fact entire group had a turnover of over Rs. 2500 crores in financial year 2014-15. It was submitted that assessee is a leading business in automotives having various high end customers and commands significant Goodwill, excellent past performance and high investors' confidence resulting into bright future prospects for the assessee in the long run. It was submitted that these aspects were duly appreciated by the shareholders and accordingly the shareholders had agreed to invest in the assessee company at a premium.

47. Before concluding, we would like to discuss the judgments so relied by learned CIT DR. He has placed reliance on the judgments of Hon'ble High Court of Delhi in the case of PCIT vs NDR Promoters Ltd. reported in 410 ITR 379, CIT vs Nova Promoters & Finlease Pvt. Ltd. reported in 342 ITR 169 and Hon'ble Supreme Court in the case of PCIT vs NRA Iron & Steel (P) Ltd. reported in 412 ITR 161. We have gone through all the aforesaid cases and rather have found that the said judgments support the case of assessee companies, as the main proposition which has been laid down in all the aforesaid judgments is that "Assessing Officer ought to conduct an independent enquiry to verify the genuineness of the credit entries once documents are submitted by the assessee or the subscriber companies", whereas, we have noticed in the instant set of appeals that the AO has besides issuing notices under section 133(6) of the Act, has done no enquiry or investigation whatsoever and has merely relied on the investigation report so provided by the investigation wing, thus, the judgments so relied by the learned CIT DR are clearly distinguishable on facts and in our view rather support the case of the assessee."

12. The Revenue filed appeals challenging the common order dated 23.12.2021 of the ITAT in bunch of appeals including the identical case of M/s. Jay Auto Components Ltd. The Hon'ble Delhi High Court dismissed all the appeals filed by the Revenue vide decision rendered on 26.09.2022 (copy at pages 201-222 of Paper Book). The relevant findings of the decision (supra) of the Hon'ble Delhi High Court are reproduced below:-

"10. In the present batch of matters, both CIT (A) and ITAT have given concurrent findings of fact that no incriminating material had been brought on record by the Assessing Officer to sustain the addition. In fact, the ITAT in the impugned order, has held that the allegation of the Assessing Officer that no notices under Section 133(6) of the Act were received by the investors, is irrelevant as the said parties had filed detailed replies in response to the Section 133(6) notices along with the requisite details as required by the Assessing Officer.

11 Further, upon perusal of the Table reproduced hereinabove which shows the networth of the investor companies and the investment made in the share capital, this Court is in agreement with the contention of learned senior counsel for the Respondents-Assessees that the investor companies had sufficient networth in the Assessee's group of companies.

12. Learned predecessor Division Bench of this Court in PCIT vs. Best Infrastructure (India) (P.) Ltd. [2017] 84 taxmann.com 287 (Delhi) has held that statements recorded under Section 132 (4) of the Act of the Act do not by themselves constitute incriminating material. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"36. Turning to the facts of the present case, it requires to be noted that the statements of Mr. Anu Aggarwal, portions of which have been extracted hereinbefore, make it plain that the surrender of the sum of Rs. 8 crores was only for the AY in question and not for each of the six AYs preceding the year of search. Secondly, when Mr. Anu Aggarwal was confronted with A- 1, A-4 and A-11 he explained that these documents did not pertain to any undisclosed income and had, in fact been accounted for. Even these, therefore, could not be said to be incriminating material qua each of the preceding AYS.*
>
> *37. Fourthly, a copy of the statement of Mr. Tarun Goyal, recorded under Section 132 (4) of the Act, was not provided to the Assessees. Mr. Tarun Goyal was also not offered for the cross-examination. The remand report of the AO before the CIT(A) unmistakably showed that the attempts by the AO, in ensuring the presence of Mr. Tarun Goyal for cross- examination by the Assessees, did not succeed. The onus of ensuring the presence of Mr. Tarun Goyal, whom the Assessees clearly stated that they did not know, could not have been shifted to the Assessees. The onus was on the Revenue to ensure his presence. Apart from the fact that Mr. Tarun Goyal has retracted his statement, the fact that he was not produced for cross- examination is sufficient to discard his statement.*
>
> *38. Fifthly, statements recorded under Section 132 (4) of the Act of the Act do not by themselves constitute incriminating material as has been explained by this Court in Harjeev Aggarwal (supra). Lastly, as already pointed out hereinbefore. the facts in the present case are different from the facts in Smt. Dayawanti Gupta (supra) where the admission by the Assessees themselves on critical aspects, of failure to maintain accounts and admission that the seized documents reflected transactions of unaccounted sales and purchases, is non- existent in the present case. In the said case, there was a factual finding to the effect that the*

Assessees were habitual offenders, indulging in clandestine operations whereas there is nothing in the present case, whatsoever, to suggest that any statement made by Mr. Anu Aggarwal or Mr. Harjeet Singh contained any such admission.

39. For all the aforementioned reasons, the Court is of the view that the ITAT was fully justified in concluding that the assumption of jurisdiction under Section 153A of the Act qua the Assessees herein was not justified in law.

(emphasis supplied)

13. In any event, in the present cases, as the Respondents-Assessees were denied the opportunity to cross-examine Mr. Rajesh Agarwal, despite a specific request, this Court is in agreement with the ITAT that his statement needs to be excluded and cannot be relied upon as a piece of evidence to make any addition. In fact the Supreme Court in the case of ***M/s Andaman Timber Industries vs. CCE (SC), 127 DTR 241 has held "...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."*

14. Consequently, this Court is of the view that no substantial question of law arises for consideration in the present batch of appeals and accordingly, the same are dismissed along with pending applications."

13. Since the facts and circumstances of the assessee's case under consideration are identical with the bunch of cases of the other assessees decided by the Hon'ble Delhi High Court vide its decision (supra), respectfully following the decision (supra) of the Co-ordinate bench of the ITAT Delhi and the decision (supra) of the Hon'ble Delhi High Court we hold that the Ld. CIT(A) was perfectly justified in deleing the impugned addition of Rs.16,60,00,000/- and Rs. 12,00,00,000/- in AY 2011-12 and 2012-13 respectively under section 68 of the Act. Consequently both the appeals of the Revenue being devoid of any merit are hereby rejected.

14. In the result, the appeal of the Revenue for AY 2011-12 and 2012-13 are dismissed.

Order pronounced in the open court on 23rd November, 2023.

sd/-	**sd/-**
(N.K. BILLAIYA)	**(ASTHA CHANDRA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 23/11/2023
Veena

Copy forwarded to -
1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	