

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा0 एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 366 & 369/JPR/2023  
निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09

Ram Dhan Yadav Near Govt. Hospital, Samod, The. Chomu, Jaipur.	बनाम Vs.	ITO, Ward-7(3), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ABBPY 7417 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Rajesh Soni (C.A.)  
राजस्व की ओरसे / Revenue by: Shri Anoop Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 17/01/2024  
उदघोषणा की तारीख / Date of Pronouncement: 20/02/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These are two appeals filed by the assessee against two separate orders of Id. CIT(A), National Faceless Appeal (Centre), Delhi both dated 15.02.2023 & 13.03.2023 [herein after referred to as "NFAC/Id.CIT(A)"] for the assessment year 2007-08 & 2008-09 respectively, which in turn arise from the orders dated 06.03.2013 & 09.09.2013 passed under section 147/143(1) of the Income Tax Act, by the ITO, Ward-7(3), Jaipur.

2. Since the issue involved in these two appeals of the assessee's are almost identical therefore, were heard together with the agreement the parties and are being disposed off by this consolidated order.

3. At the outset, the ld. AR has submitted that the matter pertaining to A.Y. 2007-08 in ITA no. 366/JPR/2023 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical in other assessment year and even grounds are also identical. The ld. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 366/JPR/2023 is taken as a lead case of each party. Based on the above arguments we have also seen that for two appeals are similar on facts and arguments were similar and therefore, were heard together and are disposed by taking lead case facts, grounds and arguments from the folder in ITA No. 366/JPR/2023.

4. In ITA No. 366/JPR/2023 the assessee has raised following grounds:-

*"1. The learned CIT (Appeal) erred in law and on facts in adjudicating the appeal filed by the Assessee against order dated 6th March, 2013 passed by the Income Tax Officer, Ward 7(3), Jaipur u/s 144 r.w.t. 147 of Income Tax Act which was passed by assuming the jurisdiction by wrongfully issuing notice u/s 148 of IT Act.*

*2. The learned CIT (Appeal) erred in law and on facts in adjudicating the appeal filed by the Assessee against order dated 6th March, 2013 passed by the Income Tax Officer, Ward 7(3), Jaipur u/s 144 r.w.t. 147 of Income Tax Act which was passed by violating principle of Natural Justice. "*

*3. The learned CIT (Appeal) erred in law and on facts in adjudicating the appeal filed against order dated 6th March, 2013 passed by the Income Tax Officer, Ward 7(3), Jaipur u/s 144 r.w.t. 147 of Income Tax Act by way of justifying and retaining the Additions made to the tune of Rs. 1,30,50,000 u/s 69B without properly appreciating the facts and law. "*

*4. The learned CIT (Appeal) erred in law and on facts in adjudicating the appeal filed against order dated 6th March, 2013 passed by the Income Tax Officer, Ward 7(3), Jaipur u/s 144 r.w.t. 147 of Income Tax Act by way of justifying and retaining the Additions made to the tune of Rs. 3,08,080 as Notional Interest income without properly appreciating the facts and law. "*

*5. The appellant craves the right to add, delete, amend or abandon any of the grounds of appeal before disposal of the appeal either before or at the time of hearing appeal."*

5.1 At the outset of hearing, the Bench observed that there is delay of 47 days in filing of the appeal by the assessee for which the ld. AR of the assessee filed an application for condonation of delay with following prayers and the assessee to this effect also filed an affidavit :-

“With due respect and in connection with the above subject, it is submitted that:-

Appeal in form No. 36 is being filed against order of CIT(A), Faceless Appeal Unit in case of order passed by ITO 7(3), Jaipur u/s 143(3)/147.

The appeal is ought to be filed with-in 60 days from communicating the order of CIT(A). The order was uploaded on income tax portal on date 15/02/2023 but due to prolonged illness the assessee could not approach counsel and was unable to gather relevant documents for filing the Appeal. So, the delay of 49 days occurred in filing the Appeal before your Sir.

The said appeal filing got delayed due to severe illness of the old age assessee of 71 years. He is living in village and previous gone through heart Bye-Pass Surgery also. The illness period was from 14.02.2023 to 31.05.2023, Doctor’s certificate along with an affidavit from me are enclosed herewith.

So, this resulted delay and under these circumstances, the assessee was prevented by sufficient cause to file the appeal within 60 days of service of order sought to be appealed against, it is requested that the delay of 49 days in filing the appeal may kindly be condoned.”

5.2 The ld. AR of the assessee appearing in this appeal submitted that the assessee was serious and the delay of 47 days due to illness of the old age of the assessee and he also living in village and previously gone through heart bye-pass surgery also. Considering the various judicial precedent where in the courts

has considered the delay with the same are reasonable. Even the apex court in the case of Collector, Land & Acquisition Vs. Mst. Katiji & Others 167 ITR 471(SC) directed the other courts to consider the liber approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

5.3 During the course of hearing, the ld. DR objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit and proper in the interest of justice.

5.4 We have heard both the parties and perused the materials available on record. The Bench Noted that the assessee for condonation of delay of 47 days has merit and we concur with the submission of the assessee. Based on the facts narrated in the condonation petition supported by the affidavit the bench noted that there is a reasonable cause with the assessee and thus, the delay of 47 days in filing the appeal by the assessee is considered and condone in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

6. Brief facts of the case are that in the case, return of income was filed on 31.07.2007 declaring total income of Rs. 91,270/-. As in this case the ACIT (Hqrs.) office of the Commissioner of Income Tax-I, Jaipur has forwarded information vide his letter No. 179 dated 18.12.2009. It has been informed that

during assessment proceedings in the case of Shri Chandra Prakash Dudi, Prop. M/s Maa Vaishno Devi & Co, A- 182, Sunder Nagar, Heerapura, Jaipur for A.Y. 2007-08, he accepted loans in cash from the assessee on different dates and paid interest in cash on various dates. In support of his claim, he also furnished copy of manuscript documents/papers on which the details of loan & interest was accepted by the assessee. The details were related to F.Y. 2006-07 & 2007-08. The details pertaining to the assessment year under consideration are as under.-

- 1- Rs. 96,50,000/- received on 01.03.2007 on interest @3%.
- 2- Rs. 30,00,000/- received on 26.03.2007 on interest @3%.
- 3- Rs. 4,00,000/- received on 29.03.2007 on interest @3%.

The facts mentioned above were compared with the return of income of the assessee, and found that the transactions of loan [ for Rs. 1,30,50,000/- ]as well as of the interest [ of Rs. 3,08,080/-] were not shown in the return of income so filed by the assessee. Thus, after recording reasons and satisfying thereon the case was re-opened u/s 147. Accordingly, notice u/s 148 was issued on 30.3.2012 which was duly served upon the assessee on 31.03.2012. The assessee did not file any reply in response to the notice. Due to change of incumbent, notice u/s 143(2) along with query letter & notice u/s 142(1) was issued on 24.07.2012 and served upon the assessee on 31.07.2012. Vide order sheet entries dated 23.08.2012, 19.09.2012 and 18.10.2012 non attended the proceedings, for which show cause notices for penalty u/s 271(1)(b) were issued. Thereafter, the ld. AR of the assessee attended the proceedings as per

order sheet and filed details/documents which placed on record and the facts of the case were discussed with him. It was stated that the assessee has been engaged in retail business in the name and style of Krishna Radymade& Fancy Store at near Government Hospital, Samod. The assessee furnished trading, profit & loss account, and balance sheet for the year wherein he has shown profit of Rs. 1,77,270/- on total turnover Rs. 12,80,650/-. During the assessment proceedings statement of the assessee were recorded on oath on 17.12.2012 wherein he was asked to produce books of account for the claim of income, basis of sales and calculation of net profit under section 44AF of the I.T. Act. As the assessee has not maintained correct record the ld. AO estimated the profit invoking the provision of section 145(3) of the Act and income of the assessee was estimated at Rs. 3,00,000/- since the assessee has already declared the income at Rs. 1,77,270/- balance amount of Rs. 1,22,730/- was added as income of the assessee. The assessee has also claimed deduction u/s. 24(b) of the Act on account of interest for the self occupied house property. As the assessee has not furnished the copy of the bank statement the claim was denied to the assessee. The assessee has claimed deduction u/s. 80C of the Act for an amount of Rs. 49,375/- the ld. AO has not allowed a sum of Rs. 28,000 being the amount of housing loan repayment and Rs. 11,375/- lic premium paid for his son LIC premium. The assessee has claimed income of Rs. 1,55,600/- from his agricultural land which was considered at Rs. 1,00,000 and 55,600/- was considered as income of the assessee. Since there has been information in this

case the statement of the assessee was recorded and was confronted with the documents based on which the assessment was re-opened. The ld. AO noted the sample signature were also obtained while recording the statement of the assessee and the same were tallied therefore, the ld. AO viewed that the assessee is intentionally denied to save himself from chargeability of tax and therefore it has been held that the assessee had given loans during the year to the tune of Rs. 1,30,50,000/- to Shri Chandra Praksah Dudi and also earned interest of Rs. 3,08,080/-. Based on all these observation against the returned income of Rs. 91,270/- the assessment was completed determining total income of the assessee at Rs. 1,37,03,680/- the breakup of the addition thus made is as under:-

Income as per return of income	91,270/-
Add:- 1. As discussed in para 7 above	1,22,730/-
2. As discussed in para 9 above. (H.P.)	36,625/-
3. As discussed in para 10 above. (Ded. 80C)	39,375/-
4. As discussed in para 11 above. (other source)	55,600/-
5. As discussed in para 12 above. (u/s 69B loans)	1,30,50,000/-
6. As discussed in para 13 above. (Intt. O.S.)	3,08,080/-
Total income	1,37,03,680/-
Agricultural income	1,00,000/-

7. Aggrieved from the order of the assessing officer, assessee preferred an appeal before the ld. CIT(A). The appeal of the assessee was partly allowed by the ld. CIT(A). Apropos to the grounds of the appeal which are disputed and

sustained by the ld. CIT(A) the relevant finding of the ld. CIT(A) is reiterated here in below for the sake of convenience :-

“10. This ground of appeal challenges the addition made by the AO u/s 69 B of the Act amounting to Rs. 1,30,50,000/-.

10.1 During the assessment proceedings the AO received information through the ACIT that he appellant has provided loan in cash to Sh. Chandra Prakash Dudi, for AY 2007-08 and even paid interest to the appellant. The appellant failed to furnish this detail in his return of income. The AO in his assessment order has stated that:-

"12. Unexplained money u/s 69 B of the I.T. Act, 1961: The ACIT (Hars.) office of the Commissioner of Income Tax-1, Jaipur has forwarded information vide his letter No. 179 dated 18-12-2009. It was also informed that during assessment proceedings in the case of Shri Chandra Prakash Dudi, for A.Y. 2007-08, he accepted loans in cash from the assessee on different dates and paid interest in cash on various dates. In support of his claim, he has also furnished copy of manuscripted documents/papers on which the details of loan & interest was accepted by the assessee under review As per details, the assessee had advanced total amount of Rs. 1,30,50,000/- (Rs. 96,50,000 on 01-3-2007, +30,00,000 on 26-3-2007 and 4,00,000 on 29-3-2007) to Shri Chandra Prakash Dudi during the financial year under consideration. The copy of reasons recorded for re-opening the case was provided to the assessee. The assessee while filing his counter reply on 02-11-2012 had denied to giving any advance or loan to Shri Chandra Prakash Dudi. Further, during his statements recorded on oath on 17-12-2012 by the undersigned, the manuscripted papers where upon the assessee had given receipt for complete principal & interest amount of Rs. 1,53,69,735/- and put his signatures on the receipt on 30-6-2007 were shown to him for confront. The copy of the papers/documents also is being re-produced (scanned) here, as under:-

XXXXXX

However, the sample of signatures of the assessee were also obtained while recording his statements and compared with the signatures already affixed on the papers/documents. The signatures tallied with the manuscripted papers and it is noticed that the signatures are same as put on the manuscripted paper/document. Therefore, it can be easily understand that the assessee is intentionally denied to save himself from chargeability of tax.

Looking to the facts and circumstances of the case and in my considered view that the assessee had given loans during the financial year to the tune of Rs. 1,30,50,000/- to Shri Chandra Prakash Dudi and do not want to explain. It is established fact that the loans were given to Shri Dudi by the assessee out of his unexplained sources. Therefore, the loans and advances of Rs 1,30,50,000/- is added to the income of the assessee treating as unexplained investment in the meaning of section 69 B of the Income Tax Act, 1961.

Since, the assessee has concealed the correct particulars of its income and furnished inaccurate particulars in this regard to willful avoid the payment of tax, it is a fit case to initiate the penal proceedings u/s 271(1) (c) of the IT Act. Therefore, in regard to the

unexplained income as discussed above, penal proceedings u/s 271(1)(c) are being initiated, separately.

13. Accrued interest on the loans and advances of Rs. 1,30,50,000/- As discussed in para 12 above that the assessee had made investment by way of advance or loan of total Rs. 1,30,50,000/- on different dates during financial year 2006-07 to Shri Chandra Prakash Dudi on interest. The calculation of interest is computed, as under-

1. On Rs. 96.50 lacs @3% p.m. for the period 01-3-2007 to 31-03-2007, Le for 1month comes to Rs. 2,89,500/-,
2. On Rs. 30 lacs @3% p.m. for the period 26-3-2007 to 31-03-2007, i.e. for 6 days comes to Rs. 17,419/-,
3. On Rs. 4 lacs @3% p.m. for the period 29-3-2007 to 31-03-2007, i.e. for 3 days comes to Rs. 1,161/-

Therefore, a total accrued interest of Rs. 3,08,080/- was not offered for taxation. Hence, addition of Rs. 3,08,080/- is made to the income of the assessee on this account."

10.2 The appellant during the appellate proceedings has stated that:-

"In this matter we have submitted detailed submissions along with court cases, presently also submitting the summary of the submissions covering following area:-

1. Unjustified selection of case u/s 148 read with section 147.

1. Unjustified high-pitch additions on the basis of "manuscript / paper delivered by a person habitual to make such type forged signature documents of various government authorities, which is also established by court of law and such person has been sentenced imprisonment of more than 3 years for such act(extract of civil court judgement already provided).

2. Unjustified additions on account of entry found in "manuscript / paper owned by other person, addition on account of Dumb paper, taxing of notional income not real income etc, where the A.O also failed to justified the source of notional income in shape of Huge cash Loans on the fact the assessee has been filing ITRs for a long time.

3. Unjustified additions on account of acting A.o. as Forensic Science Lab Expert, Fingure Print Expert without having such qualification, knowledge and specialty and further on the facts after denying of the assessee that the signature on of "manuscript" / paper is not done by him (not of him) and further ignoring of the fact that on the statements recorded by the A.o. himself, the assessee challenged the A.o. that the signature of "manuscript" / paper is not of him and he can verify the same from FSL expert.

4. Unjustified high-pitch additions on the basis of putting high and undue reliance on story cooked Up By Shri Dudi Without Enquire About His Gilt Character, His Past Act Of Manipulating Signatures Of Government Authorities (a person habitual to make such type forged signature documents of various government authorities, which is also

established by court of law and such person has been sentenced imprisonment of more than 3 years for such act(extract of civil court judgement already provided).

So, the Assessing officer erred in making addition and it is requested that the addition done of Rs. 1,30,50,000 U/s 69B needed to be quashed.

4 Regarding Addition of Rs. 3,08,080 Interest on such Notional additions of Rs. 1,30,50,000"

10.3 In view of the above discussion, I have come to the conclusion that the appellant is only challenging the analysis and investigation of the AO and the Department on technicalities since he has no other way out left to him. Once the signatures on the papers/incriminating documents have matched with those of the appellant and his has not been able to rebut the same; the addition made by the AO must be upheld and accordingly the grounds in this respect are dismissed.”

8. As the assessee did not receive any favour from the appeal filed before Id. NFAC/ CIT(A). The present appeal filed against the said order of the Id. NFAC before this tribunal on the grounds as reiterated here in above.The Id. AR of the assessee submitted that the assessment To support the grounds so raised the Id. AR of the assessee has placed reliance on the written submission which is extracted herein below:-

“GROUNDNO.1

AOhasgrosslyerredinpassingorderu/s143(3)/ 147bymakingadditionsofRs. 1,30,50000 u/s 69B & Rs. 308080 as Interest income inabsenceofrecordingofproperfindingandownsatisfaction, which is vitalnecessaryforselectionifcaseu/ s148,i.e.AOfailedtorecords ownfindingandownsatisfaction,avitalandnecessityforselectionofcaseu/s147.

SUBMISSIONS:-

The l'dA.o has just issued notice u/s 148 mechanically, based on information received from superior Authority and the information / finding shinges on third party.

The A.o. just acted on such information originated from third party which the A.o.has to verify, examine and confirm the genuineness of such information, the character of the person (a criminal character master in document forgery, falsification, manipulation and duplication) who provided such the information.

The A.o. just acted on such information originated from third party without examining the contents and volume of such information with the status of the Assessee (a Rural person running small Retail fancy store).

The A.o. has selected the case for Re-assessment proceedings in violation of Basic Guidelines set by Delhi High Court in SabhInfrastructure Ltd Vs. ACIT case.

ASSESSMENT BASED SUCH WRONG SELECTION NEEDED TO  
 BEQUASHED.

BRIEF FACTS OF THE CASE :

The appellant was engaged in retail business in the name and style of M/s Krishna Readymade & Fancy Store at village Samod. For the AY 2007-08, the return of income was filed on 31-07-07 declaring total income of Rs 91,270. The appellant did not maintain any Books of Accounts and filed his return of income on the basis of presumptive taxation applicable u/s 44AF of IT Act. Later on, the Id AO on the basis of receipt of some information from ACIT(HQ) in the o/o CIT-I,Jaipur reopened the assessment by issuing the notice u/s 148 of IT Act and passed the assessment order u/s 143(3) r.w.s. 147 of IT Act on 06-03-2013. The AO passed the assessment order by making very high pitched additions without any basis ,purely on conjecture and surmises and determined the total income at Rs 1,37,03,680 against the declared total income of Rs 91,270 . Besides some other additions, the following addition is the most significant which need more focused attention :

Particulars of the main addition	Amount (in Rs.)
Unexplained Monery u/s 69B of the Act ( alledged money transaction with Sh Chandra Prakash Dudi – based on a paper submitted by him to the department. It is concluded by the AO without any cogent evidence that ‘this page’ bears signature of the appellant and transaction belongs to the appellant)	Rs 1,30,50,000
Accrued interest on the loan and advance of Rs. 1,30,50,000	Rs 3.08,080

DETAILED SUBMISSIONS : GROUND-1:

1.1 On careful reading of the relevant provision of Sec 147 , one can conclude that before assuming jurisdiction under this provision, the AO has to satisfy two important preconditions : first, the AO has reason to believe ( earlier it was simply his opinion ) and secondly, there should be some income chargeable which has escaped the assessment . Until and unless, the AO satisfies these two vital conditions, he cannot assume the jurisdiction to reopen the assessment. In the present case, both these conditions were not satisfied which is evident from the following discussion.

1.2 Reason of belief of the AO : It is very interesting to note that proceedings u/s 147 were initiated on account of the directions received from the Commissioner of Income Tax-I, Jaipur vide letter no 179 dtd 18.12.2009. Thus, there was no independent application of mind on the part of the AO before the issue of the notice u/s 148 of IT Act. In the case of CIT vs Abdul Khader Ahmed (2006) 156 Taxman 206 (ker) , it was held that even if there is advetence in the reassessment proceedings to the direction of the superior officer, that by itself will not vitiate the resultant proceedings as long as the Assessing Officer has independently applied his mind to all the relevant aspects and has arrived at the reasons for his belief. The application of mind independently by the AO on all the relevant aspects is strikingly missing in this case. The AO had mechanically followed the direction of his superior and reopened the assessment proceeding which is against the law.

1.3 Powers are not plenary : It is well settled that AO is not given unbridled powers to reopen any assessment .Hon'ble SC in the case of ITO vs LakhmaniMewal Das (1976) 103 ITR 437 has held that the powers of the ITO to reopen assessment,though wide ,are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". The reopening of an assessment after a lapse of many years is a serious matter. If apply this ratio decidendi to the facts of the case, it crystal clear that the AO was neither having any cogent material nor any independent evidence on which the AO could formed his " belief " .He simply relied on the direction received from his superior and a letter received from a person having vested interest . This act of the AO is not sustainable in the eyes of the law. In the case of Sri Krishna (p) Ltd vs ITO (1996) 22 1 ITR 538 (SC) had held that the powers conferred upon the ITO by section 147 and 148 is not an unbridled one. It is hedged with several safeguards conceived in the interest of eliminating room for abuse of this power by the Assessing Officer.

1.4 Case of the AO rest entirely on the statement of the THIRD PARTY: In this case, the ld AO has simply relied on the statement/document filed by the third party without testing the veracity of such claim. There could be numerous reasons for which Shri Chandra Prakash Dudi is claiming that transaction noted on "manuscript/page" belonging to the assessee. In fact, this piece of paper was neither written by the appellant in his own hand-writing nor bears his signature, in that situation, AO had erroneously rested his belief on such paper. In the case of S P Agarwalla vs ITO (1983) 40 ITR 1010 (Cal) it was held that a mere confessional statement by a third party would not be sufficient to hold that the assessee's income had escaped assessment.

1.5 AO formed his belief on Extraneous and irrelevant material: The ld AO in this case solely relied upon extraneous and irrelevant material having no direct nexus between conclusion of escapement of income and formation of belief. In the case of famous judgment pronounced by hon'ble SC in the case of CIT vs Daulat Ram Rawatmull (1973) 87 ITR 349 has held that there should be some direct nexus between the conclusions of fact arrived at by the authority concerned and the primary facts upon which the conclusion is based. The use of extraneous and irrelevant material in arriving at that conclusion would vitiate the conclusion of fact.

- AO's Belief was subjective not objective : Here, the ld AO simply formed his belief on the basis of the "manuscript/paper" given to the department by Shri Chandra Prakash Dudi without first verifying the veracity of the content and claim of Shri Dudi. Thus, the belief of the AO was purely subjective and cannot be said to be in good faith. Any assumption of jurisdiction on the basis of subjective satisfaction which is devoid of bona fide intent is held to be unjustified in the case of S Narayanappa vs CIT (1967) 63 ITR 219 (SC).
- i. The selection of the case was solely based on the information Passed/ received from superior Authority ACIT HQ.  
ii. The A.o. has not applied independent mind to reach to the satisfaction as required for initiating proceedings u/s 147.  
iii. The information was originated from third Party which remained unexamined and unverified by the Ao. before initiating selection u/s 148, which can also be noted from prime-facie reading of reasons recorded by A.o.  
iv. Original "Manuscrip" or copy thereof has not been provided to the Assessee and assessment finalized on solely based on such "manuscrip".

v. Original/ copy of “Manuscript” has not been accomplished with Reasons Recorded by A.o. which is also violation of standard practice set in case of SabhInfrastrucuture Ltd Vs. ACIT case pronounced by Delhi High Court.

vi. The A.o. just acted on information received from superior Authority without looking the Cash Transaction Volume (Rs. 1.30 cr) with Regard of Status of the Assessee (A small Retail shop Owner) as well as the culprit / criminal character of the third party information provider (Third Party was already indulged in Property/ other Documents forgery, duplication, manipulation etc and for this he has been sentenced imprisonment of 3 years; he also maintained two PAN Cards with different surnames).

vii. Shri Chandra Prakash Dudi had been pronounced guilty for the offence of forging the documents in the criminal case No. 4727/10 vide order dt 25.06.13 by the court of the Additional Civil Judge & Metropolitan Magistrate.

viii. theLd.A.O.haslegallyerredinreopeningtheassessmentoftheAssessee onthebasisof impugned‘reasonstobelieve’andwithoutindependentapplicationofmind.

- A.o. Without prejudice to the submissions made herein above, it is further submitted that the copies of the alleged loose papers relied upon by the Ld. A.O. was not provided by the Ld. A.O.to the Appellant so as to enable the Appellant to peruse the same and comment on the legal sanctity of those documents. On the contrary,theLd.A.O.,withthepreconceivedmind,relieuponthosedocuments andpassed the assessment order against the Assessee without making independent inquiry for verification of facts.
- At this juncture, your good self’s kind attention is required on the recent judgement of Hon’ble High Court of Delhi in the case of Sabh Infrastructure Ltd. vs. ACIT (Delhi High Court) -398 ITR 198 dated 25.09.2017 wherein the Hon’ble high court while reiterating the legal position with respect to reassessment proceedings has squashed the notice initiating the proceedings su/s 147 of the Act and its subsequent order on the ground that the reasons to believe recorded by the Assessing Officer for initiation of reassessment proceedings su/s 147/148 of the Act should be self-explanatory and the reasons cannot be thereafter supported by any extraneous material. In the instant case in hand, Ld. A.O. has not disclosed any material/information which has been sought to be relied for the initiation of reassessment proceedings along with the reasons recorded and has not provided the same to the Appellant even at the time of assessment proceedings. Moreover, it is humbly submitted before your honour that the Hon’ble High Court in the case mentioned above has further held that the reasons to believe recorded by the A.O. should disclose all the reasons recorded by the A.O. for initiation of reassessment proceedings. The reasons to believe conveyed to Appellant should also accompany the comment/endorsement of the superior authority which in the extant case has not been communicated by your good self to the Assessee. It is to be appreciated that the reasons to believe should also accompany the sanctions of approval from the higher authority for initiation of proceedings su/s 147 of the Act. Same was not provided by the Ld. A.O. to the Appellant with the “reasons to believe”.
- It is submitted that the Hon’ble Delhi High Court in the said case has laid down certain principles/procedure to be followed in case of reassessment proceedings under Section 147 of the Act which is binding on the revenue. Relevant

extract of the case of Sabh Infrastructure Ltd vs. ACIT (supra ) mentioning the said principles is reproduced herein below for your ready reference:

“Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under Sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

- while communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officers should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided;
- the reasons to believe ought to spell out all the reasons and grounds available with the AO for re-opening the assessment—especially in those cases where the first proviso to Section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the AO on the same and if so, the conclusion thereof;
- where the reasons make a reference to another document, whether as a letter or report, such document and/or relevant portions of such report should be enclosed along with the reasons;
- the exercise of considering the Assessee’s objection to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed.”
- 
- The Hon’ble high court has laid down following principles in case of reassessment proceedings:
  - Hon’ble High Court has held that while communicating the reasons to believe recorded by the AO to the assessee, standard form used for obtaining approval by the AO of the superior authority for such actions should also be disclosed and communicated to the assessee. It is to be appreciated that the Ld. A.O. has only communicated the reasons recorded in the instant case which now here contains the approval of the superior authority.

- The Hon'ble High Court has further held that where there is any reference to any enquiry or report or any other material in the reasons to believe that the same should be accompanied with the reasons recorded and therefore, the same should be appropriately communicated to the assessee. It is evident that the Ld. A.O. in the extant case has neither provided the information nor the copy of such manuscript received from third Party Mr. C.P. Dudi which is relied upon by the Ld. A.O. while finalizing the assessment of the Appellant. Further, he also did not provide the copy of Assessment order of C.P. Dudi which was passed by the Superior IT Authority. Same is against the principle of natural justice and therefore, the assessment order passed in the instant case suffers from legal infirmity and hence, deserves to be quashed.
- Moreover, it has been held that while disposing off the objections raised by the Assessee against the assessment proceedings u/s 147/148 of the Act, there should be proper reasoning against each and every objection and same should not be general in nature. It is to be appreciated that in the extant case the Ld. A.O. has simply brushed aside the submissions made by the Appellant Assessee and has made the addition to the total income of the Appellant.
- Therefore, in view of the submissions made hereinabove, the assessment order passed by the Ld. A.O. in the instant case of the Appellant deserves to be quashed.

In view of the above discussion, it is prayed that the Reopening of the assessment proceedings was illegal ab-initio and so, deserve to be quashed.

#### GROUND NO.2

The Income Tax Officer, Ward 7(3), Jaipur has passed the Assessment order u/s 144 r.w. sec 147 of Income Tax Act by violating "principle of Natural Justice."

Submissions:-

- Denial of Natural Justice by way of denial to provide the core documents to the Assessee:-
- The copy of the statement of the appellant was not provided by the Id AO before passing the impugned assessment order which is gross violation of principle of natural justice;
- The appellant was never given the copy of "the manuscript/paper" which is the mainstay of the entire addition. By not doing so, the Id AO had brazenly flouted the settled principle of natural justice;
- The appellant was never supplied with the copy of the so-called information letter purportedly received by the Id AO from the ACIT (HQ) of CIT-I, Jaipur. As per the principle of natural justice, the person should be confronted with all the material which is being used against him by the concerned authority;

- The Id AO did not afford the opportunity to cross-examine Shri Chandra Prakash Dudi who is the main witness in this case especially when the Id AO blindly believed his version of the story. In absence of cross-examination of the witness, the assessment order is void ab initio and deserves to be quashed outrightly;
- The Id AO had also not supplied the copy of the relevant assessment order passed by the department in the case of Shri Chandra Prakash Dudi;
- The Id AO did not afford the opportunity to cross-examine Shri Chandra Prakash Dudi who is the main witness in this case especially when the Id AO blindly believed his version of the story. In absence of cross-examination of the witness, the assessment order is void ab initio and deserves to be quashed outrightly;
- Denial of Natural Justice by way of not getting the Cross Examination of the Third Party who provide the information :-

Firstly, the A.O. never enquired about the Third party and the Genuineness of information provided by the Third Party.

Secondly, the Assessee specifically requested the A.o to provide the Cross examination of the Third party for confrontation of the truth of information, but A.o. never provided such cross examination opportunity for material gathered on the back of the Assessee.

Thirdly, the Assessee specifically requested to the l'd CIT(A) to provide the cross examination of third Party, but even specifically summoned to the Third Party (Information provider), the third party has not attended the office of the A.o. in the process of Remand of the Case by CIT(A) with specific direction (Remand Report clearly mentioned the facts and the Melafide intention of Third party- information provider). This also proved that the allegation/information provided by the Third Party was not Genuine and false and may be based on Rivalry with the Assessee.

Case Specifically remanded for Cross Examination ineraliaothers:-

The Appellate Authority CIT(A) has Remanded the case to the Assessing Officer specially for cross examination inter-alia others and seeking remand report from the A.o.

On Receiving such instructions from Appellate Authority , the A.o called the Third party (Mr. Chandra Prakash Dudi) by summon with adequate time opportunity. But the Third party even received summon personally not appear before the A.o. for Cross examination (Because he very well knows the facts of forged documents he prepared against the Assessee).

The A.O has called the complainant Mr. Chandra Prakash Dudi for cross examination by duly serving notice for appearing for Cross Examination personally

On scheduled attendance date for Cross Examination and confrontation, the complainant Mr. Chandra Prakash Dudi intentionally has not attended the office of Assessing officer for Cross Examination.

Finally the Cross Examination of the information and documents collected on the back of the Assessee remained un-availed / denied to the Assessee.

Both the time the Assessee has been badly treated and Principle of Natural Justice violated:-

Firstly by A.o. who have pre-determined mind-set against the Assessee and not heard the Assessee, ignored/ rejected his submissions and unilaterally decided the case against the Assessee by violating natural justice and by acting as expert without possessing adequate expertise and finalized the Assessment without cross examination and confrontation of third party from whom documents and information collected on the back of the Assessee.

Secondly by not appearing of Third party (Mr. Chandra Prakash Dudi) for cross examination even by proper summon has been issued & served to the Third party (Mr. Chandra Prakash Dudi). SO, THE ASSESSEE HAS BEEN DEPRIVED TO GET JUSTICE.

- This resulted finally NO OPPURTUNITY OF CROSS EXAMINATION to the Assessee, a violation of NATURAL JUSTICE to the Assessee & Breach of Principal of Natural Justice.
- These all resulted denial of Natural Justice in view of denial to avail the cross examination opportunity, non providing of core / Base material containing documents by A.o.

This is in gross violation of the principles of natural justice and against the ratio laid down by the Hon'ble Court in the case of Andaman Timber Vs. CIT Civil Appeal No. 4228 OF 2006 wherein it has been 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....

- For this purpose reliance was placed on the decision of Hon'ble Bombay High Court in the case of Andaman Timber Industries 281 CTR 241 and decision of Hon'ble Supreme Court in case of KishanchandChellaram 185 ITR 713 wherein it was held that the department is bound to give the Assessee an opportunity to controvert evidence and cross examine the evidence on which the department places its reliance. A failure in providing the same can result in the order being a nullity. The Bombay High Court in H.R. Mehta vs. ACIT (2016) 387 ITR 561 (Bom.)(HC) has held that while making addition under s. 68, the A.O. had relied upon some evidence collected in that behalf including statement on oath said to have been made on behalf of persons whose identity

was not disclosed. It was held that assessee was bound to be provided with the material used against him apart from being permitting him to cross-examine the deponents. This not having been done, addition was not sustainable.

- Recently Supreme Court in CIT v Sunita Dhaddha SLP(Civil) No 9432/2018 dtd 28/3/2018 (SC) has held that “if the AO wants to rely upon documents found with third parties, the presumption u/s 292C against the assessee is not available. As per the principles of natural justice, the AO has to provide the evidence to the assessee & grant opportunity of cross-examination. Secondary evidences cannot be relied on as if neither the person who prepared the documents nor the witnesses are produced. The violation of natural justice renders the assessment void. The Dept cannot be given a second chance”.
- especially the ITAT, Delhi SMC decision in the case of [Amitabh Bansal vs. Income Tax Officer, Ward 46\(4\)](#), New Delhi (2019) 102 taxmann.com 229 similar issue has been dealt by the Tribunal and decided in favour of the assessee by holding that when revenue strongly relies on statements of certain persons to implicate an assessee, principle of cross examination has to invariably followed if truth and justice needs to be found out, which has not been done in the case of the assessee. The relevant portion of the Tribunal in the case of [Amitabh Bansal vs. Income Tax Officer, Ward 46\(4\)](#), New Delhi (2019) 102 taxmann.com 229of has been reproduced as under:-

"8.6 Now advertng to second issue framed above on impact of cross examination, I strongly rely on the following string of decisions of various courts to hold that when revenue strongly relies on statements of certain persons to implicate an assessee, principle of cross examination has to invariably followed if truth and justice needs to be found out....
- IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR ITA No. 997 to 1002/JP/2018 & 1119/JP/2018 M/s. Kota Dall Mill Date of Pronouncement : 31/12/2018. 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.
- 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 :- 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 Hon'ble Supreme Court of India in the case of [Ayaubkhan Noorkhan Pathan v. State of Maharashtra others](#) reported in (2013) 4 SCC 465, has inter alia held that the opportunity of cross- examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice."

- IV-B The Constitutional Bench of the Hon'ble Supreme Court of India in Khem Chand Vs. Union of India AIR 1958 SC 300 has defined the meaning of the term —reasonable opportunity to include an opportunity to defined by cross-examining the witnesses produced against the accused. The Hon'ble court held that:  
—To summarize: the reasonable opportunity envisaged by the provision under consideration includes-
  - (a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;
  - (b) An opportunity to defend himself by cross- examining the witnesses produced against him and by examining himself or any other witnesses in support of his defense; and finally
  - (c) An opportunity to make his representation as to why the proposed punishment should not be inflicted on him.

### GROUNDNO.3

The Income Tax Officer, Ward 7(3), Jaipur has Grossly erred in making Additions made to the tune of Rs. 1,30,50,000 u/s 69B without properly appreciating the facts and law. "

### SUBMISSIONS:-

As earlier stated, the appellant was engaged in retail business in the name and style of M/s Krishna Readymade & Fancy Store at village Samod. For the AY 2007-08, the return of income was filed on 31-07-07 declaring total income of Rs 91,270. The appellant did not maintain any Books of Accounts and filed his return of income on the basis of presumptive taxation applicable u/s 44AF of IT Act. Later on, the Id AO on the basis of receipt of some information from ACIT(HQ) in the o/o CIT-I,Jaipur reopened the assessment by issuing the notice u/s 148 of IT Act and passed the assessment order u/s143(3) r.w.s. 147 of IT Act on 06-03-2013. The AO passed the assessment order by making very high pitched additions without any basis ,purely on conjecture and surmises and determined the total income at Rs 1,37,03,680 against the declared total income of Rs 91,270 . Besides some other additions, the following addition is the most significant which need more focused attention :

Particulars of the main addition	Amount (in Rs.)
Unexplained Monery u/s 69B of the Act ( alledged money transaction with Sh Chandra Prakash Dudi – based on a paper submitted by him to the department. It is concluded by the AO without any cogent evidence that ‘this page’ bears signature of the appellant and transaction belongs to the appellant)	Rs 1,30,50,000
Accrued interest on the loan and advance of Rs. 1,30,50,000	Rs 3.08,080

Before furnishing the detailed submission on the main ground of appeal i.e. addition made u/s 69B of the Act and interest thereon, it would be most appropriate to highlight certain uncontroverted facts pertaining the case :

- The appellant was neither subjected to any action u/s 132 or 133A of the Act and hence, no incriminating paper, document or any evidence was recovered from the possession of the appellant to corroborate the story of the Id AO that transactions recorded on “the manuscript/paper” belongs to the appellant;
- The appellant has been regularly filing his return of income from the source of his small kirana business and shown the correct income and offered the same to tax. No addition had been made in the past against the assessee to substantiate that he was indulged in ‘any money lending ‘ business activity;
- The appellant has not maintained his Books of Accounts and filed the return on the basis of the provision of 44AF of IT Act. Therefore, the provision of Sec 69B of the Act are not at all applicable. Maintenance of Books of Accounts is sine qua non for applicability of the provision of sec 69B of IT Act;

With due respect, here it is worth-while to bring in your notice that :-

the A.o. has rejected Books of Accounts of the Assessee by invoking provision of section 145(3) and made addition of Rs. 122730 by rejected the Assessee adopted presumptive taxation u/s 44AF- Retail Trade.

But the Appellate order of CIT(A) (faceless centre), has deleted the Business income addition of Rs. 122730 and restored the presumptive taxation income declared by the Assessee u/s44AF.

This also means the Appellate order of CIT(A) (faceless centre) has allowed the Assessee for exemptions & privileges of Presumptive Taxation u/s 44AF which enable and allow (inter-alia others) the Assessee to not to maintain Books of Accounts mandatorily.

This also resulted in holding the additions of Rs. 1,30,50,000 u/s 69B UNJUSTIFIED & not Backed legally; as the Assessee has not maintained Books of Accounts as privileged by provisions of section 44AF. Maintenance of Books of Accounts is a mandatory condition for making additions u/s69B.

- The Id AO has neither bothered nor made any sincere effort to co-relate this huge addition to the returned income of the appellant as to where such money (claimed by Shri Dudi as repaid back to the assessee) was actually was utilized/invested. There is no evidence on record to show that the assessee was anytime possessing such huge money which was brought to tax as income. In this way, the Id AO failed to discharge his onus to adduce the cogent evidence before treating any amount as income of the assessee;
- The Id AO recorded the statement of the assessee on oath on 17.12.12 wherein he was questioned in detail about the noting on the ‘the manuscript/paper’ . In this statement also he categorically and emphatically denied that he never had any such loan transactions with Shri Chandra Prakash Dudi.
- It is nobody’s case that entries made on “the manuscript/paper” are in appellant’s handwriting. In fact , these entries were made by Shri Chandra

Prakash Dudi himself in his own handwriting. Logically, the Id AO should have confronted Shri Dudi to find out the truth of the matter. Instead, the Id AO examined the assessee and without any basis concluded that signature on this page are of the appellant.

- The Id AO had also not supplied the copy of the relevant assessment order passed by the department in the case of Shri Chandra Prakash Dudi;
- While recording the statement, the appellant specifically denied that “the manuscript/paper” does not bear his signature and demanded for verification to be done from FSL Authority. However, the Id AO instead referring the matter to FSL, erroneously concluded on his own that “signature of the appellant are tallied with the signature as appearing on the ‘manuscript/paper’”. The AO assumed himself to be a “handwriting expert” and decided the issue against the assessee;
- The appellant himself has got the signature verification done from Anil Kumar Khutetia, Handwriting and Finger-print expert” who has issued a certificate to the contrary saying that the signatures are not tallied.
- The appellant has not made efforts and collected some very vital evidences (prayed to be accepted as additional evidences) in deciding the matter judiciously which also throw light on the tainted character and conduct of Shri Chandra Prakash Dudi. Shri Dudi had been held guilty in the court of law, of forging and manipulating the documents to serve his ulterior motives. These evidences provide enough proof about the “surrounding circumstances” to hold that Shri Dudi not only forged signature of the appellant but also tried to pass off the same as his genuine signature. The Id AO had put undue heavy reliance on the story cooked up by Shri Dudi to serve his own mala fide interest.

### 3.2 PROVISION OF SEC 69B OF THE ACT IS NOT APPLICABLE:

3.2.1 It is to humbly submitted that the Id AO had made additions by wrongly invoking the provision of Sec 69B of the Act which is contrary to the facts of the case vis-à-vis provision of the law. For the sake of convenience the relevant provision is reproduced herebelow :-

“ Where in any financial year the assessee has made investment or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee for any source of income and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year. “

From the plain reading of the sec 69 B, it can safely be concluded that for applying this provision to the fact of any case, the AO need to satisfy two things

(a) the assessee must have made any investment or found to be the owner of the investment in bullion, jewellery or other valuable article. Here, the assessee neither

made any investment or found to be the owner of the bullion etc. Thus, the case of the assessee falls out of the scope of this provision. Secondly

(b) It is also a sine qua non that the amount of investment must exceed the amount reflected in the Books of Accounts maintained by the Assessee. In this case, the Assessee had filed the returns of income on the basis of presumptive taxation scheme prescribed in Sec 44AF and accordingly worked out the income chargeable to tax. The AO has also admitted this fact in the body of the assessment order and the Assessee also categorically stated the same in the statement recorded by the AO on 17.12.12. Hence, there remains no doubt that no books of accounts were maintained by the Assessee in view of privileges of Adopting Presumptive Taxation Scheme and declaring income u/s 44AF. Therefore, the Assessee is out of the scope of applicability of the provision of sec 69B of the Act on this count as well. The Appellate Order dated 15/02/2023 of CIT(A) also accepted & allowed the Assessee's declared income under Presumptive Taxation Scheme u/s 44AF where-in the assessee is not required to maintain Books of Accounts.

The CIT(A) in his order dated 15/02/2023 has allowed the Ground of Appeal in favor of the Assessee by holding that the Assessee correctly declared his income u/s 44AF of income Tax on Presumptive Taxation and nullified & corrected the wrongful action of A.o. of making Addition of Rs. 1,22,730 as Business income by Rejecting Books of Accounts by invoking provisions of section 145(3) of Income Tax Act (which the Assessee has not been maintained as not required by adopting presumptive taxation scheme u/s44AF of income Tax Act).

- This resulted justifying the adoption of section 44AF presumptive Taxation by Assessee, where-by the Assessee not required to maintain Books of Accounts.
- This also means as per provisions of section 44AF, the Assessee not required to maintain Books of Accounts.
- This also means that addition of Rs. 1,30,50,000 u/s 69B is unjustified and not Backed by Legal Ground Because MAINTENANCE OF BOOKS OF ACCCOUNT is a prime and Mandatory Condition for application of Provisions of Section 69B, which is duly stipulated in the Main provision of Section 69B duly enumerated above para .

3.2.2. It is trite to say that the charging provision must clearly impose tax obligation. The subject is not to be taxed unless the charging provision clearly imposes the obligation - CIT vs Ajax Products Ltd (1965) 55 ITR 741 (SC). The facts of the case clearly delineate that the appellant's does not fall within the ambit of the provision of Sec 69B of the Act.

It is prayed that any assessee can only be visited with the tax liability as per the provision of the Act, if the case of the assessee does not fall within the ambit of the particular provision of the Act, no tax liability can be fastened upon the assessee. In view of this, it is requested that additions made by applying the wrong provision of the Act deserve to be deleted.

### 3.2.3. ASSESSING OFFICER FAILED TO DISCHARGE HIS ONUS TO PROVE :

As discussed in the foregoing paras, the so called document/evidence was received from some other person who claimed that transactions recorded therein belong to the appellant. In that situation, before the impugned amount is brought to tax in the hands of the assessee, burden of proof lies on the department. Especially,

when the assessee had categorically denied that such transactions did not pertain to him. In that situation, the Id AO was required to bring some more material on record to corroborate his findings. The Id AO has utterly failed to discharge his burden of proof and simply made additions in the hands of the assessee which is against the settled principle of jurisprudence. The onus to prove that the apparent is not the real, is on the party who claims it to be so. ( CIT v Daulat Ram Rawatmull (1973) 87 ITR 349 (SC)).

#### 3.2.4. NO ADDITION ON THE BASIS OF DUMB DOCUMENTS/LOOSE SLIP :-

In the present case, the Id AO is guilty of placing unwarranted reliance on the loose sheets furnished by Shri Chandra Prakash Dudi which neither written by the assessee himself nor bear his signature . Although the appellant categorically denied that papers does not belong to him however, the AO treated himself as “ signature expert” and held that these papers bear the signature of the appellant (which is far from the truth).Now , since the assessee has obtained the report from the Handwriting Expert, who has held that the signature on these sheets donot tally with the signature of the assessee on certain government documents e.g. Sarkari Kisan Card and signature made on the statement recorded by the AO. It seems that Shri Chandra Prakash Dudi has fabricated the signature of the assessee on the loose sheets for he has a proven history of forging signature of other persons. In support of this copy of the decision of Additional Civil Judge and Metropolitan Magistrate is also enclosed as ‘additional evidence’. In absence of bonafide signature of the assessee on ‘these loose sheets’, the papers could at best be considered as “dumb documents/loose sheets”.

Various courts in numerous decisions has held that no addition could be sustained on the basis of ‘dumb documents/loose sheets’. Some of the citations are given here below :

1. Calculation on a slip of paperCIT V/s S.M.S. Investment Corporation (P) Ltd.207 ITR 364 (Raj.)
2. Where the document found during the course of search did not indicate whether figures mentioned therein refer to quantities of money or quantities of goods it was a dumb document and therefore, no addition could be made on the basis of such a document.Ashwani Kumar V/s ITO ( 39 ITD 183 (Del.)P R Patel vs DCIT ( 73 TTJ 262 (Mum)
3. Documents seized during search not being as to whether item were payments or receipts or some other calculations, so no additions could be made on the basis of such a dumb document.Jagdamba Rice Mills V/s ACIT (Chd.) 67 TTJ 838
4. Since the loose papers did not indicate name of assessee, from list of persons given in loose papers it could not be inferred that either any loan or any advance was given to or received from those persons, and since total amount on those loose sheets indicated a very small amount, those loose papers alone would have to be considered as dumb papers having no evidentiary value and no addition could be sustained on the basis of them.  
Chander Mohan Mehta V/s ACIT (Pune) 71 ITD 245
5. Where seized paper are not found from the possession of the assessee no can be made on the basis of the papers found.  
ChandalalKalayanmal V/s ACIT (21 TW 125 (ITAT, Jaipur)  
Jayantilal Patel and Dr. Balvir Singh Tomar V/s ACIT &Otrs.

233 ITR 588 (Raj) 25 Tax World 87 (Raj. High Court)

6. Addition could not be made on the basis of uncorroborated notings on loose sheets and papers  
S Goyal vs DCIT (2002) 77 TTJ 1 (Mum)  
Bansal Strips Pvt Ltd vs ACIT (2005) 100 TTJ 665 (Del)  
Kishan Chand Sobhraj Mal (1991) 42 TTJ 423 (JP)
7. No addition on the basis of ‘dumb paper’  
DCIT vs Rajendra Kumar Sancheti (ITAT Jaipur) 42 TW 152  
Mohan Foods Ltd vs DCIT (ITAT Delhi) 27 DTR 185  
Moolchand Kumawat & Sons vs DCIT (Ajmer) 42 TW 241

### 3.2.5. REVENUE IS NOT ALLOWED TO ‘PICK & CHOOSE’ :

During the course of the assessment proceedings, the Id AO recorded the statement of the assessee on 17.12.12 wherein the assessee stated that he did not have any financial transaction with Shri Chandra Prakash Dudi. The AO asked to the assessee to put his two style of signature. On that basis, the AO concluded that signature of the assessee are tallied with the signature on the ‘manuscript/paper’. If we compare these signatures with naked eyes, those are entirely different and not tallied with each other. Even though, the AO concluded otherwise. Nevertheless, the AO is not any “Handwriting Expert” to reach to such bizarre conclusion. However, for the signature part, he believed this part of the statement but at the same time ignored the other part of the same statement where the assessee denied of having any financial dealings with Shri Chandra Prakash Dudi. Thus, the AO is guilty of ‘pick and choose’ from the same piece of the evidence which is against the settled principle of the law. To support this contention, we would like to rely on the following judicial pronouncements:

1. The revenue should not be allowed to “pick and choose” only favourable part of an integrated piece of evidence :  
Manoj Kumr Gupta vs DCIT (2006) 100 TTJ (mum) 588  
Bansal Strips (p) Ltd vs ACIT (2006) 100 TTJ (Del)665
2. Held that the seized document has to be read in its entirety and the parties are not allowed to read only that part which is suitable to it.  
Hissaria Brothers V/s ACIT (Jpr.) 22 TW 684
3. In no case AO can be allowed to consider a part of a particular document as true being favourable revenue and other part of the very document as false since that is favourable to assessee - Duality of the approach of AO is not fair -  
Lal Chand Agarwal V/s ACIT 21 Tax World 213
4. Whether additions can be made on the basis of working papers - Held No. if the paper do not indicate materialization of any financial transaction, they have to be read as it is.  
Ashwani Kumar Bhardwaj V/s DCIT 21 Tax World 358

5. Interpretation of documents - Documents must be read as a whole. It is a well settled canon of interpretation that a document has to be read as a whole" it is not permissible to accept a part and ignore the rest of the document.  
Glass Lines Equipments Co. Ltd. V/s CIT 253 ITR 454 (Guj.)
6. Addition cannot be made on the basis of the papers, ownership of which is doubtful, since the burden to prove the ownership of such paper is on the department when it desires to make any addition on the basis of it. Further in such cases of doubtfulness, benefit of doubt should go in favour of assessee.  
Ashwani kumar Bhardwaj V/s DCIT (Jpr.) 21 TW 358
7. In the case of Pullangode Rubber Products Co. Ltd. V/s State of Kerala &Anr. 1972 CTR (SC) 253 (1973) 91 ITR 18 (SC), the Hon'ble Supreme Court has held that an admission in a statement recorded on oath is an extremely important piece of evidence but it cannot be said that it is conclusive and it is always open to the person who made the admission to show that it is incorrect. Pullangode Rubber Products Co . Ltd. V/s State of Kerala : 91 ITR 18 (SC)
8. Whether a confession/ admission create any estoppel and can be made the foundation of assessment – Held no  
ACIT Vs. Jagdish Narain Ratan Kumar : 22 TW 573 (JP)  
Sohan Lal Jain V/s ACIT : 22 TW 529 (JP)

In view of the above judicial decisions vis-à-vis the facts of the case, it is very much clear that AO followed an erroneous approach by “picking” the convenient part of the statement and “ignoring” the other part not favourable to the revenue which illegal, unfair and unjustified in the eyes of the law. Hence, any addition based on such approach deserves to be deleted outrightly.

### 3.2.6. UNDUE RELIANCE TO THIRD PARTY ASSERTION/STATEMENT:

The entire addition u/s 69B is based on the piece of paper furnished by the third party Shri Chandra Prakash Dudi and wrong belief of the ld AO that the said paper has signature of the assessee as mark of his acceptance of final settlement of the loan/advance given by the assessee. At the outset, it is to clarify that presumption is patently wrong and based on erroneous belief of the ld AO. In fact, the assessee had categorically denied about any such financial transaction with Shri Dudi. But the AO neither given the opportunity to the assessee to cross-examine Shri Dudi nor produced any independent evidence to establish that such transaction had actually happened. As discussed earlier, even the ld AO not supplied the copy of the statement of the assessee or the copy of the manuscript nor issued any Show-Cause Notice before making addition on this count.

It is not clear whether the other party namely Shri Dudi has actually shown these transactions in his books of accounts. This is so because, the ld AO has neither given opportunity to the assessee to verify the Books of Accounts of Shri Dudi nor supplied the certified copy of the same. The AO has only relied upon the “loose papers” where such transactions were deemed to be found recorded by the ld AO as pertaining to the assessee. For a moment, without admitting, it is presumed that such entries are reflected in the books of the accounts of Shri Dudi , then also those cannot

be taken as admissible evidence being “unilateral entries” without corroborating by any independent evidence.

Hon’ble Supreme Court in the case of CBI Vs. V.C. Shukla & Others has quoted certain judgements of the high courts which have bearing on the issue as under:

In Yesuvadiyan Vs. Subba Naicker, AIR 1919 Madras 132 one of the Ld. Judges constituting the Bench had this to say:

“S. 34, Evidence Act, lays down that the entries in books of account, regularly kept in the course of business are relevant, but such a statement will not alone be sufficient to charge any person with liability. That merely means that the plaintiff cannot obtain a decree by merely proving the existence of certain entries in his books of account even though those books are shown to be kept in the regular course of business. He will have to show further by some independent evidence that the entries represent real and honest transactions and that the moneys were paid in accordance with those entries. The legislature however does not require any particular form or kind of evidence in addition to entries in books of account, and I take it that any relevant facts which can be treated as evidence within the meaning of the Evidence Act would be sufficient corroboration of the evidence furnished by entries in books of account if true.”

While concurring with the above observations the other Ld. Judge stated as under:

“If no other evidence besides the accounts were given, however strongly those accounts may be supported by the probabilities, and however strong may be the evidence as to the honesty of those who kept them, such consideration could not alone with reference to S. 34, Evidence Act, be the basis of the decree.”

37. In Beni Vs. Bisan Dayal, AIR 1925 Nagpur 445 it was observed that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In Hira Lal Vs. Ram Rakha, AIR 1953 Pepsu 113 the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved said that the rule as laid down in section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the Court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts.

38. The evidentiary value of entries relevant under section 34 was also considered in Hiralal Mahabir Prasad, (ILT 1967 1 Punj. 435) I.D. Dua, J. (as he then was) speaking for the Court observed that such entries though relevant were only corroborative evidence and it is to be shown further by some independent

evidence that the entries represent honest and real transactions and that monies were paid in accordance with those entries."

#### JAIN DIARY CASE

In case of Jai Kumar Jain Vs. Asstt. Commissioner of Income Tax (2007) 11 SOT (Jaipur) (URO).

"Addition in the instant case was made on the basis of the papers found from 'A' (Third Party). In search these papers were not confronted to the assessee. From the assessment order it was not borne out whether 'A'(Third Party) had stated these papers as pertaining to the assessee. No presumption could be drawn against the assessee u/s 132(4A) in respect of paper not recovered from him. No addition can be made on the basis of documents found from third party in the absence of corroborative evidence. Therefore, the Assessing Office as 8 ITA Nos. 5340, 5341 & 5342/D/2012 Asstt.Years: 2004-05, 2007-08, 2008-09 as well as the commissioner of Income Tax (A) erred in making the addition on the basis of said papers in the hands of assessee. Hence, the entire addition made on the basis of papers found from A' (Third party) was to be deleted".

- GROUND-4 :-

The A.o has erred in law and on facts in making Additions made to the tune of Rs. 3,08,080 as Notional Interest income without properly appreciating the facts and law.

#### SUBMISSIONS:-

##### 4.1 ONLY REAL INCOME CAN BE TAXED:

The concept of real income is a well-accepted one in the taxation jurisprudence. It is the income which has actually accrued or arisen to the assessee that is taxable, and whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation. The AO can only tax the 'real income' not the 'notional income'. The ld AO could not bring any evidence to prove that the assessee had actually earned the income which is found mention on the 'manuscript/page'. The working on the said page does not indicate that the assessee had actually received the said money with interest. This is more important when the said page was not even found from the possession of the assessee. Merely based on such 'notings' the department is not empowered to treat the same as 'income' of the assessee. The AO also failed to enunciate as to how such amount brought to tax was actually utilized/invested. In absence of such corroborative evidences, the income does not partake the character of 'real income'.

It may further be clarified that in the cases where book-keeping entries are made but in fact if the income does not result at all, there cannot be a tax liability. In the present case, even the assessee did not maintain any books of accounts, and hence, no question of making entries in the books of accounts.

- In the case of CIT vs ShoorjiVallabhdas& Co. (1962) 46 ITR 144 (SC) it was held that where, the income can be said to have not resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might in certain circumstances have been made in the books of accounts.

- Likewise in the case of CIT vs Modi Rubber Ltd (1998) 230 ITR 817 (Del) it was held that mere unilateral act of the assessee debiting the books of account with the amount of interest, the liability for payment whereof was not accepted or agreed to by the debtor, would not amount to accrual of income to the assessee.
  - The Assessee has not given any such cash Amount of Rs. 1,30,50,000 to CP Dudi, so the question of levy of interest on such amount is not justified and the additions are requested to be deleted.
  - Since the Additions of Rs. 1,30,50,000 made by the A.o. u/s 69B of Income Tax Act, is itself not justified as it not backed by law resulting the additions unjustified; so the notionally calculated interest is also not tenable in the eyes of law and required to be deleted for which it is being prayed before your Goodself.
  - Thus, the facts of the case of the assessee are stronger to support the contention that there was no 'real income' in the hands of the assessee and what was taxed by the Id AO could at best be considered as "notional income".
9. The Id. AR of the assessee also relied upon the report of the handwriting expert and the said report reads as under:

**To WHOM IT MAY CONCERN**

I have examined the following:-

1. The disputed Signature of Ram Dhan Yadav on Photostat copy of note book Dated 30-6-2007 Annexed at page No. 8 of Income tax assessment order Dated 6-3-2013 marked as Q by me on it.
2. The Specimen Signatures of Ram Dhan Yadav on Photostat copies of Kisan card and Statement Dated 17-12-2012 marked as S-1 and S-2 respectively by me on it.

I have been required to examine and report that whether the disputed Signature marked as Q has been written by the same person Ram Dhan Yadav who has written the specimen signatures marked as S-1 and S-2, or not.

I have very carefully examined and compared both the set of Signatures with the help of latest instruments in my laboratory.

Prima facie, It is my opinion, on the basis of material supplied to me that the Disputed signature marked as Q has not been written by The same person Ram Dhan Yadav who has written the Specimen signatures marked as S-land S-2."

10. The Id. AR of the assessee also relied upon the paper cutting for the contention so raised before us. The extract of the same is as under:-

**राजस्थान पत्रिका**

जयपुर, बुधवार, 4 फरवरी 2009

पोस्टल रजि. नं. आरजे/जेपीसी/डी-01/2009-11

**रुग्णों के कर्ज माफ हो**

देना बैंक के मैनेजर नवलसिंह मीणा ने धोखाधड़ी का मामला दर्ज कराया है। उन्होंने रिपोर्ट में बताया कि अकबर रोड स्थित सुंदर नगर निवासी मार्वल व्यवसायी व प्रॉपर्टी डीलर चन्द्रप्रकाश डूडी ने वर्ष 06 में निर्माण नगर, महात्मा गांधी नगर व राधा स्वामी नगर (सिरसी रोड) स्थित तीन भूखण्डों के फर्नीचरिंग प्रेश कर देना बैंक से 96 लाख रुपये का ऋण ले लिया। अभियुक्त ने इन्हीं भूखण्डों के कागजों से जीहरी बाजार स्थित बैंक ऑफ इण्डिया से 85 लाख रुपये का और चित्रकूट स्थित एसबीबीए व एलआईसी हावसिंग फाइनेंस कम्पनी से भी लाखों रुपये का ऋण ले लिया।



**कागजों की तस्दीक में हुआ खुलासा**

(पि)

**3 भूखण्ड, 4 कर्ज**

**कामगार**

**करोड़ों रुपए उठा गायब**

**मेट्रो सेवादाता**

जयपुर, 3 फरवरी। माणक चौक थाने में सोमवार रात एक जुने के खिलाफ धोखाधड़ी कर कई बैंकों से करोड़ों रुपए का ऋण लेने का मामला दर्ज कराया गया है। अभियुक्त ने तीन भूखण्डों के फर्नीचरिंग प्रेश अलग-अलग बैंकों से ऋण उठा लिया था।

पुलिस ने बताया कि हट्टियों का रस्ता स्थित

देना बैंक के मैनेजर नवलसिंह मीणा ने धोखाधड़ी का मामला दर्ज कराया है। उन्होंने रिपोर्ट में बताया कि अकबर रोड स्थित सुंदर नगर निवासी मार्वल व्यवसायी व प्रॉपर्टी डीलर चन्द्रप्रकाश डूडी ने वर्ष 06 में निर्माण नगर, महात्मा गांधी नगर व राधा स्वामी नगर (सिरसी रोड) स्थित तीन भूखण्डों के फर्नीचरिंग प्रेश कर देना बैंक से 96 लाख रुपये का ऋण ले लिया। अभियुक्त ने इन्हीं भूखण्डों के कागजों से जीहरी बाजार स्थित बैंक ऑफ इण्डिया से 85 लाख रुपये का और चित्रकूट स्थित एसबीबीए व एलआईसी हावसिंग फाइनेंस कम्पनी से भी लाखों रुपये का ऋण ले लिया।

**यु पता चला**

अभियुक्त बैंकों से ऋण लेने के कुछ दिन बाद ही घर से गायब हो गया। देना बैंक इलाहाबाद अभियुक्त को ऋण की किस्त जमा करने के लिए नोटिस भेजता रहा, लेकिन कोई जवाब नहीं मिला। कुर्की के लिए देना बैंक ने भूखण्डों के कागजात की तस्दीक कराई तो पता चला कि अभियुक्त ने इन भूखण्डों के फर्नीचरिंग प्रेश के अलग-अलग बैंकों से भी ऋण ले रखा है।

**जयपुर**

**मा-बेटे छह बैंक कंपनियों से  
घर पर करोड़ों कर्ज लाने पर फरार**

जयपुर, 4 फरवरी। माणक चौक थाने में सोमवार रात एक जुने के खिलाफ धोखाधड़ी कर कई बैंकों से करोड़ों रुपए का ऋण लेने का मामला दर्ज कराया गया है। अभियुक्त ने तीन भूखण्डों के फर्नीचरिंग प्रेश अलग-अलग बैंकों से ऋण उठा लिया था। पुलिस ने बताया कि हट्टियों का रस्ता स्थित देना बैंक के मैनेजर नवलसिंह मीणा ने धोखाधड़ी का मामला दर्ज कराया है। उन्होंने रिपोर्ट में बताया कि अकबर रोड स्थित सुंदर नगर निवासी मार्वल व्यवसायी व प्रॉपर्टी डीलर चन्द्रप्रकाश डूडी ने वर्ष 06 में निर्माण नगर, महात्मा गांधी नगर व राधा स्वामी नगर (सिरसी रोड) स्थित तीन भूखण्डों के फर्नीचरिंग प्रेश कर देना बैंक से 96 लाख रुपये का ऋण ले लिया। अभियुक्त ने इन्हीं भूखण्डों के कागजों से जीहरी बाजार स्थित बैंक ऑफ इण्डिया से 85 लाख रुपये का और चित्रकूट स्थित एसबीबीए व एलआईसी हावसिंग फाइनेंस कम्पनी से भी लाखों रुपये का ऋण ले लिया।

11. Per contra, the ld. DR supported the orders of the lower authorities. He has vehemently argued that since the ld. AO was in possession of the information the assessment has rightly been reopened and that information is sufficient reason for the ld AO to invoke the provision of section 148 of the Act. As regards the pages upon which the addition is made the ld. AO has categorically stated that the signature made in the page found is matches with that of the assessee's signature. The signature were taken in the presence of the assessee in a statement recorded during the assessment proceedings. The report of the handwriting expert is not technically qualified and is Bcom., LL.B.onlyand the same is not required to be admitted at this stage. As regards the contention of the ld. AR of the assessee for cross examination the ld. DR relied upon the judgment of the Calcutta High in the case of Swati Bajaj. The judgment of the civil court cannot help the assessee as on factual aspect the signature is clearly matching and the transaction thus done is of the assessee and is required to be sustained as regards the other additions made in the assessment order he has relied upon the order of the lower authority. The ld. DR also filed the copy of the report of the ld. AO dated 04.12.2023 and the same reads as under:-

“Sub In the appeal matter pending before the ilon'ble ITAT Jaipur in the case of Sh. Ram Dhan Yadav 3/6 Sh. Narayan Lal Yadav, (PAN - AIBPY7417) APFA) NO. TA 366/JPR/2023, AY. 2007-08 and ITA 369/JPR/2023, A.Y 2008-09 comments/remand report- reg.

Kindly refer to your email dated 01.11 2023 with respect to the subject mentioned above.

In this connection, it is submitted that in the instance case, the assessment order was passed on 06.03.2013 relying upon the facts and evidences available on the record. Further, assessee filed an appeal before the CIT(A), Jaipur vide Appeal no. CITA/Jaipur-3/10810/2019-20 (manual appeal register No 407/13-14) on various grounds which were dismissed by CIT(A) vide its order u/s 250, order no. ITBA/NFAC/S/250/2022-23/1050692787(1) dated 13.03.2023. Aggrieved with the appeal order the assessee filed further appeal before the Hon'ble ITAT Jaipur vide Appeal No. IIA 366/JPR/2023, A.Y. 2007-08 and ITA 369/JPR/2023, A.Y. 2008-09.

In this context, remand report was called for repudiating the report of Sh. Anil Kumar Khutetiya, signature and hand writing expert, that the signature on manuscript relied upon by the AD in the assessment order does not belong to the assessee Sh. Ram Dhan Yadav. Point wise report on the above mentioned issue is as under:-

The Ld. AO obtained the sample of signatures of the assessee while recording his statements and compared with the signatures already affixed on the papers/documents. The signatures tallied with the manuscripted papers and it is concluded that the signatures are same as put on the manuscripted paper/document which was provided by the complainant.

During the recording of statement of the assessee, he has replied in question No. 8 that he makes two type of signature. When the assessee himself claimed in his statement that he makes two type of signature, then there is not difficulty in making three or more type of signature. Shri Anil Kumar Khutetia, signature and hand writing expert has given his report on the basis of the specimen signature taken by the AO during recording of the statement of the Assessee.

Further, Shri Anil Kumar Khutetia should have compared the two signatures of the assessee which were previously taken/given by him, i.e., one is on the document furnished by Shri Chandra Prakash Dudi and other specimen signature and signatures on the statement recorded on the same day are not same.

In addition to this, it is noteworthy to mention that there is serious concern about the authorization and competency of Shri Anil Kumar Khutetia as a signature and hand writing expert. On verification of report of Shri Anil Kumar Khutetia from his letter head it emerges that he is B.Com, LL.B., which does not authorize him as a signature and hand writing expert. Also, no authorization certificate was provided by Shri Anil Kumar Khutetia which was issued from Indian Forensic Services. Further, Shri Anil Kumar Khutetia was also not registered with the Income Tax Department as a professional in the field of signature and hand writing expert. In view of the above points report of Shri Anil Kumar Khutetia is not permissible as per the Indian Evidence Act.

It is also important to note that, hand written loan documents provided by the complainant and copies of registered sale deeds were signed by the same witnesses,

which raises the suspicion that assessee Shri Ram Dhan Yadeav and complainant Shri Chandra Prakash Dudi were known to each other and were involved in financial transactions regularly. Also, if the documents were not signed by the assessee and forged, then what stopped the assessee from filing a FIR against the concerned person.

Submitted for kind information and necessary action.”

12. In the rejoinder the Id. AR of the assessee objected to the fact that the report of the handwriting expert is not admitted as he is assisting in various Banks and even to the department and thus his expertise cannot be doubted. As regards the civil court judgment the same has been given after hearing the contention based on the FIR filed by the Banks wherein Mr. C.P. Dudi held as guilty of forging documents and therefore, the same is required to be considered to give the substantial justice to the assessee.

13. We have heard both the parties and perused the materials available on record. The bench noted that the issue which the assessee has raised two issues before us out of the various addition made by the Id. AO in his assessment order. One issue is whether the based on the set of facts available on record the addition is required to be made in the hands of the assessee for an amount of Rs. 1,30,50,000/- and the other issue is related the interest alleged to have been accrued for an amount of Rs. 3,08,080/-. The facts as it is appearing from the record is that the ACIT(Hqrs) office of the Commissioner of Income Tax-I, Jaipur has forwarded the information vide letter dated 18.12.2009 that in the case of the Shri Chandra Prakash Dudi, for A. Y. 2007-08 the he accepted loans in cash from the assessee on different dates. In support the said Shri Chandra

Prakash Dudi has submitted copy of manuscripted document / paper on which the details of the loan & interest was accepted from the assessee. As the document provided by the said person the assessee has advanced a sum of Rs. 1,30,50,000/- [ Rs. 96,50,000 on 01.03.2007 , + 30,00,000/- on 26.03.2007 and + 4,00,000/- on 29.03.2007 ] to Shri Chandra Prakash Dudi. As these financial transaction were related to the year under consideration the assessment was re-opened by issue of notice u/s. 148 of the Act. The assessment was completed based on the detailed finding recorded in the assessment order and based on the statement recorded in the assessment proceeding the addition of Rs. 1,30,50,000/- being the alleged given by the assessee and interest thereon for an amount of Rs. 3,08,080/- was made in the assessment order. On this matter the relevant finding of the Id. CIT(A) is as under :

10.2 The appellant during the appellate proceedings has stated that:-

"In this matter we have submitted detailed submissions along with court cases, presently also submitting the summary of the submissions covering following area:-

1. Unjustified selection of case u/s 148 read with section 147.

1. Unjustified high-pitch additions on the basis of "manuscript / paper delivered by a person habitual to make such type forged signature documents of various government authorities, which is also established by court of law and such person has been sentenced imprisonment of more than 3 years for such act(extract of civil court judgement already provided).

2. Unjustified additions on account of entry found in "manuscript / paper owned by other person, addition on account of Dumb paper, taxing of notional income not real income etc, where the A.O also failed to justified the source of notional income in shape of Huge cash Loans on the fact the assessee has been filing ITRs for a long time.

3. Unjustified additions on account of acting A.o. as Forensic Science Lab Expert, Fingure Print Expert without having such qualification, knowledge and specialty and further on the facts after denying of the assessee that the signature on of "manuscript" / paper is not done by him (not of him) and further ignoring of the fact that on the statements recorded by the A.o. himself, the assessee challenged the A.o. that the signature of "manuscript" / paper is not of him and he can verify the same from FSL expert.

4. Unjustified high-pitch additions on the basis of putting high and undue reliance on story cooked Up By Shri Dudi Without Enquire About His Gilt Character, His Past Act Of Manipulating Signatures Of Government Authorities (a person habitual to make such type forged signature documents of various government authorities, which is also established by court of law and such person has been sentenced imprisonment of more than 3 years for such act(extract of civil court judgement already provided).

So, the Assessing officer erred in making addition and it is requested that the addition done of Rs. 1,30,50,000 U/s 69B needed to be quashed.

4 Regarding Addition of Rs. 3,08,080 Interest on such Notional additions of Rs. 1,30,50,000"

10.3 In view of the above discussion, I have come to the conclusion that the appellant is only challenging the analysis and investigation of the AO and the Department on technicalities since he has no other way out left to him. Once the signatures on the papers/incriminating documents have matched with those of the appellant and his has not been able to rebut the same; the addition made by the AO must be upheld and accordingly the grounds in this respect are dismissed.”

As it evidently clear that the ld. CIT(A) has given his finding merely on the fact that the signature of the assessee is matching with that of the loose paper relied and submitted by Shri Chandra Prakash Dudi that has been submitted by him and the assessment was reopened based on that statement. The ld. CIT(A) has not taken into consideration of the fact that has been appearing in the remand report of the ld. AO when the proceeding where pending before the ld. CIT(A).

The report of the ld. AO in the remand proceeding is reiterated herein below:-

“The Commissioner of Income-tax (appeals-3),  
Jaipur.

(Through Proper Channel)

Sir,

Sub: Appeal No. 244/JPR/12-13 for A.Y. 2007-08 in the case of Sh. Ram Dhan Yadav S/o Sh. Narayan Lal Yadav, Near Govt. Hospital, Samod. Tehsil - Chomu Jaipur (PAN - ABBPY7417M)- comments/remand report-regarding

Kindly refer to your office letter No. 7260 dated 2002 2020 on the subject mentioned above

In this connection, it is submitted that in the instance case, the assessment order was passed on 06.03.2013 relying upon the facts and evidences available on the record. Aggrieved with the assesment order the assessee filed an appeal before your goodself.

In this context, remand report has been called for regarding key issues mentioned in the aforementioned letter. Point wise report is as under:

Point No. 1: The assessee claimed that cross examination of the complainant has not been allowed. In this regard letter dated 29.02.2020 was issued to Sh. Chandra Prakash Dudi (Complainant) and duly served upon him on the 29.03.2020 providing him a final opportunity to produce evidences alongwith witness (it am) in support of his complaint on 05.03.2020 at 11.00 AM and to attend for cross examination of his complaint against Sh. Ram Dhan Yadav. But Sh. Chandra Prakash Dudi has neither attended this office on 05.03.2020 nor he has filed any written submission or produced any witness in supporting to his complaint against Sh. Ram Dhan Yadav.

Subsequently, a letter to Sh. Ram Dhan Yadav dated 02.03.2020 also issued and duly served upon him on 02.03.2020 requesting him to attend thus office on 05.03.2020 at 11.00 AM for cross examination of complaint filed by Sh. Chandra Prakash Dudi and to produce evidences in support of his additional evidences filed by him before your goodself. Sh. Ram Dhan Yadav attended this office on 05.03.2020.

As Shri Chandra Prakash Dudi has not attended this office on the date fixed for cross examination, it is presumed that he has nothing to say in the matter about the complaint made by him

2. Point No. 2: Sh. Ram Dhan Yadav was asked to produce evidences regarding authenticity of Handwriting Expert. In written submission he filed copy of letters issued to Sh. Anil Kumar Khutetia, Signature and Handwriting Expert by Incomet-tax Authorities, copy of letters issued by Chief Manager (HR). (Centre Co- ordinator- Jaipur Centre) State Bank Of India and Authorised Signatory, AU Financiers (India) Pvt. Ltd. (Copies of letters enclosed)

In view of the above, as the services of Sh. Anil Kumar Khutetia, Signature and Handwriting Expert has been taken by authorities as above.

Submitted for kind information and necessary action.”

Thus, it is not under dispute that the assessee sought a cross examination of Shri Chandra Prash Dudi which has not been provided and the same is apparently clear from the above remand report of the AO. Even in the factual report of the Id. AO relied upon by the Id. DR before us did not speak any single sentence about the cross examination sought by the assessee. The Id. AO in the factual report merely stated that the statement of the assessee was recorded, and the signature made in the loose paper relied upon by the revenue

matches. Thus, the third-party statement is used against the assessee who have never been allowed by confronted by the assessee about the correctness of the statement made by Shri Chandra Prakash Dudi. The assessee has filed a compliant against the statement made by Shri Chandra Prakash Dudi. The assessee has submitted before the Id. AO that Shri Chandra Prakash Dudi has submitted self made forged document and relied upon against the assessee. The assessee also brought to the notice of the Id. AO that the Mr. C.P. Duldi was held guilty u/s. 420 of the CrPC and the charges against him is proved and based on that he is in prison. The assessee has given the copy of the civil court judgment in the matter. The bench has noted that the addition has been made simply based on the loose paper. The paper is merely a photocopy. The assessee called for the original copy of the paper which has never been provided. The assessee has also asked for the cross examination of Shri Chandra Prakash Dudi based upon which the addition has been made before the Id. AO and the Id. CIT(A). This fact is clearly evident from the remand report submitted by the assessee and as reiterated herein above. We find force in the argument of the Id.AR of the assessee that the document relied upon by the revenue is forged and dump document. Mr Dudi for the act of manipulating & forging of documents, sent to prison by the civil court. The revenue has never brought on record the correct facts by providing the original copy of the document relied upon and cross examination was not given. As regards the signature of the assessee appearing in that page with that of the statement recorded by the

Id.AO the Id. AR of the assessee submitted a report of Mr. Anil K. Khunteia who is signature expert and his services were used by Income Tax Department. The said experts has clearly given his report and submitted that disputed signature has not been written by the same person i.e. Ram Dhan Yadav. In light of these facts now the limited question rest before us that whether based on the fact that merely based on the third party evidence for which the assessee neither shown the original copy nor the cross examination of the person based on whose averment the addition is made is sustainable or not. In this regards we take support of the decision of the apex court in the case of Andaman Timber Industries vs. CCE and the various decision of the High Court and the decision of this co-ordinate bench in the case of Kota Dal Mill in ITA Nos. 997 to 1002 & 1119/JP/2018 and ITA Nos. 1057 to 1062 & 1210/JP/2018 relied upon by the Id. AR of the assessee. The relevant para relied upon by the Id. AR of the assessee is reproduce herein below:-

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 Id.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 Id. 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 Id.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 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 up before this court in CCE v. Andaman Timber Industries Ltd., order dated 17.3.2005 wavs 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 Id. 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 *KishanchandChellaram* (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 Id. 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 impugned 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 assessee." 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 Id 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 Id. 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.”

On being consistent with the finding so recorded here in above judicial pronouncements and the non disputed fact that the assessee was never allowed to cross examination of Shri Dudi whose statement was relied upon by the revenue we are of the considered view that the addition made by the lower authority is against the principles of nature justice and is required to be quashed. Based on these findings the ground no. 3 & 4 raised by the assessee is allowed. Ground no. 1, 2 & 5 being either general or technical raised by the assessee, as we have allowed the appeal of the assessee based on the merits of the case the other grounds become infructuous and are not required to be adjudicated.

In terms of these observations the appeal of the assessee in ITA no. 366/JPR/2023 stands allowed.

The fact of the case in ITA No. 369/JPR/2023 is similar to the case in ITA No. 366/JPR/2023 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 366/JPR/2023 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 366/JPR/2023 for the Assessment Year 2007-08 shall apply mutatis mutandis in the case of Ram Dhan Yadav in ITA Nos. 369/JPR/ 2023 for the Assessment Year 2008-09.

In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 20/02/2024.

Sd/-

(राठौड़ कमलेशजयन्तभाई )

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/02/2024

\*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Ram Dhan Yadav, Jaipur.
2. प्रत्यर्था / The Respondent- ITO, Ward-7(3), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 366 & 369/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar