

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।  
IN THE INCOMETAX APPELLATE TRIBUNAL,  
RAJKOT BENCH: RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
And  
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos. 429, 430/RJT/2017 & 358/Rjt/2018  
(निर्धारण वर्ष/Assessment Year: (2009-10 to 2011-12))

Prashant Ramjibhai Kandoliya, Sanjay and Company, Premjis, Rajput Para Main Road, Rajkot	Vs.	Income Tax Officer, Ward-2(1)(4), Rajkot
स्थायी लेखा सं./जीआइआरसं./PAN/GIR No.: AUHPK6407E		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

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आयकर अपील सं./ITA Nos. 16 to 25/RJT/2023  
(निर्धारण वर्ष/Assessment Year: (2006-07 to 2015-16))

Chetankumar Haribhai Bhalodiya, Prop. of Yash Enterprise, 202, Darshan Complex, Opp. Bombay Garage, Gondal Road, Rajkot	Vs.	The ACIT, Central Circle-1 Rajkot
स्थायी लेखा सं./जीआइआरसं./PAN/GIR No.: ADYPB7423K		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Sunny Mehta, A.R.  
राजस्व की ओर से/Respondent by : Shri Sanjay Punglia, CIT-D.R.  
सुनवाई की तारीख/ Date of Hearing : 27/03/2025  
घोषणा की तारीख/Date of Pronouncement : 28/03/2025

**आदेश / ORDER**

**PER BENCH:**

Captioned 13 appeals filed by the different assesseees, pertaining to different assessment years, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), which in turn

arise out of the separate assessment orders passed by the assessing officer u/s. 143(3)/147/144/263 of the Income Tax Act, 1961.

2. Since the issues involved in all these 13 appeals are common and identical, therefore, we have clubbed these appeals and heard together and a consolidation order is being made for the sake of convenience and brevity.

3. First, we shall take lead case in assessee's appeal relating to Shri Prashant Ramjibhai Kandoliya, in ITA No. 430/Rjt/2017 for A.Y. 2010-11. The grounds of appeal raised by the assessee in ITA No. 430/Rjt/2017 for A.Y. 2010-11 are as follows:

*"1. The Ld. Commissioner of Income Tax (A)-2, Rajkot erred in law as well as on facts in not appreciating the submission of the assessee and consequently in dismissing the appeal filed against the order under section 143(3) r.w.s. 147 passed by the Income Tax Officer, Ward 2(1)(4), Rajkot.*

*2. The Ld. Commissioner of Income Tax (A)-2, Rajkot erred in law as well as on facts by upholding addition of Rs. 1,53,40,29,505/- being cash / cheque deposited into bank account of assessee for which addition was made by The Assessing Officer. The same is confirmed by the Ld. Commissioner of Income Tax (A)-2, Rajkot despite specific findings of the Assessing Officer that assessee was engaged in Shroff/cheque discounting business and name, address and PAN of beneficiaries are available with the Assessing Officer.*

*3. The Ld. Commissioner of Income Tax (A)-2, Rajkot erred in law as well as on fact by upholding addition of Rs. 1,53,40,295/- being commission income on cash / cheques deposited in bank account of assessee from Shroff / cheque discounting business of the assessee.*

*4. The Ld. Commissioner of Income Tax (A)-2, Rajkot erred in law as well as on fact by upholding addition of Rs. 1,53,40,295/- being commission income on cash/cheque deposited in bank account of assessee from Shroff/cheques discounting business of the assessee @ 1%, which in fact was charged @ 0.5% and without eliminating Interbank transactions.*

*5. The Ld Commissioner of Income Tax (A)-2, Rajkot erred in not taking into consideration specific grounds of appeal taken before him i.e. Assessment proceedings completed without servicing notice regarding reason for reopening to the assessee*

6. *The Ld. Commissioner of Income Tax (A)-2, Rajkot being against well settled law in this behalf, deserves to be set aside, because he also failed to consider on merits*

7. *Your assessee craves leave to add, alter or amend the grounds of appeal.”*

4. The brief facts qua the issue are that there was information in the possession of the Assessing Officer that during the relevant previous year, the assessee has deposited cash of Rs. 2,50,33,95,521/- in accounts of various banks. The source of the cash deposit remains unexplained and unverified. Further it is also gathered from the ITD Application that the assessee has not filed any return of Income. As such, with a view to verify the source of cash deposits made in bank accounts, the case of the assessee was re-opened resorting the provisions of Sec. 147 of the Act. Accordingly, after recording reason for re-open and obtaining of prior approval of concern authority, notice u/s 148 of the Act was issued to the assessee, on 28.03.2015 and the same was duly served upon the assessee. In response to notice issued u/s. 148 of the Act, the assessee has filed returns of income declaring salary income of Rs 1,34,150/- on 29.11.2016. Subsequently, in compliance to section 129 of the I.T. Act, a fresh notice u/s 142(1) of the I.T. Act was issued to the assessee on 23.09.2016, as there was change of incumbent in this office. The same was duly served upon the assessee. During the course of assessment proceedings, the following opportunities were granted to the assessee.

<i>Notice issued</i>	<i>Date of Issue</i>	<i>Date of Service</i>	<i>Hearing fixed on</i>	<i>Status</i>
<i>u/s. 148</i>	<i>28.03.2016</i>	<i>30.03.2016</i>	<i>Within 30 days.</i>	<i>Assessee was requested to file return within 30 days.</i>

<i>u/s. 142(l)r.w.sl29</i>	<i>23.09.2016</i>	<i>28.09.2016</i>	<i>13.10.2016</i>	<i>Assessee was requested to file return within 30 days.</i>
<i>u/s. 142(1)</i>	<i>20.10.2016</i>	<i>20.10.2016</i>	<i>28.10.2016</i>	<i>Assessee was requested to file return within 30 days.</i>
<i>u/s!43(3)</i>	<i>16.12.2016</i>	<i>20.12.2016</i>	<i>22.12.2016</i>	<i>Non attended</i>
		<i>29.11.2016</i>		<i>The assessee filed a ROI along with letter intimating return filed u/s 139(1) may be treated as in response to notice u/s 148 of the IT. Act. on dtd. 29.11.2016</i>
<i>Show Cause notice issued</i>	<i>21.11.2016</i>	<i>25.11.2016</i>	<i>30.11.2016</i>	<i>Adjournment letter filed by the assessee on 30.11.2016</i>
<i>Further opportunity to show cause</i>	<i>20.12.2016</i>	<i>20.12.2016</i>	<i>23.12.2016</i>	<i>Assessee only filed reply dated 23.12.2016</i>

5. In response to the statutory notices issued, the assessee, attended the proceedings from time to time and furnished reply of the notices. In order to verify the genuineness of the banking transactions, a summon u/s 131(1A) was issued to the assessee on 23rd June 2015 and statement of the assessee was recorded under oath on 29th June 2015. In the course of recording of statement, the assessee has accepted the ownership of following proprietorship concerns, and has claimed to be engaged in the business of discounting:

(1). M/s N.P. Enterprise- This firm was into the business of cheque and cash discounting from FY 2004-05 to FY 2010-11. Currently this firm is closed.

(2). M/s Krishna Enterprise- This firm was into the business of cheque and cash discounting from FY 2006-07 to FY 2009-10. Currently this firm is closed.

(3). M/s Mahi Selection-This firm started in FY 2014-15 is into the business of trading of ladies wears and cosmetics and is still running.

In the statement recorded on 29-06-2015, the assessee has stated that assessee maintained following bank accounts either in his name or in the name of his firms-

SR No	Account No	Name of account Holder	Bank	Branch
1.	015305500177	Krishna Enterprise	ICICI	Jaihind Press Annexe, Dharam Cinema, Rajkot
2.	015305009087	Krishna Enterprise	ICICI	Jaihind Press Annexe, Dharam Cinema, Rajkot
3.	2426	N.P.Enterprise	Rajkot Peoples Co-operative Bank	LodhawadChowk, Rajkot
4.	015301523484	PrashantRamjibhaiKandoliya	ICICI	Jaihind Press Annexe, Dharam Cinema, Rajkot

Earlier, statement on oath was recorded on 31-12-2012, the assessee has stated that he owns following accounts in his name-

SR No	Account No	Name of account Holder	Bank	Branch
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1.	30587376890	PrashantRamjibhaiKandoliya	SBI	Gaikwadi, Laxmiwadi, Rajkot
2.	9569	PrashantRamjibhaiKandoliya (Joint account with wife)	Rajkot Peoples Co-operative Bank	Junction Plot, Gayakwadi, Rajkot

6. During the relevant previous year, the assessee has made aggregate cash deposits worth Rs. 1,53,40,29,505/- in above bank accounts and also in statement recorded under oath, assessee has accepted these bank accounts. Therefore, a show-cause notice was issued on 21.11.2016 and served to the assessee, and the assessee was asked to explain the source of cash, and why inability to explain the source with supporting documentary evidence, should not be treated as unexplained cash within the meaning of section 69A of the I.T. Act.

7. The assessee has filed his reply on 05.12.2016 in response to the above show-cause notice, which is reproduced by the assessing officer in the assessment order.

8. The assessing officer dealt with the reply of the assessee and held as follows:

(i) The assessee's reply was duly considered and the same is not acceptable. It is the contention of the assessee that, he is engaged in cheque discounting business and earns commission income. **But, this reply lacks credence because, even in the regular books of accounts and Income tax return, no commission income has been offered.** So, this reply is an afterthought.

(ii). Secondly, the assessee has relied upon the adverse inference drawn by this office in the show cause notice that the assessee is allowing those

people who resort to under invoicing and thereby suppress their profit. In the reply, the assessee contends that the department is fully aware of the modus operandi and hence, the argument of commission income should be accepted. However, this contention is not acceptable. As per section 69A, when any person is found to be the owner of any money, bullion, jewellery or valuable article and where such money is not recorded in the books of account, and the assessee offers no explanation about the nature and source of acquisition of the money, or the explanation offered by him is not, the opinion of the AO, satisfactory, the money and the value of the bullion or other valuable article may be deemed to be the income of the assessee.

**(iii) Here, the assessee is not offering any explanation of the cash, except by stating that this belonged to various persons to whom he had issued cheques in lieu of cash and earned commission.**

(iv). The next contention of the assessee is that, in the show cause, the department on one hand says that the entire cash is unexplained, whereas, on the other hand, also proposes to add commission income and hence, there is contradiction. It is true that there is contradiction. But this stand of the department is justified on following grounds:

(a). That the entire cash has been deposited into the account of the assessee or his proprietary concern. **The assessee produced no proof like persons of whom the cash belonged, persons who are beneficiaries, contra copies of accounts, confirmations, etc.**

(b). The alleged owners of the cash would also be having bank accounts. They could have put the same in their accounts as well. They did not do so but used the assessee as a conduit. It means that, that the source of cash

and the entire transactions revolving around this cash is bound to be unaccounted.

(C) As per section 69A, the onus is upon the assessee to prove the source of cash.

(d) Such presumption is also made in section 292C, though however, it is for search cases. But the preamble is that the onus is upon the assessee to prove and explain the source of cash.

(e) In the absence of any such details, the cash is rightly presumed as belonging to the assessee.

(f). Now coming to the contradiction as to why both cash and commission is being added? **It needs to be seen that the assessee himself has admitted to have earned commission income. This is not shown by him in his return. Hence, morally, the assessee ought to have admitted and offered the same. The assessee got three opportunities. One is while filing regular return u/s. 139(1), another is while filing return u/s. 148 and thirdly during the course of present assessment proceedings. In all the three proceedings, the assessee is silent and did not explain commission income with documentary proof.**

(g). Suppose, if during further appellate stages, the assessee produces such persons, confirmations, cash books or ledgers etc, of the owners of cash or beneficiaries of cash, then the assessee might get relief of cash deposited to that extent. Then in that case, at least commission income remains added to the total income.

(h) It is for this reason, that both the cash deposit and commission are added.

(i) It needs to be appreciated that, the present activities of the assessee is a real menace to a growing economy. The persons like assessee, aids people in hiding their financial transactions and thereby, avoid taxes like income tax, VAT, excise, etc. This also aids in circumventing various other transactions from tax nets. Therefore, such menace has to be dealt with seriously.

**9. In the reply dated 22.12.2016, the assessee contends that, this office has not done proper investigation.** However, this is only a lame excuse. The onus is upon the assessee to prove the source of cash and explain it with supporting documentary evidences. No such onus has been discharged. Now the assessee is blaming the department. What can the department do, when the assessee himself is not co-operating in the proceedings. Therefore, the contention that department has not done the investigation is not acceptable.

10. Since, there is hug cash deposits of Rs 1,53,40,29,505/- and the source of cash deposited is not explained and as the assessee failed to discharge the onus casted upon him, therefore, assessing officer held that the same belongs to the assessee. The same was therefore added to the total income of the assessee to the tune of Rs 1,53,40,29,505/-.

11. Without prejudice to the above, the assessing officer also observed that the assessee himself admits that he has earned commission. But this is nowhere reflected in the return. If the contention of the assessee is sacrosanct, the assessee should have offered it at least while filing return u/s. 147 of the I. T. Act. The commission income is added in the interest of revenue because, if in future, the assessee's any additional evidence is accepted before any judicial authorities or Courts, then at least the commission income should be taxed in the hands of the assessee. **The assessee himself has admitted before the Investigation Wing that he is**

**earning 1% commission on cheque issue in lieu of cash. Now without prejudice to the above finding that the cash belonged to the assessee, even if it is assumed that the entire cash deposit is for discounting purpose, the assessee has earned 1% on such alleged business.** The assessee's statement is dated 29.3.2015 (Q.No.4). The total cash deposit is Rs 1,53,40,29,505/- One percent commission of the same works out to Rs. 1,53,40,295/- The same is added to the total income of the assessee.

12. Aggrieved by the order, of the assessing officer, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the action of the assessing officer. The Id CIT(A) observed that where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is prima facie evidence against the assessee, viz., the receipt of money, and if he fails to rebut the same, the said evidence being un rebutted, can be used against him by holding that it is a receipt of an income nature. While considering the explanation of the assessee, the department cannot, however, act unreasonably. Therefore, after relying on judicial rulings the Id CIT(A) held that assessee has failed to explain the source of cash deposits in the bank accounts and therefore by virtue of provision of section 69A of the Act, impugned cash deposits held to be income of the assessee.

13. Aggrieved by the order of Id. CIT(A), the assessee is in appeal before us.

14. Learned Counsel for the assessee, argued that first of all, the reasons of reopening were not given the assessee, despite of repeated reminders,

during the assessment proceedings, and reasons recorded by the assessing officer are bad in law.

15. Learned Counsel for assessee, on merit, submitted that the real income is to be taxed. The assessee is dealing in cash, which belongs to other persons and assessee is not owner of the money. The assessee is getting commission which can be taxed in the hands of the assessee. During the assessment proceedings, the assessing officer did not provide sufficient time to submit the name and address of the beneficiaries. Therefore, assessee could not submit this information during the assessment proceedings. The ld. Counsel also argued that only profit element may be taxed in the hands of the assessee. The ld. Counsel also submitted, case law- compilation and relied on several judgements, which we have gone through.

16. On the other hand, ld. DR for the Revenue submitted that during the assessment proceedings, the assessee has not co-operated and did not submit the details of the beneficiaries. Had the assessee filed the details of the beneficiaries, the department would have initiated re-opening proceedings under section 147 of the Act, on these beneficiaries, hence there is a loss to the revenue because of the non-cooperative attitude of the assessee. Therefore, matter may be remitted back to the file of the assessing officer, with the direction to the assessee to file the name and address of the beneficiaries and produce the beneficiaries before the assessing officer. Besides the reasons recorded under section 147 of the Act, are in accordance with law and assessee has not demanded the copy of the reasons recorded, during the assessment proceedings.

17. On merit, ld. DR for the Revenue submitted there is a difference between element of profit and cash credit in assessee's hand. There is addition on account of cash credit, in the assessee's case under

consideration, therefore, profit should not be estimated and entire cash is to be added. There is no question of element of profit in these cases. The assessee has not explained nature of the transaction. The assessee has also not explained the source of cash deposited in the bank account and did not provide name and address of the beneficiaries. Therefore, addition made by the AO should be sustained.

18. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We find that reasons recorded by the assessing officer to reopen the assessment are as per the provisions of the Act. At this juncture, it is pertinent to mention para No.2 of the assessment order, which deals with re-opening of the assessee's case, which is reproduced below:

*“2. Accordingly, after recording reason for re-open and obtaining of prior approval of concern authority, notice u/s 148 of the Act was issued to the assessee, on 28.03.2015 and the same was duly served upon the assessee. In response to notice issued u/s. 148 of the Act, the assessee has filed returns of income declaring salary income of Rs 1,34,150/- on 29.11.2016.”*

We find that during the course of assessment proceedings, the assessee has not raised this issue and did not object the reopening of assessment. Thus, the reopening and jurisdiction of the AO to proceed with the re-assessment u/s. 147 of the Act is fully in compliance with the decision of Hon'ble Supreme Court as held in GKN Drivsshafts. In view of these facts, the ground of appeal challenging the reopening is not entertainable. The objection raised by the assessee regarding the assumption of jurisdiction by assessing officer by issuance of notice u/s 148 of the Act, is devoid of merits and facts. **The assessee never objected to the**

**issuance of the notice u/s 148 of the Act during the assessment proceedings.** Besides, the Hon`ble Gujarat High Court in some of the recent judgments has held reopening on the basis of the information of the Investigation Wing is valid. In the case of Peass Industrial Engineers Pvt. Ltd 73 taxmann.com 185(2016) (Gujarat) it was held whether at the instance of same material of another wing, whether reopening is permissible or not. While dealing with said issue this Court has examined the said aspect and has come to the conclusion that reopening is permissible. In the said group of appeals, the substantial question of law posed before the Court, whether the ITAT was justified in setting aside the reassessment orders on the ground that reopening of assessment under Section 147 of the Act was bad in law. In that particular group of matters, the reopening was initiated by the authority based upon the show cause notice along with accompanied, material forwarded by the Excise Department to the Income-Tax Department and on the basis of said material provided by the Excise Department, the Assessing Officer has reopened the assessment of the assessee by issuing notice under Section 148 of the Act. The assessee of that case in the similar manner in this case has contended that the information provided by a different Investigating Team may not be ipso facto utilized to reopen the assessment which has become final by the Income-tax authority. It was also contended by the assessee of that case that there was no independent application of mind on the part of Assessing Officer and just based upon said information provided by the Excise Department, the authority resorted to Section 148 of the Act to reopen the assessment. This issue in extenso dealt with by the Division Bench and by a detailed judgment, came to conclusion that the Assessing Officer has merely relied upon the show cause notice issued by the Excise Department and has not concluded finally and therefore, there is no illegality or irregularity in arriving at a belief that assessment

deserves to be reopened. Relying upon the decision delivered by the Apex Court in the case of Purushottam Das Bangur & Another, 224 ITR 362 (SC), it was held that action of reopening of assessment was found to be justified. Therefore, ground nos.1 and 5 raised by the assessee are dismissed.

19. Now coming to the merits of the case, we note that Id. DR for the revenue submitted that during the assessment proceedings, the assessee has not co-operated and did not submit the details of the beneficiaries. Had the assessee filed the details of the beneficiaries, the department would have initiated re-opening proceedings under section 147 of the Act, against these beneficiaries, hence there is a loss to the revenue because of the non-cooperative attitude of the assessee. Therefore, matter may be remitted back to the file of the assessing officer, with the direction to the assessee to file the name and address of the beneficiaries and produce the beneficiaries before the assessing officer. The Id. Counsel for the assessee also argued before us that during the assessment proceedings, the assessing officer did not provide sufficient time to submit the name and address of the beneficiaries. Considering these arguments, we are of the view that entire *lis* should be remitted back to the file of the assessing officer for fresh adjudication.

20. We find that during the appellate proceedings, Id. CIT(A) passed a speaking order, narrating the facts that Assessing Officer having come in possession of information that the assessee has deposited huge cash in bank account and yet assessee had not filed the return of income. The AO issued notice u/s 148 of the Act, after recording reasons and obtaining approval of the PCIT-2, Rajkot. In response, the assessee filed return declaring salary income of Rs 1,34,150/-. **No commission income has been shown.** During his statement recorded u/s 131(1A) assessee had

given details of his proprietary concerns and details of his bank accounts. In these bank accounts there was cash deposit of Rs 1,53,40,29,505/- during the relevant assessment year and the fact of deposits being there is not controverted. **When asked by Assessing Officer to explain the source of these deposits, the assessee vide his letter dated 30/11/2016 contended that it is not possible to file the submission/reply with full preparation as certain information and evidences /replies relating to the said submission are yet to be collected /prepared and/or under preparation and requested for further time.** Subsequently the assessee filed his explanation on 05/12/2016 wherein he contended that whatever amount was deposited in the bank account are of cheque discounting business/ shroff business conducted on commission basis and that the cash deposited is not relating to him therefore cannot be assessed as his income. The assessee also contended that in para 9 of the show-cause notice name, PAN, amount and jurisdiction of AO of the beneficiary were mentioned and therefore these deposits cannot be assessed his income. The AO in para 10 and 11 of the assessment order has rejected the contentions of the assessee holding that no commission income has been shown by assessee in the regular books of accounts as well as in the Income tax return and the assessee has offered no evidence in support of his contentions that the deposits belonged to other persons. Therefore, theory of commission income is an after- thought. The AO has also brought out that the assessee has drawn adverse inference from the show-cause notice wherein modus operandi of the shroff business was discussed in general terms. The onus to prove the source of deposits was entirely on assessee, which onus has not been discharged. The AO has also drawn strength from the provisions of section 292(C), which though relates to search cases, to emphasize that the impugned bank accounts belonging to assessee, the presumption is that impugned income belonged to assessee.

This presumption has not been rebutted with any contrary evidence. Having brought out above facts, the Assessing Officer has rejected contentions of the assessee and held the cash deposits of Rs 1,53,40,29,505/- unaccounted income of the assessee. During appellate proceeding the assessee has merely reiterated his contentions made during assessment proceeding which have already been discussed above. Having considered facts and circumstances of the case and rival contentions, the ld.CIT(A) noticed that it uncontroverted that there are cash deposits of Rs. 1,53,40,29,505/- in the bank account of the assessee. Despite sufficient opportunity, neither at the assessment stage nor at the appellate stage the assessee has been able to prove with any plausible evidence that the deposits did not belong to him and that he only earned commission income from them, as alleged. The assessee has not given particulars of the alleged beneficiaries whose cash have been statedly deposited in his bank accounts.

21. We note that during the appellate proceedings, before ld CIT (A), the assessee has also contended in ground 4 and 7 that he was not granted sufficient opportunity to compile the detail of the beneficiaries. This ground is not tenable. However, the ld CIT(A) rejected this plea of the assessee and stated that the assessee has been given sufficient opportunity to explain the sources of deposits and assessee has not produced any evidence even at the appellate stage in support of his assertion. Before us, learned counsel for the assessee, as well as ld. DR for the revenue, both have submitted that assessee was not given sufficient time to produce the name and address of the beneficiary and to produce the beneficiary before the assessing officer, therefore, we are of the view that one more opportunity should be given to the assessee to furnish the name and address and PAN Number and other relevant details of the beneficiaries before the assessing officer and assessee should also produce

beneficiaries before the assessing officer for cross examination and verification. Therefore, we find that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the assessing officer, hence it is a violation of principle of natural justice. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. We note that the Hon'ble Supreme Court in M.S.Gill vs The Chief Election Commission 1978 AIR SC 851 held "The dichotomy between administrative and quasi-judicial function vis-à-vis the doctrine of natural justice is presumably obsolescent after Kraipak (A.K. Kraipak vs UOI AIR 1970 SC 150) which makes the water-shed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems and are not any new theology. They are manifested in the twin principles of *nemo judex in parte sua* (no person shall be a judge in his own case) and *audi alterem partem* (the right to be heard). It has been pointed out that the aim of natural justice is to secure justice.

22. We note that during the assessment proceedings, the assessing officer has issued several notices of hearing. However, the assessee submitted its reply on 05.12.2016, ( last month of passing the assessment order, near to time limit to frame the assessment order). The assessing officer framed the assessment order on 26.12.2016, in hurry, without conducting proper enquiry, the assessing officer got only 20 days, therefore assessment order has been framed in haste, which is against the principle of natural justice. The particular of other appeals are given below:

"ITA No. 16/Rjt/2023

<b>143(2)</b>	<b>142(1)</b>	<b>142(1)</b>	<b>Letter</b>
NO	15.12.2015	18.04.2016	NO
<b>Reply</b>	<b>Reply</b>	<b>Reply</b>	<b>Reply</b>

No	NO	NO	NO
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Because of the notice remain uncomplined with on 18.04.2016 and the assessment order passed on 26.05.2016 in this short period. The Ld. AO was having not sufficient time to issue notice u/s. 133/136(6) of the act and investigate the matter by the Ld. AO. No person beneficial detail submitted.

ITA No. 17/Rjt/2023

<b>143(2)</b>	<b>142(1)</b>	<b>142(1)</b>	<b>Letter</b>
12.07.2013	19.09.2013	NO	NO
<b>Reply</b>	<b>Reply</b>	<b>Reply</b>	<b>Reply</b>
01.08.2013	14.02.2014	NO	NO

Because of the notice remain uncomplined with on 14.12.2014 and the assessment order passed on 20.02.2014 in this short period. The Ld. AO was having not sufficient time to issue notice u/s. 133/136(6) of the act and investigate the matter by the Ld. AO. No person beneficial detail submitted.

ITA No. 18/Rjt/2023

<b>143(2)</b>	<b>142(1)</b>	<b>142(1)</b>	<b>142(1)</b>	<b>Summon</b>
30.07.2015	29.07.2015	15.08.2015	29.01.2016	02.02.206
<b>Reply</b>	<b>Reply</b>	<b>Reply</b>	<b>Reply</b>	<b>Reply</b>
No	NO	09.09.2015	NO	15.02.2016

Because of the notice remain uncomplined with on 15.02.2016 and the assessment order passed on 22.03.2016 in this short period. The Ld. AO was having not sufficient time to issue notice u/s. 133/136(6) of the act and investigate the matter by the Ld. AO. No person beneficial detail submitted.

ITA No. 19/Rjt/2023

<b>143(2)</b>	<b>142(1)</b>	<b>142(1)</b>	<b>Letter</b>
29.07.2016	24.08.2016	15.11.2016	05.12.2016
<b>Reply</b>	<b>Reply</b>	<b>Reply</b>	<b>Reply</b>
No	23.11.2016	22.11.2016 23.11.2016	12.12.2016

Because of the notice remain uncomplined with on 12.12.2016 and the assessment order passed on 27.12.2016 in this short period. The Ld. AO was having not sufficient time to issue notice u/s. 133/136(6) of the act and investigate the matter by the Ld. AO. No person beneficial detail submitted.

ITA No. 20/Rjt/2023

<b>143(2)</b>	<b>142(1)</b>	<b>142(1)</b>	<b>Letter</b>
29.07.2016	24.08.2016	15.11.2016	05.12.2016
<b>Reply</b>	<b>Reply</b>	<b>Reply</b>	<b>Reply</b>
No	23.11.2016	22.11.2016 23.11.2016	12.12.2016

Because of the notice remain uncomplied with on 12.12.2016 and the assessment order passed on 27.12.2016 in this short period. The Ld. AO was having not sufficient time to issue notice u/s. 133/136(6) of the act and investigate the matter by the Ld. AO. No person beneficial detail submitted.

ITA No. 21/Rjt/2023

<b>143(2)</b>	<b>142(1)</b>	<b>142(1)</b>	<b>Letter</b>
29.07.2016	24.08.2016	15.11.2016	05.12.2016
<b>Reply</b>	<b>Reply</b>	<b>Reply</b>	<b>Reply</b>
No	23.11.2016	22.11.2016 23.11.2016	12.12.2016

Because of the notice remain uncomplied with on 12.12.2016 and the assessment order passed on 27.12.2016 in this short period. The Ld. AO was having not sufficient time to issue notice u/s. 133/136(6) of the act and investigate the matter by the Ld. AO. No person beneficial detail submitted.

ITA No. 22/Rjt/2023

<b>143(2)</b>	<b>142(1)</b>	<b>142(1)</b>	<b>Letter</b>
29.07.2016	24.08.2016	15.11.2016	
<b>Reply</b>	<b>Reply</b>	<b>Reply</b>	<b>Reply</b>
No	23.11.2016	22.11.2016 23.11.2016	12.12.2016

Because of the notice remain uncomplied with on 12.12.2016 and the assessment order passed on 27.12.2016 in this short period. The Ld. AO was having not sufficient time to issue notice u/s. 133/136(6) of the act and investigate the matter by the Ld. AO. No person beneficial detail submitted.

ITA No. 23/Rjt/2023

<b>143(2)</b>	<b>142(1)</b>	<b>142(1)</b>	<b>Letter</b>
29.07.2016	24.08.2016	15.11.2016	05.12.2016
<b>Reply</b>	<b>Reply</b>	<b>Reply</b>	<b>Reply</b>

No	23.11.2016	22.11.2016 23.11.2016	12.12.2016
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Because of the notice remain uncomplied with on 12.12.2016 and the assessment order passed on 27.12.2016 in this short period. The Ld. AO was having not sufficient time to issue notice u/s. 133/136(6) of the act and investigate the matter by the Ld. AO. No person beneficial detail submitted.

ITA No. 24/Rjt/2023

<b>143(2)</b>	<b>142(1)</b>	<b>142(1)</b>	<b>Letter</b>
29.07.2016	24.08.2016	15.11.2016	05.12.2016
<b>Reply</b>	<b>Reply</b>	<b>Reply</b>	<b>Reply</b>
No	23.11.2016	22.11.2016 23.11.2016	12.12.2016

Because of the notice remain uncomplied with on 12.12.2016 and the assessment order passed on 27.12.2016 in this short period. The Ld. AO was having not sufficient time to issue notice u/s. 133/136(6) of the act and investigate the matter by the Ld. AO. No person beneficial detail submitted.

ITA No. 25/Rjt/2023

<b>143(2)</b>	<b>142(1)</b>	<b>142(1)</b>	<b>Letter</b>
23.08.2016	24.08.2016	15.11.2016	05.12.2016
<b>Reply</b>	<b>Reply</b>	<b>Reply</b>	<b>Reply</b>
No	23.11.2016	22.11.2016 23.11.2016	12.12.2016

Because of the notice remain uncomplied with on 12.12.2016 and the assessment order passed on 27.12.2016 in this short period. The Ld. AO was having not sufficient time to issue notice u/s. 133/136(6) of the act and investigate the matter by the Ld. AO. No person beneficial detail submitted.

ITA No. 429/Rjt/2017

<b>143(2)</b>	<b>142(1)</b>	<b>142(1)</b>	<b>SCN</b>
NO	23.09.2016	20.10.2016	21.11.2016
<b>Reply</b>	<b>Reply</b>	<b>Reply</b>	<b>Reply</b>
No	NO	NO	20.12.2016

Because of the notice remain uncomplied with on 20.12.2016 and the assessment order passed on 26.12.2016 in this short period. The Ld. AO was having not sufficient time

to issue notice u/s. 133/136(6) of the act and investigate the matter by the Ld. AO. No person beneficial detail submitted.

ITA No. 430/Rjt/2017

<b>143(2)</b>	<b>142(1)</b>	<b>142(1)</b>	<b>SCN</b>
NO	23.09.2016	20.10.2016	21.11.2016 20.12.2016
<b>Reply</b>	<b>Reply</b>	<b>Reply</b>	<b>Reply</b>
NO	NO	NO	22.12.2016

Because of the notice remain uncomplied with on 22.12.2016 and the assessment order passed on 26.12.2016 in this short period. The Ld. AO was having not sufficient time to issue notice u/s. 133/136(6) of the act and investigate the matter by the Ld. AO. No person beneficial detail submitted.

ITA No. 358/Rjt/2018

<b>143(2) &amp; 142(1)</b>	<b>142(1)</b>	<b>SCN</b>
02.06.2017	02.11.2017	NO
<b>Reply</b>	<b>Reply</b>	<b>Reply</b>
13.11.2017	29.11.2017	NO

Because of the notice remain uncomplied with on 29.11.2017 and the assessment order passed on 19.12.2017 in this short period. The Ld. AO was having not sufficient time to issue notice u/s. 133/136(6) of the act and investigate the matter by the Ld. AO. No person beneficial detail submitted.”

23. Based on these facts and circumstances, we note that learned counsel for the assessee, as well as ld. DR for the revenue, both have submitted that assessee was not given sufficient time to produce the name and address of the beneficiary and to produce the beneficiary before the assessing officer, therefore, we are of the view that one more opportunity should be given to the assessee to furnish the name and address and PAN Number and other relevant details of the beneficiaries before the assessing officer and assessee should also produce beneficiaries before the assessing officer for cross examination and verification. For statistical purposes, all appeals of the assessee are allowed.

24. In the result, appeal filed by the assessee ( in ITA No. 429,430 & 358) are allowed for statistical purposes.

25. Now, we shall take appeals relating to Shri Chetan Harilal Bhalodiya, wherein we take ITA No.16/Rjt/2023 for A.Y. 2006-07, as a lead case. The grounds of appeal raised by the assessee as per lead case in ITA No.16/Rjt/2023 are as under:

- “1. *The Ld. CIT(A) erred on facts as also in law in confirming the additions made vide order under section 144 r.w.s. 263 of Act without affording constructive and real opportunity of hearing.*
2. *The Ld. CIT(A) grievously erred on facts as also in law in not considering the fact that such high pitched addition made was without giving prior and specific show cause notice. Therefore, only on this ground alone assessment order may kindly be quashed.*
3. *The Ld. CIT(A) grievously erred on facts as also in law in taking on record the additional evidences submitted under section 46A during the appellate proceedings only for the limited period where in fact such evidences submitted pertained to all the assessment years under appeal. Therefore, only on this ground alone assessment order may kindly be quashed.*
4. *The Ld. CIT(A) grievously erred on facts as also in law in (i) rejecting various factual aspects and contentions of the assessee which were supported by the seized/impounded materials and additional submissions made during the course of assessment as also appellate proceedings (ii) confirming the addition Rs. 16,21,71,996/- treating it as unexplained cash deposits in bank account, which may kindly be deleted.*
5. *The Ld. CIT(A) grievously erred on facts as also in law in holding that assessee is not angadia / shroff and has earned profit / income on commission basis. Such addition made is arbitrary and without any base therefore the same may kindly be deleted.*
6. *Without prejudice to the above your assessee craves leave to add, alter, vary, or withdraw all or any of the grounds on or before the hearing of the appeal.*

26. Since the facts and circumstances in the case of Shri Chetan kumar Haribhai Vhjalodiya in ITA Nos. 16 to 25/RJT/2023, are identical to those

considered in the case of Shri Prashant Ramjibhai Kandoliya,(supra), our decision in the case of Shri Prashant Ramjibhai Kandoliya,(supra) shall apply *mutatis mutandis* in the case of Shri Chetan kumar Haribhai Vhjalodiya, also. Accordingly, these appeals are also allowed for statistical purposes.

27. In the result, appeals filed by the assessee ( in ITA Nos. 16 to 25/RJT/23) are allowed for statistical purposes.

28. In the combined results, all appeals filed by the assessee are allowed for statistical purposes.

**Order is pronounced on 28/03/2025 in the Open Court.**

Sd/-  
**(DR. A. L. SAINI)**  
ACCOUNTANT MEMBER

Sd/-  
**(DINESH MOHAN SINHA)**  
JUDICIAL MEMBER

(True Copy)

Rajkot

दिनांक/ Date: 28/03/2025

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File.

By Order,

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot