IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 1382/Del/2017
निर्धारणवर्ष/Assessment Year: 2012-13

ITO, Ward-5(1), Room No.379, 3rd Floor, C.R. Building, I.P. Estate, New Delhi.	**बनाम** **Vs.**	BILLET PROCON PVT. LTD. House No.4, Ground Floor, Khasra No.75, Sant Nagar, Delhi.
PAN No.AALFB8236G		PAN No.AAECB8234C
अपीलार्थी Appellant		**प्रत्यर्थी/Respondent**

Assessee by	Dr. Kapil Goel, Adv.
Revenue by	Shri Ajay Kumar Arora, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	27.05.2025
उद्घोषणाकीतारीख/Pronouncement on	25.06.2025

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Revenue against the order of the Ld. CIT(Appeals)-2, New Delhi dated 30.11.2016 for the AY 2012-13.

Revenue in its appeal raised the following grounds: -

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.3,52,00,000/- made by AO u/s 68 of the I.T. Act on account of unexplained credits in the form of share capital/share premium during the year.*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the assessee has discharged the onus of proving the identify and creditworthiness of the share subscribers and the genuineness of the subscription."*

2. Ld. Counsel for the assessee, at the outset, submitted that the assessee filed petition under Rule 27 of ITAT Rules as a defense plea to support Ld. CIT(Appeals) order on legal and jurisdictional grounds raised before the Ld. CIT(Appeals) but was rejected vide para 3.2.2. Referring to page 1 of the PB which is the petition under Rule 27 of ITAT Rules filed by the assessee, the Ld. Counsel submitted that assessee has raised legal ground that the Ld. CIT(A) grossly and seriously erred in not accepting assessee's legal contention and the proposition that provisions of section 68 cannot be apply to mere barter/shares swap transaction, where admittedly no infusion of mandatory funds were involved and accordingly the section 68 *per se* is wrongly invoked to transaction of Rs.3.19 crores where there is no actual infusion of funds in hands of assessee company. On the admissibility of petition under Rule 27 of ITAT Rules the Ld. Counsel for the assessee placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of Sanjay Sawhney vs. PCIT in ITA No.834/2019 dated 18.05.2020 which is placed at page 14 of the

Paper Book. He also relied on the decision of the Hon'ble Bombay High Court in the case of Peter Vaz Vs. CIT (128 taxmann.com 180).

3. Ld. Counsel for the assessee further placing reliance on the following judgments submitted that when there was swapping of shares on barter system/arrangement there was no money of either inflow or outflow and therefore in such circumstances the provisions of section 68 are not applicable:

1. DCIT Vs. NCR Business Park Pvt. Ltd. in ITA No.6046/Del/2018 & 6595/Del/2018 dated 15/06/2022 ITAT Delhi;
2. ITO Vs. Zexus AIR Services Pvt. Ltd. ITA No.2608/D/2018 & CO No.121/D/2018 dated 23/4/2021 ITAT Delhi;
3. Acres Buildwell P. Ltd. Vs. ITO ITA No.2191/D/2022 dated 22.05.2024 ITAT Delhi.
4. ITO Vs. M/s Telplay Packaging Solutions Pvt. Ltd. dated 7.3.2025 in ITA 5892/D/2017;
5. DCIT Vs. Glass Tech India ITA No.6241/D/2017 dated 25.3.2022.

4. On the other hand, the Ld. DR submitted that since the assessee did not file any cross appeal or cross objection he cannot invoke Rule 27 of ITAT Rules to question validity and applicability of the provisions of section 68 of the Act. Ld. DR submitted that issue qua the validity of proceedings u/s 68 has attained finality before Assessing Officer and CIT(Appeals) and since assessee chose not to

challenge the same in appeal ro by way of cross objection before the Tribunal, Rule 27 cannot be brought into play to reopen the same. Ld. DR submitted that permitting the assessee to do so would leave the Revenue worse off in its own appeal. The Ld. DR further placed reliance on the following decisions in support of its contentions: -

- State of Kerala Vs. M/s Vijaya Stores (1979) AIR 355;
- B.R. Bamasi Vs. CIT (83 ITR 223) (Bom.);
- CIT Vs. Jamnadas Virji Shares and Stock Brokers Pvt. Ltd. (2012) (21 taxmann.com 27) (Bom.);
- CIT Central Ludhiana Vs. Self Knitting Works (2014) 51 taxmann.com 137 (P&H).

5. Heard rival submissions, perused the orders of the authorities below and the decisions relied on. The assessee filed petition under Rule 27 of ITAT Rules with the following ground: -

1. *"Ground No.1: That Ld. CIT(A) grossly and seriously erred in not accepting assessee's legal contention on the proposition that provision of section 68 cannot apply to mere "barter"/share swap transaction where admittedly no infusion of monetary funds is there, accordingly section 68 per se is wrongly invoked to transaction of Rs.3,19,00,000/- where there is no actual infusion of funds in hands of assessee company."*

6. On perusal of the order of the Ld. CIT(Appeals) it is noticed that the Ld. CIT(A) rejected the contention of the assessee that the provisions of section 68 are not applicable when the shares have been issued under a barter arrangement wherein there is no inflow or outflow of money and as such the provision of section 68 are not applicable to the facts of the assessee's case. The findings of the Ld. CIT(Appeals) rejecting the contentions of the assessee are as under:

> *"3.2.1 Ground no. 4 is regarding addition of Rs.3,19,00,000/- u/s 68 of the Act. This addition is relating to issue of shares by the appellant company against purchase consideration for acquisition of shares of M/s. Omni Present Credits P. Ltd. During the year under consideration, the appellant company has purchased shares of M/s. Omni Present Credits P. Ltd from 3 parties and in return of purchase consideration, the appellant has issued its own shares as per following details:*
>
> *Details of shares issued against acquisition of shares of M/s. Omni Present Credits P. Ltd.*

Names of parties from whom shares purchased	Shares in Omnipresent Credits P. Ltd	Amount (Rs.)	Shares in assessee company	Amount (Rs.)
Destiny Vincom (P) Ltd.	1,40,000	1,12,00,000	11200	1,12,00,000
Gurukul Commosales Pvt. Ltd.	1,09,000	87,20,000	8700	87,00,000
Marina Tie Up Pvt. Ltd.	1,50,000	1,20,00,000	12000	1,20,00,000
TOTAL	3,99,000	3,19,20,000	31,900	3,19,00,000

3.2.2 It is contended by the Id. Counsel for the appellant that the shares have been issued under a barter arrangement wherein there is no inflow or outflow of money and as such the provisions of section 68 are not applicable to the facts of the case. The appellant has further contented that various documentary evidences in support of the above arrangement have been furnished before the Assessing Officer in order to establish the identities of the parties and genuineness of the transactions. As regards the appellant's contention that the transaction of issue of its shares by the appellant company to the above mentioned three companies in exchange for shares of M/s. Omni Present Credits Pvt. Ltd. does not come within the purview of section 68, I am not inclined to agree with this view because the net result of these transactions has been increase in share capital/share premium/reserves and surplus of the appellant company on the liabilities side of the balance sheet while on the assets side the investment of the appellant in shares of M/s. Omni Present Credits Pvt. Ltd. has gone up. Section 68 of the I.T. Act states as follows:-

> *"Section 68:- Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income- tax as the income of the assessee of that previous year……." (emphasis provided)*

It has been held by a number of Hon'ble Courts that "cash credits" referred to in section 68 do not necessarily mean cash entries in the accounts but also include liabilities shown in the books of accounts. The Hon'ble Madhya Pradesh High Court (Indore Bench) have held in the case of M/s. V.I.S.P. Pvt. Ltd. vs. CIT & another (2004) 265 ITR 202 as under:-

> *"CASH CREDITS-SCOPE OF SECTION 68- SECTION 68 NOT CONFINED TO CASH ENTRIES IN ACCOUNTS-CREDITS FOUND TO BE BOGUS-AMOUNT REPRESENTING CREDITS*

INCLUDIBLE IN TOTAL INCOME OF ASSESSEE- INCOME-TAX ACT, 1961.

Section 68 of the Income-tax Act, 1961, is not confined to cash entries in accounts. If a liability shown in the accounts is found to be bogus, in the absence of any plausible and reasonable explanation offered by the assessee, the amount can be added towards the income of the assessee and brought to tax in the hands of the assessee.

Held, dismissing the appeal, that, in the instant case, it was found that the whole transaction of illegal purchase by the assessee was bogus and the entry made in the trade account as a liability was only a paper entry. The addition of Rs. 72,100/- u/s 68 was justified."

In view of the interpretation given to "cash credits" by Hon'ble Courts, I am of the opinion that the Assessing Officer was justified in enquiring into the identities & appellant in lieu of shares of M/s. Omni Present Credits Pvt. Ltd. purchased by the appellant from them even though there was no cash entry involved and the contention of the appellant that the transactions do not come within the ambit of section 68 is rejected."

7. The assessee filed petition under Rule 27 of ITAT Rules to support the Ld. CIT(Appeals) order on legal ground which was rejected by the Ld. CIT(Appeals) as stated above.

8. We observed that whether the petition filed by the Assessee under Rule 27 of ITAT Rules supporting the order of the Ld. CIT(A) on a ground which was decided against the Assessee, without having filed any cross objection or an appeal before ITAT has been decided

by the Jurisdictional High Court in the case of Sanjay Sawhney Vs. PCIT (supra) as under:

> *"20. Having analyzed the judgments relied upon by the Revenue and not finding same to be of any assistance to the Revenue, we now proceed to examine the legal position that emerges from a plain reading of the provision in question. In fact, we feel the controversy sought to be raked up by the Revenue to deprive the Appellant [Respondent before ITAT] an option to raise jurisdictional grounds of objection is completely misplaced. If we refer to Rule 27 of ITAT Rules, 1963, a bare reading thereof manifest that a Respondent has a right to support the impugned order, without having filed any cross appeal or cross objection. This understanding emerges from the language of the said provision which begins with the words "The Respondent, though he may not have appealed,". This means that the provision is to enable a Respondent to effectively defend the order appealed before the Appellate forum. The expression "though he may not have appealed" also indicates that the provision is to be resorted to in a situation where a Respondent may otherwise have a right to file an appeal or cross objections, but has chosen not to avail of this remedy. Thus, a party who has not availed of the option of filing an appeal, in a given situation, if arrayed as a Respondent before the Appellate Tribunal, can rely upon Rule 27, to support the order under appeal. The aforesaid expression also suggests that recourse to Rule 27 would only be available in case the remedy of appeal is otherwise available with the Respondent, and he has elected not to avail the same. In other words, in case a Respondent would not have such a right [of filing a cross appeal or cross objection], then he would not have the option to invoke the said provision. This brings us to the more fundamental question regarding the scope of aforesaid rule at the instance of the Respondent who is invoking the same. The scope and ambit of the aforesaid provision can be gathered from the remaining part of the said rule to the effect "may support the order appealed against on any of the grounds decided against him". A plain reading of the aforesaid expression indicates that a*

Respondent can support an impugned order on any of the grounds which were decided against him. Now, if weapply the aforesaid provision to the situation before us, we can easily discern that the Appellant-assessee- on the basis of Rule 27, was urging before the ITAT that the initiation of reassessment may be declared as invalid. Therefore, by invoking Rule 27, the assessee sought to support the final order of the CIT(A) in his favour, by assailing that part of the said order, wherein the CIT(A) upheld the initiation of reassessment under Section 153C of the Act. We are, therefore, of the view that invocation of Rule 27 for challenging the decision of the CIT (A) on the legal ground was well within the scope of Rule 27. The Appellant - assessee, as a respondent before the Tribunal was within its right to support the order under appeal before the Tribunal by attacking the grounds decided against him. It should nevertheless be borne in mind that Rule 27 cannot be invoked by a Respondent on an issue which is independently decided against him in the order appealed by the Appellant. In other words, if there is an issue, which is separately decided against a Respondent [in appeal], and the decision on the said issue has no bearing on the final decision of the CIT (A), then invocation of Rule 27 to challenge the correctness of the same cannot be sustained. Rule 27 and the provisions dealing with cross objections operate in separate fields, although there is certain overlap between them. Evidently, if cross objection is not filed, the Respondent would run the risk of being faced with a situation that it cannot succeed in getting anything over and above the order in appeal being confirmed. If the Respondent wants to assail an independent issue that has been decided against him in the order appealed by the Appellant, which has no bearing on the result of order impugned in appeal before the Tribunal, the appropriate remedy would lie in of filing a cross appeal or cross objection. In that event, as explained above, Rule 27 cannot be pressed into service to have the same upset or overturned.

21. Therefore, arguably Rule 27 has a limited sphere of operation, but this cannot be whittled or narrowed down to the extent, the Revenue would like us to hold. We

cannot read Rule 27 in a restrictive manner to hold that the said provision can only be invoked to support the order in appeal and while doing so, the subject matter of the appeal before the ITAT should be confined only to the extent of the grounds urged by the Appellant. To read Rule 27 in this manner would render the said rule redundant as the respondent before the Tribunal would, even otherwise be entitled to oppose the appeal and raise submissions in answer to the grounds raised in the appeal that are pressed at the hearing of the appeal. With this clarity, we do not find any merit in the submissions of the Revenue that the assessee had accepted order of CIT (A), or that the issue of maintainability had attained finality. We also do not find that by such an interpretation, the scope of Rule 27 is expanded or that it would be contrary to Section 253 (4), or that it would render the provision relating to cross objections redundant and otiose. In Sundaram &Co. (supra),the High Court observed that the reason for such a rule [Rule 27] was that when a decision is favorable to a person and comes to be challenged by his adversary, the person must be in a position to support the decision on every ground urged before the deciding authority whether or not it found favor, else such a person would be a victim of wrong reasons if no such freedom was given. In fact, the court has further held that even if Rule 27 as under the 1946 Rules had not been enacted, scope for invocation of the principle underlying the rule would still be possible based on principles of natural justice. This is the essence of the proceedings in appeal before the ITAT which unfortunately has been completely ignored and, instead, the Tribunal has engaged itself in a totally irrelevant issue of the form and structure of the application.

22. Therefore, the position of law that materialises on a reading of the aforesaid decisions is that the appellant herein, (Respondent before ITAT) could have invoked Rule 27 to assail those grounds that were decided against him if those grounds/issues had a bearing on the final decision of the CIT(A). Revenue was certainly not taken by surprise as the appeal is considered to be continuation of the original proceedings. The ITAT had no discretion to

deprive the appellant the benefit of the enabling Rule provision to defend the order of the CIT(A). The question of jurisdiction -which is sought to be urged by the Respondent while supporting the order in appeal, had a bearing on the final order passed by the CIT(A), because if the said issues were to be decided in favour of the appellant herein the assessee, that would have been an additional reason to delete the additions made by the A.O.

23. We shall now also note some other decisions, where similar issue has been considered. The decision in Kanpur Industrial Works v. Commissioner of Income-Tax, 1965 SCC OnLine All 480: (1966) 59 ITR 407 is worth mentioning. In this case, certain land of the assessee was acquired by the State Government for Rs. 10,000/- and immediately he was given a part of the land on lease for 999 years on a nominal rent. He was permitted to sell the land to anybody as a freehold property. Accordingly, he sold a major part of it during the accounting year for Rs.1,26,870/-. During his assessment, two questions arose, one, whether the net receipts from the sale of the land amounted to profits of business, example, an adventure in the nature of trade or commerce liable to tax, and the other being the quantum of the net receipts. The Income Tax Officer (ITO) held that the receipts were profits and fixed the amount at Rs.1,16,870/-,by deducting Rs. 10,000/- paid as premium, from the sale proceeds of Rs.1,26,870/-. The assessee appealed before the Appellate Assistant Commissioner (AAC), who confirmed the Income Tax Officer's finding that the receipts from the sale were profits but disagreed with the finding that the amount of Rs.1,16,870/- was the quantum of profits. The AAC was of the opinion that market price of the land should be cost to the assessee. Accordingly, on the basis of a report from the ITO, he determined the market price of the land was Rs.1,12,056/- and on that basis determined the net receipts at Rs. 14,814/- and decided the appeal accordingly. The department preferred an appeal before the Tribunal. In the appeal, the assessee invoked Rule 27 of the Income Tax Appellate Tribunal Rules, 1946 to support the order on the ground that the transaction was

not an adventure in the nature of trade, a ground having been decided against the Respondent. The Tribunal took the prayer to be of fundamental nature, destroying and not supporting the order of the AAC and disallowed it. The Tribunal held that the price paid by the assessee for purchasing the land in dispute should be taken to be the cost price and remanded the case for determining it and then arriving at the amount of net receipts. The assessee applied to the Tribunal for referring the case to the High Court under Section 66 (1) of the Act. The question on reference to the High Court was "Whether on a proper construction of rule 27 of the Appellate Tribunal Rules, 1946, the assessee-respondent having not appealed against the order of the Appellate Assistant Commissioner was entitled to contend, in the department's appeal before the Tribunal, that the entire profit arising out of the sale of land was not liable to assessment?"

The question was answered in the negative, and it was held that the assessee could contend that the receipts were not profits of a business at all, but for the purpose of showing that the department was not entitled to succeed in the appeal i.e. to an increase in the assessed income and not for the purpose of claiming the relief of quashing of the assessment order. It was held that so long as it did not ask for the quashing of the assessment order, its plea that the receipts were not profits ought to have been entertained. It was thus held that the answer to the question referred depends upon what the assessee prayed for before the Appellant Assistant Commissioner. If it prayed that the assessment order be quashed, it was not entitled to be heard, whereas if it simply prayed that the Department's appeal be dismissed, it was entitled to be heard. This judgment thus brings out this fine distinction with respect to the interplay of Rule 27, which is the pari materia provision under the rules in operation. The observations of the Court, bring out the scope of Rule 27, reads as under:

> *"7. The provision in rule 27, with which we are concerned, is to be distinguished from that in Order 41, rule 22(1). While rule 22(1) gives two rights to the*

respondent, one in respect of part of the claim decreed in his favour, and the other in respect of the part disallowed, rule 27 deals with the order of the lower court, viz., the Appellate Assistant Commissioner in its entirety. It does not contemplate the splitting of the Appellate Assistant Commissioner's order into two parts for the simple reason that an assessment order is incapable of being treated as an order partly allowing something and partly disallowing the other thing. While in respect of a claim of a plaintiff it can be said that part of it is allowed and part disallowed the same cannot be said in respect of an assessment order and it cannot be said to involve two orders partly assessing something and partly disallowing assessment of another thing. When a person is assessed he is assessed on all the income found assessable. There are no two parties before an Income-tax Officer or an Appellate Assistant Commissioner and there is no claim by one party to be met by the other; so the analogy of a suit, part of which may be decreed and part rejected, does not apply to an assessment proceeding. A dispute may arise in an assessment proceeding about certain receipts being income or not income or the assessees being entitled to a certain deduction or being not entitled to it and the assessment order is passed after deciding this dispute. The dispute may be decided partly in favour of the assessee and partly against him. But since the assessability is indivisible the order assessing the income is treated as one indivisible order and the facts on account of which the various receipts are held to be assessable income are treated as various grounds of attack and the various facts on account of which deductions or exemptions are allowed or receipts are not treated as assessable income are treated as grounds of defence. So an assessment order is based upon allowing and disallowing grounds of attack and of defence. An appeal to the Tribunal whether by the department or by an assessee is like an appeal by a defendant or a

plaintiff from a decree accepting or rejecting the entire claim of the plaintiff. There is no scope for any cross-objection and consequently no scope for the respondent's, e.g., the assessee's or the department's urging for reduction in the assessed income or increase in the assessed income, as the case may be. If the appellant before the Tribunal is the department claiming increase in the assessed income all that the assessee can urge is that there should be no increase; that is the only subject-matter of the appeal. If the assessee desires reduction in the assessed amount he himself must file an appeal; he has not been given the right to file a cross-objection. The only right given to him is of urging that there should be no increase, not only for the ground of defence accepted by the Appellate Assistant Commissioner but also for the other ground of defence rejected by him. This is the only right given to him by rule 27. There is only one order of the Appellate Assistant Commissioner that assessing the income at a certain figure, and the right given to him is of urging another ground, though rejected by the Appellate Assistant Commissioner, in support of it; he must support the order, i.e. must not ask for any variation (in his favour) in the order. In other words, he must not ask for any reduction in the assessed income. Asking for any reduction in the assessed income is not supporting the order assessing it.

8. As I said earlier the order is one assessing the income after accepting and rejecting various grounds of attack and defence. Grounds of attack and defence may be grounds of law or of fact. A ground of law may affect the assessability of the assessee or inclusion of the whole of a receipt or a part of a receipt in his assessable income. If an assessee is not liable to be assessed at all no part of his income can be assessed; if the whole of a receipt is not income no part of it can be included in his assessable income and if a part of a receipt is not income that part cannot be included

in his assessable income. If an assessee is not assessable at all but is still assessed he and the department both can be aggrieved by the assessment order; he, on the ground that he was not liable to be assessed at all and other grounds, if any, and the department, on the ground that something more should have been included in his assessed income. So either of them can file an appeal. If he files an appeal, the department can urge in support of the assessed income any ground of attack that might have been rejected by the Appellate Assistant Commissioner but it cannot ask for an increase in the assessed income; it can ask for an increase only by appealing. If the department files an appeal, which must be for an increase in the assessed income, the subject-matter of the appeal is the increase claimed by the department and the assessee can urge any ground of defence, even though it might have been rejected by the Appellate Assistant Commissioner, for showing that there should be no increase. That he is not liable to be assessed is a ground for showing that there should be no further assessment. Whole includes part and if no receipt is assessable the particular receipt claimed by the department to be assessable also is not assessable and the department's appeal can be resisted on this ground. The Appellate Assistant Commissioner rejected this ground of defence and holding him assessable assessed his income. But since the non-liability to assessment on any income includes the non-liability to assessment on a particular receipt he can object to the inclusion of the receipt in his assessable income on the ground that he is not liable to be assessed on any receipt. This is supporting, and not demolishing, the assessment order passed against him, provided he does not ask for cancellation of the assessment order. He could have filed an appeal against his being assessed but was not bound to do so even though he believed that he was not liable to be assessed at all. If he did not mind paying the tax on the assessed amount nothing compelled him to file an

appeal. But this fact that he did not file an appeal does not estop him from contending in the department's appeal for an increase in the assessed amount that there should be no increase. He is not barred either by the rule of estoppel or by the rule of res judicata on account of the fact that on that ground he should not have been assessed at all and that he has submitted to his being assessed. His submission to the assessment order does not amount to his submission to assessability. If the assessment order becomes final it may be said that he is barred by estoppel or res judicata from contending in a subsequent proceeding that he was not liable to be assessed at all. In an appeal against the assessment order itself there is no question of his being barred by estoppel or res judicata. The appeal being from the assessment order there is no question of its being final or operating as res judicata. There is no other doctrine which can be relied upon for barring his contention that he was not assessable at all. It is irrelevant to consider that on the ground on which he urges that there should be no increase he should not have been assessed at all; there is no law that in the absence of estoppel or res judicata a ground applicable to a whole cannot be urged in respect of a part if it is not urged, or is urged but rejected, in respect of the other part. No incongruity results from applying it to a part even though it is not applied to the other part nor any shock to the conscience. There is no incongruity in maintaining the assessment order passed on the assessee and refusing to increase it on the ground that he was not liable to be assessed at all. What is irksome is incongruity in two orders and not incongruity in respect of reasons for the two orders. Two orders should not be incompatiable with each other, so that one can be enforced and the other cannot be, but if two orders can both be enforced it is immaterial that they are based upon contradictory reasons. Two orders not mutually exclusive have been maintained even though they are based on mutually exclusive reasons:

vide Dunn v. United States [76 L.Ed. 356 : 284 U.S. 390.], Bartkus v. Illinois [3 L.Ed. 2d. 684 : 359 U.S. 121.], Hoag v. New Jersey [2 L.Ed. 2d. 913 : 356 U.S. 464.] and In re William Barron [10 Criminal Appeal Reports 81.] . It is also irrelevant to consider what relief could have been allowed to the assessee if this ground of defence is allowed to be urged by him in the department's appeal if the appellant does not ask for it. No relief can be given to an assessee unless he asks for it and is entitled in law to get it; the Tribunal has no jurisdiction to give him any relief though he may be entitled to it, if he does not ask for it in the appeal. The power conferred upon it by section 33(4) is certainly very wide but is so wide only within the subject-matter of the appeal. However wide it may be, it is limited by the scope of the appeal. It cannot travel outside its scope and pass any order even though it thinks it a fit order. It has to pass an order on the appeal, i.e., in respect of the subject-matter of the appeal. The order that it thinks fit must be in respect of the subject-matter of the appeal and so long as it is in respect of it it can be passed regardless of its nature or contents. I respectfully agree with the observation of Sir Leonard Stone C.J. and Kania J. in Motor Union Insurance Co. Ltd. v. Commissioner of Income-tax [[1945] 13 I.T.R. 272.] at page 283, of Chagla C.J. and Tendolkar J. in Puranmal Radhakishan v. Commissioner of Income-tax [[1957] 31 I.T.R. 294.] at page 304 and in New India Life Assurance Co. Ltd. v. Commissioner of Income-tax [[1957] 31 I.T.R. 844.] and of Jagadisan and Srinivasan JJ. in Commissioner of Income- tax v. Sundaram & Company Private Ltd. [[1964] 52 I.T.R. 763.] at pages 759 and 770, that "the word 'thereon' used in section 33(4) only means 'on the appeal', which must mean on the grounds raised in the appeal." In the last case the learned judges observed that "the subject-matter of an appeal.... is that which the Tribunal or the appellate court is called upon to decide and to adjudicate" and that "the subject-matter cannot be identified with the grounds raised either by the appellant or by the respondent." By its

order an appellate court can dispose of the appeal and not something not included within its scope. In the department's appeal for an increase in the assessable income the only question for its consideration is whether the increase or part of it should be allowed or not. Whether the amount already assessed was wrongly assessed or not or whether the assessee is liable to be assessed at all or not is a question quite outside the scope of the appeal and any decision on it cannot be said to be an order on the appeal. Consequently it cannot be said that the Tribunal would have power to annul the assessment even without any prayer by the assessee to that effect, if it accepts his ground of defence that he was not liable to be assessed at all. On that ground being accepted it can only refuse to increase the assessed income; only that would be an order on the appeal by the department. Any other order such as annulling the assessment would be outside the scope of the appeal. Therefore, it would be erroneous to say that the effect of accepting the ground of defence of the assessee would be the annulment of the assessment order and that this would be quite the reverse of supporting it by the ground of defence.

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13. In the result I hold that the assessee could contend that the recepits were not profits of a business at all, but for the purpose of showing that the department was not entitled to succeed in the appeal, i.e., to an increase in the assessed income and not for the purpose of claiming the relief of the quashing of the assessment order. In other words, so long as it did not ask for the quashing of the assessment order its plea that the receipts were not profits ought to have been entertained."

(emphasis supplied)

24. Similar is the view taken in the case of Principal Commission of Income Tax, Vadodara - II v. Sun Pharmaceuticals Industries Ltd. 2017 86 taxmann.com 148 (Gujarat). The brief facts of the said case are that the

Respondent - assessee, a company registered under the Companies Act was engaged in various businesses including manufacturing pharmaceuticals. For relevant assessment years, the assessee had filed the returns of income computing the same in terms of Section 115 JB. The AO issued notices for reopening of the assessments and ultimately framed reassessment by making various additions. In appeal, the assessee contested the reopening of the assessments and also the addition made by AO. The Commissioner (Appeals) allowed the appeals on the additions made by the AO, however on the question of validity of reopening of the assessments, he held against the assessee. Revenue preferred an appeal before the Tribunal, where the assessee - Respondent without filing an appeal, relied upon Rule 27 of the ITAT Rules and raised the legal issue of the validity of assessments before the Tribunal. Despite objections from the Revenue, the Tribunal permitted the assessee to raise such contentions and ultimately held that the notice for reopening of assessment was bad in law. When the matter travelled to the High Court, the question arose as to whether the Tribunal was right in law by allowing Respondent - assessee to raise question of validity of notices for reopening of assessments taking the recourse of Rule 27 of the ITAT Rules without assessee having filed cross appeal or cross objection before the Tribunal against order of Commissioner (Appeals).”

9. As could be seen from the above, the Hon’ble Jurisdictional High Court held that the position of law that materials on a reading of various decisions is that the assessee could have invoked Rule 27 to assail those grounds that were decided against him if those grounds has bearing on the final decision of the Ld. CIT(Appeals). The case laws relied on by the Ld. DR are distinguishable on facts and has no bearing on the facts of the Assessee’s case. Thus,

respectfully following the decision of the Jurisdictional High Court, we admit the petition filed by the assessee under Rule 27 of ITAT Rules.

10. In the petition filed under Rule 27 of ITAT Rules the assessee has raised the following ground:

1. *"Ground No.1: That Ld. CIT(A) grossly and seriously erred in not accepting assessee's legal contention on the proposition that provision of section 68 cannot apply to mere "barter"/share swap transaction where admittedly no infusion of monetary funds is there, accordingly section 68 per se is wrongly invoked to transaction of Rs.3,19,00,000/- where there is no actual infusion of funds in hands of assessee company."*

11. We observed that the issue in the ground raised by the assessee in its petition under Rule 27 of ITAT Rules is squarely covered by the following decisions, wherein it has been held that provisions of section 68 are not applicable in case of swaping of shares: -

1. DCIT Vs. NCR Business Park Pvt. Ltd. in ITA No.6046/Del/2018 & 6595/Del/2018 dated 15/06/2022 ITAT Delhi;

2. ITO Vs. Zexus AIR Services Pvt. Ltd. ITA No.2608/D/2018 & CO No.121/D/2018 dated 23/4/2021 ITAT Delhi;

3. Acres Buildwell P. Ltd. Vs. ITO ITA No.2191/D/2022 dated 22.05.2024 ITAT Delhi.

4. ITO Vs. M/s Telplay Packaging Solutions Pvt. Ltd. dated 7.3.2025 in ITA 5892/D/2017;

5. DCIT Vs. Glass Stick India ITA No.6241/D/2017 dated 25.3.2022.

12. In the case on hand, it is not in dispute and as a matter of fact it is the finding of the Ld. CIT(A) that the assessee has issued shares under a barter arrangement against purchase consideration for acquisition of shares of M/s Omnipresent Credits P. Ltd. Therefore, the ratios of the above decisions squarely applies to the facts of the assessee's case. Thus, we allow ground raised by the assessee in the petition under Rule 27 of ITAT Rules, and hold that the provisions of section 68 are not applicable to the transactions of shares swaping/Barter arrangement as there was neither inflow of funds nor outflow of funds.

13. As we have allowed the ground in the petition filed under Rule 27 of ITAT Rules the addition to the extent of 3.19 crores cannot be sustained u/s 68 of the Act and the same is liable to be deleted on the preliminary legal ground itself.

14. Since we have allowed the Assessee's petition under Rule 27 of ITAT Rules and decided on the legal print, we are not inclined to go into the merits of the addition made u/s 68 to the extent of 3.19 crores at this stage.

15. Coming to the balance addition of Rs.32 lakhs the Ld. CIT(A) held as under:

> *"4.0 Grounds nos. 5 & 6 of the appeal are regarding additions of Rs.32,00,000/- and Rs.1,00,000/- u/s 68, being consideration received by the appellant company in cash for its shares from three companies (M/s. New Era Creations Pvt. Ltd., M/s. Pranchal Cold Storage Pvt. Ltd. & M/s. Kabir Enterprises Pvt. Ltd.) as well as from two directors namely, Sh. Chandu Ram and Sh. Swaran Singh.*
>
> *4.1 The Assessing Officer has very briefly discussed these additions to income, stating that physical identities and creditworthiness of the parties and genuineness of the transactions were not proved in the case of the companies and the sources were not explained in the case of the two individuals. However, it is noted that as regards the three companies, M/s. New Era Creations Pvt. Ltd., M/s. Pranchal Cold Storage Pvt. Ltd. & M/s. Kabir Enterprises Pvt. Ltd., their Permanent Account Numbers (PANs), I.T. return acknowledgements for A.Y. 2012-13, copies of their bank statements for the relevant period and confirmations are on record and these constitute sufficient proof of their identities. So far as their creditworthiness is concerned, copies of their audited balance sheets and bank statements have been filed as evidences. The companies are having sufficient share capital and reserves and surplus to be able to invest in the appellant company. As per their bank statements, there is no deposit of cash prior to issue of funds to the appellant company. Since the transactions took place through banking channel and shares were allotted to them (copies of shares certificates have been filed), the genuineness of the transactions also stands established. As regards non service of notices on some of the companies and non production of their directors by the appellant, my remarks in respect of ground no. 4 of the appeal would apply here as well. In the case of one of the companies i.e. M/s. Kabir Enterprises Pvt. Ltd., the appellant has explained that although shares were allotted to this*

party on 27.03.2012, payment was received from it through RTGS on 28.03.2012 because at the request of the appellant, the allottee company offered to make the payment through RTGS in lieu of cheque and as such the RTGS payment was received on next date. However, the company carried out procedural formalities on 27.03.2012 and as such there was no case of any dispute or irregularity regarding genuineness of transactions particularly when the fact of RTGS payment is not in dispute. Therefore, the three conditions of section 68 in respect of share capital/share application money received from M/s.-New Era Creations Pvt. Ltd., M/s. Pranchal Cold Storage Pvt. Ltd. & M/s. Kabir Enterprises Pvt. Ltd. have been duly established by the appellant company and accordingly the addition on this account made by the Assessing Officer is directed to be deleted. The balance Rs.1 lac has been received from the two directors Sh. Chandu Ram and Sh. Swaran Singh (Rs.50,000/- from each) and their PANs and places of assessment have been furnished. Hence I see no reason to sustain the addition of this amount made by the A.O. u/s 68 of the Act. With these observations, grounds nos. 5 & 6 of the appeal are allowed."

16. As could be seen from the above, it is the finding of the Ld. CIT(A) that all the three conditions of the section 68 in respect of share capital/share application money received from M/s New Era Creations Pvt. Ltd., M/s Panchal Cold Storage P. ltd. and M/s Kabir Enterprises P. ltd. of Rs.32,00,000/- have been duly established by the assessee company as the assessee has filed all the necessary details proving the genuineness, creditworthiness and identity of the shareholders. None of the findings of the Ld.CIT(Appeals) have been rebutted by the Revenue with evidences. Thus, we sustain the

reasoned order of the Ld. CIT(Appeals) and reject the grounds raised by the Revenue.

17. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 25/06/2025

Sd/-	**Sd/-**
(S RIFAUR RAHMAN)	**(C.N. PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 25.06.2025

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI