आयकर अपीलीय अधिकरण, विशाखापटणम पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री एस. बालकृष्णन, माननीय लेखा सदस्य
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI BALAKRISHNAN. S, HON'BLE ACCOUNTANT MEMBER,

आयकरअपीलसं./**I.T.A.No.212/Viz/2025**
(निर्धारण वर्ष/ **Assessment Year:2022-23)**

The Deputy Commissioner of Income Tax, Circle – 3(1), Visakhapatnam.	*Vs.*	Vikas Kumar Chhajer, Vizianagaram. PAN : ADGPV3250J
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	None
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT-DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	01.07.2025
घोषणा की तारीख/ Date of Pronouncement	:	.07.2025

O R D E R

प्रति रवीश सूद, जे.एम./**PER RAVISH SOOD, J.M.**

The present appeal filed by the Revenue is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 10.02.2025, which in turn arises from the order passed by the Assessing Officer (for short "A.O.")

under Section 143(3) of the Income Tax Act, 1961 (for short, "the Act") dated 21.03.2024 for A.Y. 2022-23. The Revenue has assailed the impugned order on the following grounds of appeal before us:

> "1. The Order of the Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi is erroneous in law and to the facts of the case.
>
> 2 The Ld.CIT(A), NFAC has erred in deleting the addition of Rs. 9,22,76,960/- made by the AO in the assessment order towards unexplained cash credits' u/s 68 of the IT Act.
>
> 2.1. The Ld.CIT(A) erred in deleting the entire addition without appreciating the facts and surrounding circumstances of the case.
>
> 2.2. The Ld.CIT(A) erred in deleting the addition though the Ld.CIT(A) was aware of the fact that the said addition was made by the AO on the basis of the information received through CRIU that the assessee had done alleged unaccounted cash transactions which were unearthed in the Search & Seizure action conducted u/s.132 of the Act on 28.05.2022 in the case of M/S.JM Jain LLP.
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> 2.3. The Ld.CIT(A) ought to have caused in-depth examination through the Assessing Officer in respect of alleged unaccounted cash transactions done by the assessee with M/s. IM Jain LLP. Delhi in the F.Y.2021-22 particularly in the light of the fact that such information/data was emanated out of search action conducted by the Investigation Wing u/s 132 of the IT Act in the case of M/s.JM Jain LLP and also the assessee admitted to have done trading activity with the above group.
>
> 2.4. The Ld.CIT(A) erred in deleting the addition by holding that the AO has passed assessment order by not allowing the assessee an opportunity to cross examine or rebut the statements and evidence that were made by third parties and were being used against the assessee. This finding of the Ld.CIT(A) is not acceptable as in the event of Assessing Officer failing to discharge his functions properly, obligation to conduct proper inquiry shifts to Commissioner (Appeals) and CIT(A) cannot simply delete the addition made by the Assessing Officer on the ground of lack of inquiry by the Assessing Officer or on the ground that the assessee has not been given an opportunity to cross examine the third parties.
>
> 2.5. The Ld.CIT(A) has plenary powers of Assessing Officer and should have himself caused third party examination to unearth the alleged unaccounted cash transactions of the assessee instead of accepting the submissions of the assessee during appeal proceedings.

3. The appellant craves leave to add or delete or amend or substitute any ground of appeal before and/or at the time of hearing of appeal.

4. For these and other grounds that may be urged at the time of appeal hearing, it is prayed that all these above additions be restored."

2. Succinctly stated, the assessee who is engaged in the business of trading in ready-made garments under the name and style of Sri Ganesh Textile Market, Vizianagaram, Andhra Pradesh had filed his return of income for A.Y. 2022–23 on 29.09.2022, declaring an income of Rs. 73,39,840/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Section 143(2) of the Act.

3. During the course of assessment proceedings, the A.O. came across information that search proceedings under Section 132 of the Act were conducted on 28.05.2022 on a leading group operating in the garment sector located at Gandhi Nagar, New Delhi, viz., (i) M/s. J.M. Jain LLP (erstwhile M/s. JM Jain, a proprietorship). During the course of search & seizure operation evidence of unaccounted transactions was found, which was maintained in a parallel SAP-based server, which was known amongst the employees of the Jain group as the "JSK server". This parallel server was used to record transactions between vendors and customers, which included cheque payments (that were accounted for in the books of the vendors and customers) and the cash component

(that was not accounted for in the books of accounts of the vendors and customers). The server, hence, recorded the unaccounted commission and interest income of JM Jain on such transactions.

4. The A.O. alongwith the report was made available the ledger account of the parties and the excel sheets containing the cash transactions as under:

SHOP NOS 7 & 8,SRI GANESH TEXTILE MARKET,CANTONMENT,VIZIANAGARAM,VIZIANAGARAM DISTRICT,535003,ANDHRA PRADESH				
	535003	-	-	1,05,16,735
795	CSO000122	VIKASH R/M HOS.	2021-22	VIKAS READYMADE & HOSIER
SHOP NOS 7 & 8,SRI GANESH TEXTILE MARKET,CANTONMENT,VIZIANAGARAM,VIZIANAGARAM DISTRICT,535003,ANDHRA PRADESH				
	535003	-	-	8,17,60,225

The A.O., based on the aforesaid details, called upon the assessee to explain why the amounts of Rs. 1,05,16,735/- and Rs. 8,17,60,225/- recorded in the ledger of JM Jain LLP as cash transactions made by the assessee during the subject year may not be treated as his undisclosed income under Section 68 of the Act. In reply, it was claimed by the assessee that the information contained in the documents found by the Department during the search proceedings at the premises of "JM Jain Group", i.e., a third party, was not binding on it. It was stated by the assessee that he had done sizable business transactions, i.e. trading transactions with M/s Jain LLP, Delhi and M/s. JM. Jain LLP, Delhi, in the financial year 2021–22, and the same were duly accounted for in

his books of accounts and all the payments were made through banking channels or by way of journal entries and no cash transactions were involved. The assessee distanced himself from the alleged cash transactions and stated that he was unaware of the said entries, which might have been made by the said concerns unilaterally, and hence, he was not bound by the entries recorded by the said concerns in their books of accounts electronically or in the paper form. Apart from that, it was stated by the assessee that the information that was made available to him in the form of scanned copies of the excel sheets was vague, and he was unaware of the same, much less the nature of the said transactions. Accordingly, the assessee firmly denied the transactions that had surfaced in the course of the search proceedings conducted on the "Jain Group" and further confirmed that he had never carried on any cash transactions with the said concerns.

5. Also, it transpires that the assessee, in the course of the assessment proceedings, had specifically stated that, as the complete and full details of the alleged impugned transactions were not made available to him, therefore, he was not in a position to explain or rebut the same. Further, the assessee specifically stated that no opportunity was afforded to him to cross-check the alleged impugned transactions

or to cross-examine the said parties, i.e., the Jain group entities. Elaborating further, the assessee stated that the probability of the searched parties, viz., (i). M/s Jain LLP, Delhi; and (ii). M/s. JM. Jain LLP, Delhi, of having used the name of his business concern for their vested interest to protect the identity of the actual parties with whom the impugned transactions might have been carried out, could also not be ruled out. Rebutting the observations of the A.O. that the assessee during the subject year had substantial cash deposits in his bank accounts, it was submitted by him that the said observation was in itself irrelevant, as the assessee had during the year under consideration had a sizable turnover and hence, the cash deposits in his bank account were sourced out of his regular business sale transactions. Accordingly, it was the assessee's claim that the unaccounted transactions that had surfaced during the course of the search proceedings conducted on the "Jain group" entities, as per the parallel server maintained by the latter, viz., "JSK Server" being found at the business premises of the said concerns had nothing to do with the assessee, as he was by no means concerned with the said transactions and had no knowledge about them.

6. Alternatively, it was stated by the assessee that even if it was to be assumed, without conceding, that if the alleged impugned transactions had taken place, then also the transactions would represent purchases and the corresponding sales would also be required to be considered. As a result, it was submitted by the assessee that only the Gross Profit (G.P.), i.e., the difference between the purchases and the sales was to be considered as the income of the assessee while framing the assessment, and not the total value of the alleged impugned purchases.

7. However, the A.O. did not find favour with the aforesaid explanation of the assessee. It was observed by him that, though the assessee had initially not agreed to the addition, but later on, he had stated that even if such transactions had materialized, the addition should not be made of the whole amount of such transactions. Accordingly, the A.O., based on his aforesaid observations, held a firm conviction that as the assessee had failed to explain the alleged cash transactions made during the year under consideration and, thus, treated the entire value of the same aggregating to Rs. 9,22,76,960/- as unexplained cash credit under Section 68 of the Act. Accordingly, the A.O. vide his order passed under Section 143(3) r.w.s. 144B of the Act,

dated 21.03.2024, determined the income of the assessee at Rs. 9,96,16,800/-.

8. Aggrieved, the assessee carried the matter in appeal before the CIT(A), who found favour with the explanation of the assessee and vacated the addition made by the A.O. under Section 68 of the Act.

9. Ostensibly, the CIT(A) had vacated the impugned addition for more than one reason, viz., (i). that the statements of the third parties, viz. M/s. Jain LLP, Delhi, and M/s. JM Jain LLP, Delhi (along with the scanned copies of the excel sheets), which had formed the basis for making the impugned addition in the hands of the assessee, were not made available to him; and (ii). that the assessee was denied the cross-examination of the aforementioned persons, whose statements were made the basis for making the impugned addition in his hands, which was a flagrant violation of the principles of natural justice. For the sake of clarity, the observations of the CIT(A), based on which he had vacated the addition is culled out as under:

I have perused the facts of the case and have examined the assessment order passed by the AO and also the detailed submissions tendered by the assessee. On examining the assessment order of the AO, it is clear that the entire addition has been based on certain Excel sheets that were recovered from a computer server during the course of a search operation conducted on the premises of M/s JM Jain, LLP, Delhi and M/s Jain LLP, Delhi on 28.05.2022. Now whenever an addition is based on evidence discovered on the premises of a third party or is based on the statements of third parties, certain principles of natural justice have to be strictly followed failing which the assessment loses its force and is reduced to a nullity In this case it is seen that the appellant was not granted an opportunity to cross examine the third parties from whose premises these Excel sheets had been impounded and neither were the statements of these third parties made available to the assessee. This tantamounts to using 'evidence' against the assessee behind his

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back and without giving him any opportunity whatsoever to rebut the 'evidence'. The Hon'ble Supreme Court in Andaman Timber Industries (2015) 281 CTR 214 (SC) held that denial to the assessee of the right to cross examine the witness whose statement was made the basis of the impugned order is a serious flaw which renders the order a nullity in as much as it amounted to violation of the principles of natural justice. A number of other High Courts and Tribunals have endorsed the principle mentioned above. A few of these judgments are given as under:-

In Laxmanbhai S. Patel vs CIT, 327 ITR 281(2010), the Hon'ble High Court of Gujrat has considered the legal effect of a statement recorded behind the back of the assessee and where no copy thereof was furnished to the assessee and neither was an opportunity of cross examination granted. The High Court held that if the addition was made in this manner then the same is required to be deleted on the ground of violation of the principles of natural justice. In M/s R.W. Promotions (P) Ltd., Mumbai v/s ACIT (ITA No. 1489 of 2013) the Hon'ble High Court of Mumbai held that the right to cross examine is a part of the 'Audi Alterem' principle and the same can be denied only on exceptional and extraordinary grounds and that too after recording them in writing and then communicating the same to the assessee. The Court held that denial of the right to cross examine rendered the order passed against the assessee null and void.

In Prarthana Construction (P) Ltd. v/s DCIT (2001) 118 Taxman 112 (ITAT Ahmedabad) it was held that loose papers and documents seized from the premises of third parties and statements recorded behind the back of the assessee without the assessee being afforded any opportunity to cross examine and rebut these statements could not be made the basis for adding undisclosed income in the hands of the assessee.

In Amarjit Singh Bakshi (HUF) vs ACIT (2003) 86 ITD 13 (Delhi) it was held that where the document in questioned was not recovered from the assessee's possession but was receovered from somebody else's possession and the assessee was not allowed any opportunity to cross examine that person no addition could be made based on such document in the hands of the assessee.

Finally, in Kalra Glass Factory vs Sales Tax Tribunal (1987) 167 ITR 488 the Supreme Court held that it is an elementary principle of natural justice that the assessee should have knowledge of the material that is being used against him so that he may be able to meet itwhere for instance the statement of a person is recorded or evidence gathered behind the back of the assessee but the same is not tested by cross examination, such a statement or evidence cannot be allowed to be used to the prejudice of the assessee.

Hence, from the above discussion it is clear that by not affording the assessee an opportunity to cross examine the partners of M/s JM Jain, LLP, Delhi and M/s Jain LLP, Delhi, who alleged that unrecorded cash transactions with the assessee were stored in their server, the order of the AO has been vitiated as it violates a fundamental tenet of the principles of natural justice, namely, 'Audi AlteremPartem' i.e. that the other side will be heard and that no evidence/statement shall be used against the assessee without affording him an opportunity to cross examine and rebut the adverse statement or evidence. On examining the AO's order it is seen that he has simply reproduced the copies of the Excel Sheets taken from the server on the premises of M/s JM Jain, LLP and M/s Jain, LLP and has then proceeded to add the amount without bringing on record any evidences whatsoever that the assessee had made unaccounted expenditure in cash. The presumption u/s 132(4A) can be drawn only against the person in whose case the search was authorised and from whose possession incriminating documents have been found. This presumption therefore cannot be raised against the assessee as he was not subjected to a search operation and neither were these Excel Sheets recovered from him. The AO has failed to adduce any evidence to corroborate the information in these 'Excel' Sheets and has only mechanically copied them onto his order and made the addition.

In conclusion it is held that he AO's order is violative of all principles of natural justice as it was passed by not allowing the assessee an opportunity to cross examine or rebut the statements and evidence that were made by third parties and were being used against the assessee. Further, the AO has not produced even a single piece of evidence in his order to establish that the assessee had carried out unrecorded cash transactions. Instead the AO has relied blindly on the copies of the 'Excel Sheets' and has made the addition in a mechanical way. Hence, the addition made by the AO of Rs.9,22,76,960/- u/s 68 is hereby deleted and the assessee's appeal is **allowed**.

10. The Revenue, being aggrieved with the order of the CIT(A), has carried the matter in appeal before us.

11. As the assessee/respondent despite having been intimated about the fixation of the appeal, had neither put up an appearance nor sought for an adjournment, therefore, we are constrained to proceed with as

per Rule 25 of the Appellate Tribunal Rules, 1963 i.e. after hearing the Revenue/appellant and perusing the orders of the lower authorities along with the material available on record.

12. Dr. Satyasai Rath, CIT-Departmental Representative (for short "CIT-DR") at the threshold of hearing of the appeal, relied upon the assessment order. The Ld. CIT-DR submitted that, as the CIT(A) has powers co-terminus with those of the A.O., therefore, in case, if he was of the view that the assessee had been divested of his right to cross-examine the aforementioned parties, whose statements had formed the basis for making the addition in the hands of the assessee, then nothing prevented him from either allowing such cross-examination or directing the A.O. to do the needful.

13. The Ld. CIT-DR submitted that the concrete facts, that had surfaced in the course of the search proceedings conducted in the case of the "Jain Group", which revealed beyond doubt that the impugned cash transactions were carried out by the assessee, during the subject year, and there was no justification for the CIT(A) to have summarily vacated the addition made by the A.O. Elaborating further on his contention, the Ld. CIT-DR submitted that the assessee, in the course of the assessment proceedings, had though initially distanced himself

from the cash transactions that were retrieved by the Department, in the course of the search proceedings, from the parallel server maintained by "JM Jain Group" i.e., the SAP-JSK server, which was being used by the latter for recording transactions between vendors and customers, but had interestingly, thereafter come up with an alternative plea that even if it was to be assumed that the said transactions had materialized, then, the addition in his case was liable to be restricted only to the extent of the "Gross Profit" element, i.e., the difference between the purchases and sales, and the entire amount of the transactions could not be added in his case. The Ld. CIT-DR submitted that the aforesaid alternative contention of the assessee, in itself, revealed that the transactions retrieved in the course of the search proceedings on "Jain Group" were the actual unaccounted transactions of the assessee.

14. Admittedly, it is a matter of fact borne from the record that, during the course of search proceedings conducted on "JM Jain" group, a parallel server, commonly known amongst its employees as "JSK Server", i.e., a SAP-based server that was used for recording transactions between vendors and customers containing cheque transactions (accounted for in the books of accounts of vendors and

customers) and cash component (not accounted for in the books of accounts of vendors and customers) was found. On a perusal of the assessment order, we find that numerous other pieces of evidence were found through which the data of the parallel books of accounts – "JSK Server" was corroborated. The A.O. had observed in the assessment order that corroboration of the "JSK server" was established through, viz. (i). admission by key employees and cash collectors of vendors during the search; (ii). analysis of the seized material (Kachcha/Pakka Invoices/Reminder Ledger seized during the search proceedings; (iii). analysis of Ledger/Challan of vendors and customers sent through e-mail delpostmen@gmail.com; (iv). analysis of Bank Statement/Ledgers of vendors and customers; (v) convergence of the JSK server and JMJ Server (vi). the miscellaneous files/documents found in the digital device cloned during the search. Accordingly, the A.O. observed that the corroboration of the "JSK server" at multiple levels squarely established that the "JM Jain" group was routinely engaged in generating out-of-book commission and interest income.

15. Also, the A.O. observed that the analysis of the parallel server that was commonly known amongst its employees as the "JSK server", revealed that the same housed transactions between thousands of

customers and vendors from the Financial Year 2020–21 onwards. It was further observed by him that though the server contained data from the Financial Year 2020–21 onwards, the in-house forensic team of the department was able to recover deleted data pertaining to the Financial Year 2019–20 as well. Accordingly, the data from the "JSK server" retrieved from the post-search covered the period from F.Y. 2019–20 up to F.Y. 2022–23, i.e., up to May 2023. Apart from that, the A.O. observed that Shri Anil Swami, Accountant for M/s. JM. Jain at Gandhinagar office, has in his statement recorded under Section 131(1A) of the Act, recorded in the course of the search proceedings on 31.05.2022, decoded the recording of the transactions by the Jain Group.

16. Be that as it may, we find that the assessee, on being confronted with the excel sheets and the ledger accounts, as were retrieved by the Department, during the course of the search proceedings from the "JSK server", had distanced himself from the cash transactions therein recorded. As observed hereinabove, it was the assessee's claim that he was unaware of the transactions recorded by the aforesaid entities of the "Jain Group" in their parallel books of accounts.

17. Considering the observations of the authorities below, we are of the firm conviction that the A.O., except for relying upon the excel sheets/ledger accounts retrieved from the SAP-based "JSK server" during the course of search & seizure proceedings conducted on "JM Jain" Group, had failed to place on record any documentary evidence, which could irrefutably evidence that the cash deposits disclosed under the name of the assessee in the seized documents were the actual transactions carried out by the assessee. We concur with the Ld. CIT(A) that whenever reliance is placed on evidence discovered from the premises of a third party or based on the evidence of third parties, certain principles of natural justice have to be strictly followed, failing which the impugned addition made in the hands of the assessee cannot be sustained and is reduced to a nullity. Ostensibly, the assessee had though stated before the A.O. that the scanned copies of the excel sheets, based on which the impugned addition was sought to be made, were vague, but despite that, no proper photocopies of the same were made available to him. Also, it is a fact discernible from the order of the CIT(A) that the assessee, despite specific request for the cross-examination of the "JM Jain" Group entities, i.e., the third parties on whose statements adverse inferences were sought to be drawn against him, was however, most arbitrarily divested of the said statutory right.

We are of the firm conviction that not allowing the assessee firm an opportunity to cross-examine the aforementioned third party, while acting upon the latter's statements for drawing an adverse inference in his hands, is nothing but a flagrant violation of the basic tenets of the principles of natural justice i.e. *audi alteram partem*. Our aforesaid view that denial to the assessee to cross-examine the witness whose statement was made the basis of the impugned addition made in his hands is a serious flaw which renders the order a nullity, as it amounts to a violation of the principles of natural justice, is supported by the judgment of the **Hon'ble Supreme Court** in the case of **M/s. Andaman Timber Industries Vs. Commissioner of Central Excise [(2015) 281 ELT 431 (SC)] and Civil Appeal No. 4228 of 2006, dated 02.09.2015.** The Hon'ble Supreme Court after exhaustive deliberations on the denial of the right of an assessee for cross-examination of a witness, whose statement was being acted upon by the adjudicating authority and had formed the basis of drawing an inference in his hands, had held that not allowing the same amounted to violation of the principles of natural justice because of which the assessee was adversely affected. The Hon'ble Apex Court further observed that not allowing cross-examination constituted a serious procedural flaw which rendered the order a nullity. The Hon'ble Supreme Court disapproved

the view taken by the Tribunal, which had observed that no useful purpose would have been served by allowing the cross-examination of third parties to the assessee before it. The Hon'ble Apex Court had observed that it was not for the Tribunal to have guessed as to for what purpose the assessee/respondent wanted to cross-examine the third party and what extraction he wanted from them. The Hon'ble Supreme Court, considering the aforesaid facts, had set aside the impugned order passed by the Tribunal and allowed the appeal. For the sake of clarity, the relevant observations of the Hon'ble Apex Court are culled out as under:

> "We have heard Mr. Kavin Gulati, learned senior counsel appearing for the assessee, and Mr. K. Radhakrishnan, learned senior counsel who appeared for the Revenue.
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> 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.

> As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.
>
> In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice.
>
> We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal."

18. Also, we find that a similar issue had been looked into by the **Hon'ble High Court of Rajasthan** in the case of **CIT, Central, Jaipur Vs. Sunita Dhadda (2018) 100 taxmann.com 525 (Rajasthan)**. The indulgence of the Hon'ble High Court was, *inter alia,* sought for adjudicating, viz., (i). that whether an assessee who was fastened with the tax liability based on the testimony of a third party, was supposed to be afforded an opportunity for cross-examination; and (ii) that what would be the effect in case, the opportunity for cross-examination was not afforded. We find that the Hon'ble High Court, drawing support from the judgment of the Hon'ble Supreme Court in the case of M/s. Andaman Timber Industries Vs. Commissioner of Central Excise (supra)

along with a host of other judicial pronouncements, had approved the view taken by the Tribunal that had held that for the said failure on the part of the A.O. to allow cross-examination of the third party, the adverse inference that was drawn by the A.O. in the hands of the assessee before them were liable to be vacated. Also, we may herein observe that the aforesaid judgment of the Hon'ble High Court of Rajasthan in the case of CIT, Central, Jaipur Vs. Sunita Dhadda (supra) had thereafter been approved by the **Hon'ble Supreme Court** in the case of **CIT Vs. Sunita Dhadda (2018) 100 taxmann.com 526 (SC)** and the petition filed by the Department had been dismissed. Further, we find that the **Hon'ble High Court of Gujarat,** in the case of **Laxmanbhai S. Patel Vs. CIT (2010) 327 ITR 281 (Guj.),** had deliberated upon the ramifications of not allowing the opportunity of cross-examination to the assessee. It was observed that, in the absence of allowing of cross-examination, the addition which was based on the statement of the third party was required to be deleted on the ground of violation of the principles of natural justice. **The Hon'ble High Court of Bombay,** in the case of **M/s R.W. Promotions P. Ltd. Vs. ACIT (2015) 61 taxmann.com 54 (Bombay)**, had held that the right to cross-examination is a part of the *audi alteram partem* principle, and the same can be denied only on exclusive and extraordinary grounds, that too,

only after recording them in writing and then communicating the same to the assessee. It was further observed by the Hon'ble High Court that the denial of the right to cross-examine renders the assessment against the assessee as null and void. Further, we find that the **ITAT, Delhi** in the case of **Amarjit Singh Bakshi (HUF) Vs. ACIT (2003) 86 ITD 131 (Delhi) (TM)** has held that where the documents in question were not recovered from the possession of the assessee, but were recovered from somewhere else, and the assessee was not allowed to cross-examine the concerned person, then no addition could be made in the hands of the assessee based on such documents..

19. We thus, in the backdrop of the aforesaid facts wherein neither the A.O. had acceded to the request of the assessee for providing proper copies of the excel sheets, based on which adverse inferences were sought to be drawn in his case; nor had acted upon the specific request of the assessee for allowing the cross-examination of “JM Jain” Group entities i.e., the third parties whose statements had formed the basis of the adverse inferences drawn in the case of the assessee, therefore, we find no infirmity in the view taken by the CIT(A) who had rightly vacated the impugned addition made by the A.O. under Section 68 of the Act.

20. Resultantly, finding no infirmity in the reasoned order of the CIT(A), we find no substance in the appeal filed by the Revenue, which, thus, being devoid and bereft of any substance is dismissed.

Order pronounced in the Open Court on 25th July, 2025.

Sd/- **(एस. बालकृष्णन)** **(S. BALAKRISHNAN)** **लेखा सदस्य/ACCOUNTANT MEMBER**	**Sd/-** **(रवीश सूद)** **(RAVISH SOOD)** **न्यायिक सदस्य/JUDICIAL MEMBER**

Hyderabad, dated 25.07.2025.
TYNM/sps

आदेशकी प्रतिलिपि अग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Vikas Kumar Chhajer, Shop Nos.7 & 8, Sri Ganesh Textile Market, Cantonment, Vizianagaram – 535003, Andhra Pradesh.
2.	राजस्व/ The Revenue	:	The Deputy Commissioner of Income Tax, Circle 3(1), Visakhapatnam.
3.	The Principal Commissioner of Income Tax, Visakhapatnam.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Visakhapatnam.		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam