

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI SUDHIR KUMAR, JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.1250/Del/2025  
(ASSESSMENT YEAR 2011-12)**

Horizon Buildmart Pvt. Ltd., C-131, Ground Floor, Block-C, Sushant Shopping Arcade, Sushant Lok-1, Gurgaon-122002. <b>PAN-AACCH4582P</b>	Vs.	Asst. CIT, Central Circle-II, Faridabad, Haryana-121001.
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	Shri S.S. Nagar, CA
<b>Department by</b>	Ms. Amisha S. Gupta, CIT DR
<b>Date of Hearing</b>	03/11/2025
<b>Date of Pronouncement</b>	16/01/2026

**ORDER**

**PER MANISH AGARWAL, AM:**

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-3, Gurgaon ('Ld. CIT(A)' in short) dated 27.01.2025 in Appeal No.10581/CIT(A) GGN-3/2018-19 for Assessment Year 2011-12 arising out of the order passed u/s 147 r.w.s 144 of the Income Tax Act, 1961 ('the Act' for short) dated 28.12.2018.

2. Brief facts of the case are that assessee is private limited company engaged in the business of real estate. The assessee filed its return of income on 30.09.2011 declaring a loss of Rs.54,833/-. The AO had information that assessee received loan

from one M/s Grand Realcon Private Limited which was managing and controlling by some individuals alongwith other companies for providing accommodation entries and accordingly, the AO alleged that M/s Grand Realcon Private Limited is a paper company established to provide accommodation entries the loan taken from it is unexplained cash credit us/ 68 of the Act and made the addition of Rs.8.35 towards loan received by the assessee from M/s Grand Realcon Pvt. Ltd.

3. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide impugned order had dismissed the appeal of the assessee, therefore, the assessee is in appeal before the Tribunal by taking following grounds of appeal:

- 1.0 *That on the facts and in the circumstances of the case, the disallowance, imposition of tax, and interest with reference thereto, as well as the quantification of taxable income and tax liability, are unjustified, erroneous, and unsustainable, and it is prayed that necessary directions be issued to the Learned Assessing Officer (Ld. AC) to grant appropriate relief in accordance with the law.*
- 2.0 *That, on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. AO without considering the fact that the assessment completed u/s 147 r.w.s 144 was bad in law on various technical and jurisdictional grounds.*
- 3.0 *That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. AO without appreciating the fact that recourse to section 147 of the Act would be unavailable in cases where the AO is empowered to proceed u/s 153C of the Act.*
- 4.0 *That, on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. AO without appreciating the fact that there was no failure on the part of the appellant to disclose fully and truly all material facts necessary for the assessment for the year under consideration and hence assumption of jurisdiction u/s 147 by issuance of notice u/s 148 beyond the period of 4 years was invalid and as such, could not be sustained in law.*
- 5.0 *That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. A.O, without considering the fact that assumption*

*of jurisdiction by issuing notice u/s 143(2) of the Act before supplying the reasons to believe to the appellant is bad in law.*

- 6.0 *That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. AO without considering the fact that reasons recorded u/s 148 of the Act do not meet the requirement of law hence completely vague and untenable.*
- 6.1 *That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of the Ld. AO without considering the fact, that the reasons to believe recorded by the Ld. AO for the initiation of reassessment proceedings u/s 147 of the Act was based on borrowed satisfaction and without application of mind.*
- 6.2 *That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. AO without considering the fact that the reasons u/s 148 were recorded merely on the basis of suspicion and assumptions/presumptions derived from search conducted in case of M3M Group.*
- 6.3 *That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of the Ld. AO without considering the fact that the material which has been made the basis of recording reasons to believe for initiation of proceedings u/s 147 of the Act has never been supplied to the appellant.*
- 7.0 *That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. AO without considering the fact that Ld. AO has changed his mind at each stage of assessment proceedings.*
- 8.0 *That on the facts and circumstances of the case, the Ld. CIT-(A) has erred without substantiate the fact that no approval accorded u/s 151 of the Act by the Ld. AO has been provided to the appellant.*
- 9.0 *That on the facts and circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. AO passed u/s 147 r.w.s. 144 of the Act without consideration the fact that submissions were filed by the appellant in response to the notices and questionnaire issued and accordingly impugned order is annulled on this ground alone.*
- 10.0 *That on the facts and circumstances of the case, the Ld. CIT-(A) has erred in upholding the order of Ld. AO without appreciating the fact that the appellant has discharged onus laid down u/s 68 of the Act and hence addition made was baseless and invalid.*
- 10.1 *That on the facts and circumstances of the case, the Ld. CIT-(A) has erred in upholding the addition made by the Ld. AO u/s 68 on account on unexplained*

*cash credits amounting to Rs. 8.35 crores without considering the facts and reply filed by the appellant.*

*10.2 That on the facts and circumstances of the case, the Ld. CIT-(A) has erred in upholding the addition made by the Ld. AO u/s 68 since bank statement cannot be construed to be books maintained by the assessee for the purpose of section 68 of the Act.*

*11.0 That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in treating the appellant company as an accommodation entry recipient by relying on statement recorded at back of the appellant without providing an opportunity by the Ld. AO to cross examine the same.*

*12.0 That the appellant craves leave, to add, to amend, modify, rescind, supplement, or alter any of the Grounds stated here-in-above, either before or at the time of hearing of this appeal.”*

4. Grounds of appeal No.1 & 2 are general in nature and needs no adjudication.

5. Grounds of appeal No. 3 to 9 are with respect to the legality of the reopening of the assessment u/s 147 of the Act.

6. Before us, ld. AR for the assessee submits that from the perusal of the reasons recorded, which are available at PB pages 15 to 19, it could be seen that AO simply reproduced the information received from Investigation Wing, Faridabad and had not applied his mind to find out the real nature of transaction. He drew our attention to the facts that in the reasons recorded, AO made observations that assessee has not filed the details of the Schedules to Balance Sheet in the return of income filed ignoring the fact that in the form of return of income prescribed for Companies, there is no column for filing such details. Ld. AR submits that loan alleged as bogus was repaid in Financial Year 2013-14. He further submits that entire reassessment proceedings were based on the incriminating materials and documents found as a result of search carried in some other group and therefore, the action u/s 153C should have been taken in the case of assessee, however, the AO has proceeded u/s 148 of the Act which is not permissible in the present case. Ld. AR placed reliance on the

judgments of the Hon'ble Rajasthan high court in the case of Shyam Sunder Khandewal vs. ACIT reported in 161 taxmann.com 255 (Raj.) and further submits that SLP filed against the said order was also dismissed by the Hon'ble Supreme Court. Besides this, the Ld. AR placed reliance on the judgments of the hon'ble Bombay High Court in the case of Sejal Jewellery vs. Union of India reported in 171 taxmann.com 846(Bom.) and of the Co-ordinate Bench of ITAT Mumbai in the case of Shri Amit Mangilal Jian vs. ACIT (ITA No.3331/Mum/2019) order dated 28.07.2025.

7. The Ld. AR further submits that before issuing the notice u/s 148 of the Act, AO has not carried out any independent enquiry or verification and simply based on the letter issued by DCIT for search and seizure action was conducted on M3M India Group, concluded that the funds received by the assessee from M/s Grand Realcon Pvt. Ltd. are not genuine. The Ld. AR further submits that the AO has inordinate delayed in supplying the reasons recorded to the assessee though the assessee had filed the return in response to notice u/s 148 and requested to supply the reasons so that the same could be challenged. He thus prayed for cancellation of the assessment order as reassessment order passed is not in accordance with the provisions of law.

8. On the other hand, the Ld. CIT-DR supported the orders of the lower authorities and submits that there was no incriminating material found during the search and during the post search enquiries, information was gathered that the company from whom assessee had received loan is a paper company and the loan is nothing but an accommodation entry. The Ld. CIT-DR submits that in terms of the judgments of Hon'ble Supreme Court in the *Abhisar Buildwell* proceedings could not be initiated u/s 153C in the case of assessee. Ld. CIT-DR further submits that regarding the repayment of the loan, an affidavit is filed by the assessee which was

never filed before the AO or CIT(A) and, therefore, matter may be sent back to the file of the AO for necessary verification as the same constitutes additional evidence. She, therefore, prayed that lower authorities have rightly initiated reassessment proceedings u/s 148 of the Act and requested for confirmation of the same.

9. Heard both the parties and perused the materials available on record. In the instant case, from the perusal of the reasons recorded as available at page 19 of paper book filed by the assessee, it is observed that the AO has based his findings on the Ld. AR has placed reliance on the search carried out in the M3M Group on 01.07.2016 and further placed reliance on the statements of various persons. The hon'ble Delhi high court in the case of **PCIT Vs. Naveen Kumar Gupta** reported in **(2024) 168 Taxmann.com 574** has held as under:

*Section 153C, read with sections 147 and 148, of the Income-tax Act, 1961 - Search and seizure - Assessment of any other person (Reassessment) - Assessment year 2011-12 - A search was conducted in respect of 'J' and 'N' and a large volume of documents were seized - It was revealed that assessee was major beneficiary of accommodation entry operations carried on by 'J' and 'N' - Assessing Officer, also received information from investigation wing that assessee had purchased penny scrips - Assessing Officer, based on information issued reopening notice and thereafter made additions under section 68 - Tribunal held that Assessing Officer was required to frame assessment under section 153C and was precluded from proceeding under section 147 - Whether non obstante clause as used in section 153C cannot be read to completely exclude provisions of section 147 in cases where assessee's income is sought to be assessed inter alia on basis of information found during search proceedings - Held, yes - Whether however, it will not be open for Assessing Officer to take recourse to section 147, where Assessing Officer has taken steps under section 153C - Held, yes - Whether where jurisdictional conditions to initiate further steps under section 153C were not satisfied, Assessing Officer could initiate reassessment proceedings under section 147 even if proceedings under section 153C could have been initiated - Held, yes - Whether thus, in instant case where reassessment proceedings were initiated under section 147 not only on basis of material containing information that was found during search conducted in respect of another person but was also founded on basis of other information as obtained by Investigation Wing, decision of Assessing Officer to reassess income of assessee under section 147 could not be faulted - Held, yes [Paras 58, 59, 66 and 67] [In favour of revenue]*

10. In view of the aforesaid judgement of hon'ble Delhi high court, we find no error in the proceedings initiated by the AO u/s 148 of the Act even though he has based his satisfaction on the material found during the course of search. Regarding assessee's argument that AO has not supplied the reason within the time, we find that the AO has provided the reasons alongwith the notice u/s 143(2) on 12.11.2018 and since there is no bar in issuing notice u/s 143(2) prior to the supply of reasons recorded, we find no error in the order of AO and accordingly, all the legal grounds taken by the assessee are dismissed.

11. In Grounds of appeal No. 10 and 11, assessee has challenged the addition of Rs. 8.35 crores made by AO u/s 68 of the Act.

12. Before us, ld. AR submits that the before AO, assessee submits the confirmed copy of ledger account, copy of income tax return, its bank statements and financial statements of M/s Grand Realcon Pvt. Ltd. Ld. AR submits that by filing the copy of ITR assessee has established the identity of the lender company. Regarding creditworthiness of the lender company, assessee has filed its financial statements and bank account for the relevant period and submits that lender company has sufficient net worth and there was sufficient balance when the funds were transferred to the assessee. Ld. AR further submits that the AO has relied upon the statements of third parties for alleging that the lender company is a paper company however, despite repeated requests, no opportunity to cross-examine those persons was allowed which is a violation of principal of natural justice.

13. It is further stated by ld. AR that the loan was repaid in the Financial Year 2013-14, and no action was taken by the department in that year. Further the AO has alleged that the funds were actually belonged to M/s Misty Meadows Pvt. Ltd and

therefore protective addition is made in the hand of the assessee however, no substantive addition was made in the hands of M/s Misty Meadow Pvt. Ltd. prior to the addition made on protective basis. Ld. AR thus submits that the additions made on protective basis are without any authority of law and deserves to be deleted.

14. On the other hand, Id. CIT DR vehemently supported the order of lower authorities and submits that by making inquiries, Investigation wing has already proved that the lender company is merely a paper company managed and controlled by some entry operators and thus the addition made should be sustained.

15. Heard both the parties and perused the materials available on record. In the instant case, assessee has received unsecured loan of Rs.8.35 crores from M/s Grand Realcon Pvt. Ltd. and filed all the necessary documents to establish identity of lender and its creditworthiness. The lower authorities alleged that during the search on M3M group, it was found that the lender company was managed and controlled to provide accommodation entries of unsecured loans. However, it is seen that neither the copy of the said statements was provided to the assessee nor any opportunity of cross examination of such person was provided. The sole allegation in the instant case is based on the alleged admission made by the entry operator, however when neither his statements were provided nor any opportunity of cross examinations was provided, in our considered opinion it is violation of principal of natural justice and no addition could be made based on such statements.

16. The Co-ordinate Bench of the Tribunal in the case of ***Rishipal Investments and Finance (P) Ltd.*** in ***ITA No.2465/Del/2017*** under identical circumstances has held as under:

“12. We have, considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, reopened the assessment on the basis of the report of the Investigation Wing that the assessee has received accommodation entry of Rs.23,50,000/- from four companies, the details of which are given in the reasons recorded. We find, the AO after going through the various statements filed by the assessee from time to time, made addition of Rs.55,85,000/- being the share application money/share capital received by the assessee by invoking the provisions of section 68 of the Act and made further addition of Rs.83,775/ being 1.5% of the above amount which the assessee incurred as commission for arranging the accommodation entries. We find, the ld. CIT(A) dismissed the ground challenging the validity of the reassessment proceedings as well as the addition on merit. It is the submission of the ld. Counsel that the assessee during the assessment proceedings had categorically asked for the cross-examination of Shri S.K. Gupta, whose statement was the basis for making the addition of Rs.55,85,000/- to the total income of the assessee. However, we find from the assessment order that the AO rejected the request for cross-examination by observing as under:-

4.1 On 11.3.2014, another Counsel, Sh. V.K. Tulsian, CA attended on behalf of the assessee company but filed no details. He was informed that the name of the assessee company is very much visible at page 5 of the statement given by SK Gupta mentioned above. On the next date of hearing on 18.3.2014, the Counsel of the assessee again reiterated his objection to the reopening of the case which was not warranted as the same was already disposed off through a speaking order as mentioned earlier. He also objected to the name of the assessee and amount appearing in the statement of SK Gupta. It is an accepted fact that recording of reason is only the preliminary stage of initiating the assessment or re-assessment. What is relevant and to be taken here is the income and also any other income chargeable to tax which has escaped assessment and which comes to the notice of the AO subsequently in the course of the proceedings u/s 147. The assessee's request for cross-examination is also not acceptable and there is no need for it because there is no other statement of Sh. S.K. "Gupta which retracts from his earlier statement given on 20.11.2007. The original sworn statement of Sh. S.K. Gupta holds good till today which itself stands as the corroborating evidence of the escapement of income of this assessee. In reply to Q.No. 16, Sh. S.K. Gupta acknowledged that he himself maintained the bank accounts of the companies mentioned in the question out of which Dhamaka Trading & Construction (P) Ltd, ChanderPrabhu Financial Services Ltd, Central Gum & Chemicals Ltd, AGM Holdings Ltd were some of

*them. These paper companies were also functioning at the office premises of Sh.S.K. Gupta. In reply to Q.No. 7, Sh.S.K. Gupta also acknowledged that around 40 companies, registered at his office address, having no infrastructure, resources, employees and having no real business activities are created only for providing accommodation entries. The assessee's denial that it has no transaction with Sh.S K. Gupta has not absolved him from its onus u/s 68. It is reiterated here that Sh.S.K. Gupta is the entry operator, who through several dummy companies floated by him and controlled by him directly or indirectly, has given the accommodation entries to this assessee through the companies mentioned earlier. Till the last stage of proceedings, the assessee's counsel vide dtd 27.3.2014 again challenged assumption of jurisdiction u/s 147/148 stating that the name of entry provider was mentioned in the reason as 'Sh. Kapur. It may be clarified here that Sh. Kapoor mentioned in the form for recording reason is the middleman engaged by Sh. S.K. Gupta and he is a team of the entry provider, Sh.S.K. Gupta. To say that the name of Kapoor has not appeared except in the reason is factually wrong because this name has appeared as one of the intermediaries at page 8 of the sworn statement of S.K. Gupta, This trifle objection does not effect the nature of transactions, done by the assessee using the mode of accommodation entries to bring back its unaccounted income to its books. The assessee's has not discharged its onus cast u/s 68 as required. To say that the assessee has no control over the share applicants with whom it had many dealings is nothing but an admission of the fact that the entries taken by it are its own money shown in the garb of share application money and has no concern for those paper companies because his purpose has been served. Moreover, this office has already issued summons u/s 131 to the alleged share applicants on 15.10.2013 but some were returned back unserved and others did not comply with these summons. It is surprising to note that some confirmations were sent by post from the same address even in cases which were received back unserved from postal authorities. The fact is that in the course of assessment proceedings, the assessee's counsel was aware about non-service of notices/summons to alleged share subscribers. It appears that the so-called confirmations were got arranged and sent by the assessee himself. The papers arranged by the assessee and filed by its Counsel are nothing but paper trails which have no evidentiary value."*

13. *From the above, it is clear that despite the request of the assessee for cross-examination of Shri S.K. Gupta, whose statement is the basis of addition made by the AO, the AO has not provided the opportunity of cross-examination to the assessee.*

14. *We find, identical issue had come up before the coordinate Bench of the Tribunal in the case of TRN Impex Pvt. Ltd. (supra) where the Tribunal deleted the addition on the ground that the AO did not grant the opportunity of cross-examination despite being asked for by the assessee. The relevant observation of the Tribunal from para 6 onwards reads as under:-*

6. *We have considered the rival submissions and perused the material on record. It is not in dispute that reopening of the assessment was made on the basis of the search conducted in the cases of Shri Deepak Agarwal and Shri Mukesh Kumar. Their statements were also recorded which were adverse in nature against the interests of the assessee. Certain documents were also found during the course of search from their premises to reveal that they have been providing accommodation entries. However, the details of the same have not been mentioned in the assessment order. Thus, the basis for reopening of the assessment and making addition against the assessee was on the basis of statement recorded by Investigation Wing of Shri Deepak Agarwal and Shri Mukesh Kumar implicating the assessee company of providing accommodation entries to the assessee company. The assessee made a specific request before A.O, to provide an opportunity to cross examine the statements of Shri Deepak Agarwal and Shri Mukesh Kumar, but, it were denied by the A.O. vide his letter Dated 05.11.2018 PB-75-76. The A.O. in his letter has mentioned that primary onus is upon assessee to prove its case and under such circumstances by asking for cross examination, the assessee is trying to shift the burden of proof on the Department. Therefore, request of assessee was declined. The Ld. CIT(A) instead of deciding the issue in proper perspective as per Law has also held that right of cross-examination to the statements of witnesses used against the assessee is not an absolute in nature. However, it is well settled Law that any material collected at the back of assessee or statement recorded at the back of assessee cannot be used in evidence against the assessee, unless the same is confronted to the assessee at assessment proceedings and right of cross-examination have been granted to assessee to such statements. We rely upon the Judgments of Hon'ble Supreme Court in the cases of Kishan Chand Chellaram (supra) and Andaman Timber Industries 281 CTR 214 (SC) and Judgment of Hon'ble Delhi High Court in the case of CIT us., SMC Share Broker Ltd., (supra). In view of the above, it is clear that right of assessee have been denied by the authorities below in not allowing the assessee to cross-examine the statements of Shri Deepak Agarwal and Shri Mukesh Kumar. Thus, these statements recorded at the back of the assessee which were adverse in nature to the interest of assessee cannot be relied upon against the assessee and no addition could be made on that basis. The decisions relied*

*upon by the Learned Counsel for the Assessee above also apply to the facts and circumstances of the case. Thus, there is no material left on record with the Department to justify the addition of Rs. 10 lakhs against the assessee. It may also be noted here that assessee has produced the above documentary evidences noted above which clearly shows that the Investor company has made investment in assessee company which is confirmed by the Investor in their confirmation and affidavit of the Director. The balance-sheet of the Investor shows that they have made investment in assessee company and they have sufficient balance to make the investment in assessee company which was made through banking channel. No cash was found to have been deposited in the account of the Investor before making investment in assessee company and actual shares were also allotted to the Investor by the assessee company. Thus, documentary evidences on record have not been rebutted by the A.O. through any evidence or material on record. No independent enquiry has been made against these documentary evidences. Therefore, such documentary evidences clearly supports the explanation of assessee that genuine investment have been made in the assessee company. We rely upon Judgments of Hon'ble Delhi High Court in the cases of CIT us. Fair Investment Ltd., 357 ITR 146 (Del.); CIT vs. Kamdhenu Steel and Alloys Ltd., & Ors. 361 ITR 220 (Del.); CIT us. (i) Dwarakadhish Investment P. Ltd., (2011) 330 ITR 298 (Del.); CIT us. Winstral Petrochemicals P. Ltd., 330 ITR 603 (Del.); CIT vs. Value Capital Services Pvt. Ltd., (2008) 307 ITR 334 (Del.) and CIT vs., Kureli Papers Mills P. Ltd., 380 ITR 571 (Del.).*

*6.1. Considering the totality of the facts and circumstances of the case and that there is no adverse material available on record against the assessee so as to make the impugned addition of Rs.10 lakhs and that no investigation have been made by the A.O. on the documentary evidences submitted by assessee, we are of the view that addition of Rs. 10 lakhs is wholly unjustified. We, accordingly, set aside the Orders of the authorities below and delete the addition of Rs.10 lakhs. In view of the above, there is no need to decide the issue of reopening of the assessment which is left with academic discussion only. Accordingly, appeal of the Assessee is allowed.*

*7. In the result, appeal of the Assessee allowed."*

*15. Similar view has been taken by the coordinate Bench of the Tribunal in the case of Vijayshree Food Products Pvt. Ltd. (supra) where the Tribunal, following the decision of the Tribunal in the case of Kuber Khan Paan Udyog (P) Ltd. and Kuber Food Products India Pvt. Ltd. vide ITA Nos.580/Del/2019 and 322/Del/2019, order dated 22nd October, 2019 for AY 2011-12 has*

*deleted the addition on account of non-granting of opportunity of cross-examination to the assessee of the person whose statement was the basis for making the addition and which has been recorded behind the back of the assessee. Since, in the instant case also the reopening was made on the basis of the report of the Investigation Wing in the case of Mukesh Gupta group along with its close confidants Sh. Rajan Jassal and Sh. Surinder Pal Singh, but the addition was made on the basis of the statement of Shri S.K. Gupta recorded during the course of survey on 20.11.2007 in the case of M/s Sino Credits & Liasing Limited, M/s Rapid Packaging Limited, Girisho Company (P.) Limited, M/s Mitsu Securities Management (Pvt.) Ltd., M/s Sino Securities and M/s Anila Industries and since even after repeated requests of the assessee, the AO has not provided the opportunity of cross-examination of Shri S.K. Gupta to the assessee, therefore, respectfully following the decisions cited supra, we hold that the addition made by the AO and sustained by the CIT(A) is not in accordance with the law. We, therefore, delete the addition.”*

17. In the case of ***Veena Gupta vs. ACIT*** in ***ITA No.5662/Del/2018***, the Co-ordinate Bench has followed the judgement of Hon’ble Supreme Court in the case of ***Andman Timber Industries*** reported in ***62 Tax,mann.com 3 (SC)*** has held that not providing the opportunities of cross examining the prime witness of the Revenue, no addition could be made. The relevant observations as contained in para 11 to 15 are as under:

11. *We have perused submissions advanced by both sides in light of records placed before. We also refer to all judicial precedents relied upon by both sides.*
12. *It is observed that both Assessing Officer as well as Ld. CIT(A) is relying upon statement recorded by Investigation Department of Sh. Amit Dalmia and Sh. Narendra Kumar Jain. It is based upon their statements, that test of human probabilities has been applied to facts of present case by authorities below. Further, it cannot be ignored that assessee was not granted opportunity to cross examine Sh. Amit Dalmia and Sh. Narendra Kumar Jain. Even after assessee asking for opportunity to cross examine these persons, before First Appellate Authority, same was not granted. Assessee has contested truthfulness of statements given by Sh. Amit Dalmia and Sh. Narendra Kumar Jain before us.*
- 12.1 *It is pertinent to note that assessee, vide letter dated 21/12/16 had asked Ld. AO to provide material based upon which various allegations have been levied by Ld. AO. These factors from para 20 of assessment order, wherein*

*assessee raised objections, one of which is opportunity to cross examine, in case of any evidence used against assessee.*

12.3 *To our surprise, Ld. AO without providing any material evidence, report on which he was relying and not granting an opportunity to cross examine the persons on whose statement he arrived at certain presuppositions, made addition in the hands of assessee. This is evident from para 22 of assessment order.*

13. *Before Ld. CIT (A) assessee once again raised plea of cross-examination granted to assessee and materials not based upon which the submissions have been made has not been provided for examination. Even then opportunity was not granted to assessee, though Ld. CIT (A) had coterminous powers as that of Ld. AO.*

14. *In our view this amounts to gross violation of principles of natural Justice. We draw our support from the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries versus CCE reported in (2015) 62 Taxmann.com 3, wherein Hon'ble court observed as under:*

*"According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority."*

15. *We, accordingly, respectfully following decision of Hon'ble Supreme Court in the case of Andaman Timber Industries versus CCE (supra) allow appeal of assessee on legal ground raised in Ground 2(c), and quash and set-aside the assessment order so passed."*

18. On the issue of discharging the onus, the Hon'ble Delhi High court in the case of ***Mod. Creations (P.) Ltd. v. ITO*** reported in **[2013] 354 ITR 282**, held as under:

*"It will have to be kept in mind that Section 68 of the I.T. Act only sets up a presumption against the Assessee whenever unexplained credits are found in the books of accounts of the Assessee. It cannot but be gainsaid that the presumption is rebuttable. In refuting the presumption raised, the initial burden is on the Assessee. This burden, which is placed on the Assessee, shifts as soon as the Assessee establishes the authenticity of transactions as executed between the Assessee and its creditors. It is no part of the Assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the Assessee to prove the creditworthiness of the sub-creditors.*

19. It was further observed by the hon'ble court as under:

*14. With this material on record in our view as far as the Assessee was concerned, it had discharged initial onus placed on it. In the event the revenue still had a doubt with regard to the genuineness of the transactions in issue, or as regards the creditworthiness of the creditors, it would have had to discharge the onus which had shifted on to it. A bald assertion by the ASSESSING OFFICER that the credits were a circular route adopted by the Assessee to plough back its own undisclosed income into its accounts, can be of no avail. The revenue was required to prove this allegation. An allegation by itself which is based on assumption will not pass muster in law. The revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation. The ITAT, in our view, without adverting to the aforementioned principle laid stress on the fact that despite opportunities, the Assessee and/or the creditors had not proved the genuineness of the transaction. Based on this the ITAT construed the intentions of the Assessee as being mala Ride. In our view the ITAT ought to have analyzed the material rather than be burdened by the fact that some of the creditors had chosen not to make a personal appearance before the A.O. If the A.O. had any doubt about the material placed on record, which was largely bank statements or the creditors and their income tax returns, it could gather the necessary information from the sources to which the said information was attributable to. No such exercise had been conducted by the A.O. In any event what both the A.O. and the ITAT lost track of was that it was dealing with the assessment of the company, i.e., the recipient of the loan and not that its directors and shareholders or that of the sub-creditors. If it had any doubts with regard to their credit worthiness, the revenue could always bring it to tax in the hands of the creditors and/or sub-creditors.*

20. The Hon'ble Delhi High Court in the case of ***PCIT vs. Agson Global Pvt. Ltd*** reported in ***[2022]134 Taxmann.com 256 (Delhi)*** while allowing the appeal in

favour of the assessee towards the additions made u/s 68 of the Act has held as under:

*Section 68 of the Income-tax Act, 1961 – Cash credits (Share capital money) – Assessment years 2012-13 to 2017-18 – Assessee-company received share capital and share premium money from several investors – Assessing Officer made addition in respect of same on account of unaccounted income under section 68 on basis of recorded statement of managing director of assessee-company – Whether since assessee placed sufficient documentary evidence to establish that money which assessee had paid to investors was routed back to it in form of share capital/share premium and identity, creditworthiness and genuineness of investors was proved, there was no justification to make addition under section 68 – Held, yes [Paras 11.4, 11.5 and 14.4] [In favour of assessee]*

21. It is also a matter of fact that the loan taken was repaid much before the search was carried by the Department in the case of M3M group and the said loan was repaid through banking channels and if the AO has alleged that it was accommodation entry, action should have been taken in the year when the loan was repaid by the assessee, however, it appears that no action whatsoever was carried in the year when the loan was repaid. The Hon'ble Gujarat High Court in the case of ***PCIT Vs Ojas Tarmake Pvt Ltd*** reported in ***156 Taxmann.com 75*** has observed as under:

*“Where appellant showed unsecured loans received during relevant assessment year and AO made addition on ground that appellant failed to discharge onus of liability as laid down under section 68, since amount of loan received by appellant was returned to loan party during year itself and all transactions were carried out through banking channels, impugned addition was to be deleted.”*

22. In view of the above and by respectfully following the judgments of the Co-ordinate Bench of the Tribunals and Hon'ble Jurisdictional High Court as reproduced above, we are of the view that in absence of providing statements of the person which are made sole basis making additions nor providing any opportunity on for cross examining is serious violation of principle of natural justice, therefore,

the entire addition made is hereby deleted. Accordingly, the grounds of appeal No.10 & 11 of the assessee are allowed.

23. In the result, the appeal of the Assessee is partly allowed.

Order is pronounced in the Open Court 16.01. 2026

Sd/-  
**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

Sd/-  
**(MANISH AGARWAL)**  
**ACCOUNTANT MEMBER**

Dated: 16.01.2026

*PK/PS*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT NEW DELHI**