HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Income Tax Appeal No. 44/2025

The Principal Commissioner Of Income Tax, (Central), Rajasthan, Room No. 402, 4Th Floor, Lic Building, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.

----Appellant

Versus

Shri Shailendra Kumar Gupta, E-20, Dynamic Engineers, Opposite Multi Metal Industrial Area Kota (Pan/gir No. - Acupg 6276 C).

----Respondent

Connected With

D.B. Income Tax Appeal No. 45/2025

The Principal Commissioner Of Income Tax, (Central), Rajasthan, Room No. 402, 4Th Floor, Lic Building, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.

----Appellant

Versus

Shri Pawan Gupta, B-801, Royal Palm Canal Road, Bajrang Nagar, Kota (Pan/gir No. Abnpg3277D).

----Respondent

D.B. Income Tax Appeal No. 46/2025

The Principal Commissioner Of Income Tax, (Central), Rajasthan, Room No. 402, 4Th Floor, Lic Building, Bhawani Singh Road, Ambedkar Circle, Jaipur- 302005.

----Appellant

Versus

Shri Raj Rajeshwari Gupta, 205-C, Talwandi, Kota (Pan/ Gir No. Aavpg 2155 K).

----Respondent

For Appellant(s)	:	Mr. Siddharth Bapna with Ms. Tanushka Saxena
For Respondent(s)	:	Mr. Gunjan Pathak with Mr. Kanisk Singhal

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HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SHUBHA MEHTA

Order

24/03/2026

1. Heard.

2. These appeals assail the order passed by the ITAT, whereby the ITAT has held that the AO has relied on the statement of third persons recorded behind the back of the assessee and without giving an opportunity to the assessee to cross-examine the person before using the statements against the assessee.

3. Relying on the judgment passed by the Hon'ble Supreme Court in the case of **Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata-II,** reported in **(2016) 15 SCC 785**, the Tribunal has held that there is a serious flaw, which makes the order a nullity, as it amounts to violation of principles of natural justice. The Rajsthan High Court in the case of **PCIT Vs. Sanjay Chhabra (D.B. ITA No.22/2021)** noted that prejudice is caused to assessee when material used against him is not provided and opportunity of cross-examination is not provided. The assessee is based in Rajasthan and the Tribunal has proceeded to hold that the judgment passed by the Rajasthan High Court would bind the CIT (A) and the ITAT.

4. Per contra, learned counsel appearing for the appellants submits that question of law arising for consideration is in regard to the addition made under Section 68 of the Income Tax Act, 1961 on account of assessment made by the AO that there was bogus amount of capital gain entries by the assessee. He has relied on the judgment passed by the Delhi High Court in the case

of **Commissioner of Income-tax Vs. Nr Portfolio P. Ltd, 2013 SCC OnLine Del 6466,** decided on 22.11.2013, more particularly para Nos.19, 23 and 31, which read as under:

> *"**19**. On the question of creditworthiness and genuineness, it was highlighted that the money no doubt was received through banking channels but did not reflect actual genuine business activity. The share subscribers did not have their own profit making apparatus and were not involved in business activity. They merely rotated money, which was coming through the bank accounts, which means deposits by way of cash and issue of cheques. The bank accounts, therefore, did not reflect their creditworthiness or even genuineness of the transaction. The beneficiaries, including the respondent-assessee, did not give any share dividend or interest to the said entry operators/subscribers. The profit motive normal in case of investment, was entirely absent. In the present case, no profit or dividend was declared on the shares. Any person, who would invest money or give loan would certainly seek return or income as consideration. These facts are not adverted to and as noticed below are true and correct. They are undoubtedly relevant and material facts for ascertaining the creditworthiness and genuineness of the transactions.*
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> ***23**. The contention that the Revenue must have evidence to show circulation of money from the assessee to the third party is fallacious and has been repeatedly rejected, even when Section 68 of the Act was not in the statute. In A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC), the Supreme Court observed that it was not the duty of the Revenue to adduce evidence to show from what source, income was derived and why it should be treated as concealed income. The assessee must prove satisfactorily the source and nature of cash received during the accounting year. Similarly the observations were made in CIT vs. M. Ganapathi Mudaliar [1964] 53 ITR 623 (SC), inter alia, holding that it was not necessary for the Revenue to locate the exact source. This principle was reiterated in CIT vs. Devi Prasad Vishwanath Prasad [1969] 72 ITR 194 (SC), wherein the contention that the Assessing Officer should indicate the source of income before it was taxable, was described as an incorrect legal position. Thus when there is an unexplained cash credit, it is open to the Assessing Officer to hold that it was income of the assessee and no further burden lies on him to show the source. In Yadu Hari Dalmia vs. CIT [1980] 126 ITR 48 (Delhi), a Division Bench of Delhi High Court has observed (page 57):*

"It is well known that the whole catena of sections starting from section 68 have been introduced into the taxing enactments step by step in order to plug loopholes and in order to place certain situations beyond doubt even though there were judicial decisions covering some of the aspects. For example, even long prior to the introduction of section 68 in the statute book, courts had held that where any amounts were found credited in the books of the assessee in the previous year and the assessee offered no explanation about the nature and source thereof or the explanation offered was, in the opinion of the Income-tax Officer, not satisfactory, the sums so credited could be charged to income-tax as income of the assessee of a relevant previous year. Section 68 was inserted in the Income-tax Act, 1961, only to provide statutory recognition to a principle which had been clearly adumbrated in judicial decisions."

***31**. The respondent herein is a private limited company. It is not the case of the respondent that the directors or persons behind the companies making the investment in their shares were related or known to them. It is highly implausible that an unknown person had made substantial investment in a private limited company to the tune of Rs.63,80,100/- and Rs.75,60,200/- in two consecutive assessment years 2002-03 and 2003-04 respectively without adequately protecting the investment and ensuring appropriate returns. Other than the share application forms, no other agreement between the respondent and third companies had been placed on record. The persons behind these companies were not produced by the respondent. On the other hand, the respondent adopted prevaricate and non-co-operation attitude before the Assessing Officer once they came to know about the directed enquiry and the investigation being made. Evasive and transient approach before the Assessing Officer is limpid and perspicuous. Identity, creditworthiness or genuineness of the transaction is not established by merely showing that the transaction was through banking channels or by account payee instrument. It may, as in the present case required entail a deeper scrutiny. It would be incorrect to state that the onus to prove the genuineness of the transaction and creditworthiness of the creditor stands discharged in all cases if payment is made through banking channels. Whether or not onus is discharged depends upon facts of each case. It depends on whether the two parties are related or known to each; the manner or mode by which the parties approached each other, whether the transaction was entered into through written documentation to protect the investment, whether the investor professes and was an angel investor, the quantum of money,*

creditworthiness of the recipient, the object and purpose for which payment/investment was made etc. These facts are basically and primarily in knowledge of the assessee and it is difficult for the Revenue to prove and establish the negative. Certificate of incorporation of company, payment by banking channel, etc., cannot in all cases tantamount to satisfactory discharge of onus. The facts of the present case noticed above speak and are obvious. What is unmistakably visible and apparent, cannot be spurred by formal but unreliable pale evidence ignoring the patent and what is plain and writ large."

5. In support of his contentions that the order passed by the ITAT deserves to be set aside, learned counsel for the appellant submits that the ITAT has failed to consider the fact that Kolkata Investigation Directorate had conducted the investigation and found that the concerned brokers had adopted a regular modus operandi to acquire the shares of private limited company and, therefore, it cannot be said that the respondent was not involved and has wrongfully mentioned of having obtained long term capital gain. He also relies on the judgment passed by the Calcutta High Court in the case of **Principal Commissioner of Income Tax Five Vs. Swati Bajaj (IA No.GA/2/2022 in ITAT/6/2022),** reported in **2022 SCC OnLine Cal 1244**.

6. We have carefully considered the submissions.

7. We find that the principal issue on which the Tribunal has allowed the appeal is that there has been violation of principles of natural justice and no opportunity of cross-examination was provided in spite of demand by the assessee to the AO and the entire assessment is based on the third party statement recorded behind the back of the assessee. As held by the Hon'ble Supreme Court, such AO would fail.

8. We, therefore, find that so far as the contentions raised by the appellant are concerned, they are all factual aspects and para

2.6 of the ITAT order extensively deals with the factual aspects to reach to the conclusion that so far as the assessee is concerned, his transactions are all through the banking network and due evidence has been placed, which the ITAT found to be satisfactory. The issue, therefore, is factual and no substantial question of law arises to examine in these appeals.

9. Accordingly, the appeals are dismissed.

(SHUBHA MEHTA),J (SANJEEV PRAKASH SHARMA),ACTING CJ

N.GANDHI/RAJAT/17-19