

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 2766/MUM/2025
Assessment Year: 2017-18**

ITO-12(3)(1),
R.No. 145, 1st floor, Aayakar
Bhavan, M.K. Road,
Mumbai-400020.

Appellant

Vs.

Manju Diamonds Pvt. Ltd.,
57/59, 1st floor, Nagdevi Street,
Maszid Bunder,
Mumbai-400 003.
PAN NO. AAECM 6609 G
Respondent

Assessee by : Ms. Dinkle Hariya
Revenue by : Mr. Virabhadra S. Mahajan, Sr. DR

Date of Hearing : 12/06/2025
Date of pronouncement : 30/07/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against the order dated 14.02.2025 passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as "Ld. CIT(A)"], for the Assessment Year 2017-18. The Revenue has impugned the findings of the Ld. CIT(A) on several grounds, principally revolving around the deletion of an addition of ₹75,50,000/- made under Section 68 of the Income-tax Act, 1961



("the Act") by the Assessing Officer. The relevant grounds are reproduced as under:

1. *Whether on the facts and circumstances of the case and in law the Id. CIT(A) erred in deleting the addition of Rs 75,50,000/-made under Section 68 of the Income Tax Act, 1961 by the Assessing Officer, ignoring the fact that the assessee failed to prove the identity genuineness and creditworthiness of the lenders during the course of the assessment proceedings.*
2. *Whether on the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the addition made by the Assessing Officer without considering the fact that during the search and survey, it was found that Mr Sushil Lahoti and his group companies were involved in providing accommodation entries in exchange for commission, and the assessee company was one of the beneficiaries?*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition without appreciating the facts that the assessee had availed accommodation entries in the form of unsecured loans from four companies linked to Mr. Lahoti, and that these loans were found to be non-genuine? Furthermore, the genuineness and creditworthiness of the entities providing these loans could not be established by the assessee, and moreover notices issued under Section 133(6) of the Act remained un-complied with?*
4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition without appreciating the fact that the right of cross-examination is not absolute, as held in Nath International Sales vs. UOI (AIR 1992 Del 295) and State of Jammu & Kashmir vs. Bakshi Gulam Mohammad (AIR 1967 SC 122) Additionally, the addition made by the Assessing Officer was based on independent enquiry, which was further corroborated by the findings of the search and survey conducted in the case of Sushil Lahoti"*

2. The primary grievance of the Revenue in the grounds is that the Ld. CIT(A) erred in deleting the addition despite the assessee's failure, during assessment proceedings, to discharge the burden of establishing the identity, genuineness, and creditworthiness of the



alleged lenders from whom unsecured loans were claimed to have been received. It is the Revenue's case that the loans were sourced from four entities associated with one Mr. Sushil Lahoti and his group companies, who, pursuant to search and survey operations, were found to be engaged in providing accommodation entries in lieu of commission. Notices issued under Section 133(6) of the Act to verify the lenders went unanswered, thereby reinforcing the inference that the loan transactions were not genuine. It is further contended by the Revenue in its grounds that the Ld. CIT(A) failed to appreciate the effect of the corroborative material emerging from the search and seizure operations and wrongly proceeded to discredit the addition on the basis of the alleged denial of cross-examination. Reliance is placed by the Revenue on judicial precedents, including *Nath International Sales v. Union of India* [(1992) AIR Del 295] and *State of Jammu & Kashmir v. Bakshi Ghulam Mohammad* [(1967) AIR SC 122], to submit that the right to cross-examination is not absolute and may be circumscribed in certain factual contexts, particularly where the Assessing Officer's conclusion is independently founded on primary material.

3. The assessee, in turn, has filed an application under Rule 27 of the Income-tax Appellate Tribunal Rules, 1963, to support the impugned appellate order on additional legal grounds. The assessee has urged that the reassessment proceedings initiated under Section 148 of the Act were without jurisdiction, as the correct



provision in the present factual matrix would have been Section 153C of the Act. In the alternative, it is contended that even if viewed as a proceeding under Section 147, the reassessment suffers from illegality and procedural infirmities, including non-compliance with the statutory requirements under Sections 147, 148, and 151 of the Act. The grounds raised are reproduced as under:

In the facts and the circumstances of the case, and in law, the reassessment initiated under section 148 of the Act is illegal and void as the same should have been initiated under section 153C of the Act and not under section 148 of the Act.

Alternatively, the initiation as well as completion of the reassessment proceeding are bad in law, illegal and void as the same are in contravention of the statutory mandate as contained in section 147 r.w. sections 148 & 151 of the Act."

3. We have heard rival submissions on the issue of the admission of the grounds raised in Application filed under Rule 27 of the Rules. We find that the legal ground raised in Rule 27 were raised before the Ld. CIT(A) but the Ld. CIT(A) though has discussed the issue of validity of the reassessment u/s 147 of the Act in favour of the assessee but no specific finding has been given in respect of ground No. 1 raised in application under Rule 27 of the ITAT Rules. It is well-settled that a legal plea going to the root of the matter, and which affects the very jurisdiction of the assessing authority, can be entertained at any stage of the proceedings. The objection as to the proper statutory route — whether under Section 147 or Section 153C — is not merely academic but foundational, given that each provision operates in different factual contexts and is governed by



distinct procedural safeguards. Consequently, the objection raised in the Rule 27 application is not only maintainable but necessary to be adjudicated upon in the interest of justice. In light of the above, the legal ground raised by the assessee under Rule 27 of the ITAT Rules is admitted for adjudication.

4. The brief facts giving rise to the present proceedings are that the assessee filed its original return of income for the Assessment Year 2017-18 on 31.10.2017, declaring a total income of ₹1,70,303/-. The said return was processed under Section 143(1) of the Act.

4.1 Subsequently, the Assessing Officer received certain information from the Deputy Commissioner of Income-tax, Central Circle-2(2), Kolkata, by communication dated 04.03.2021. The said information emanated from a search and seizure operation carried out under Section 132 of the Act on 27.05.2018 in the case of one Mr. Sushil Lahoti and his group entities. It was revealed therein that entities controlled by Mr. Lahoti were allegedly engaged in providing accommodation entries by way of fictitious unsecured loans and share capital in lieu of commission.

4.2 Based on the aforesaid information, the Assessing Officer recorded reasons to believe that income chargeable to tax had escaped assessment within the meaning of Section 147 of the Act. Accordingly, a notice under Section 148 of the Act was issued on



31.03.2021 and duly served upon the assessee. In compliance therewith, the assessee filed its return of income on 31.05.2021, reiterating the same income as declared in the original return

4.3 In the course of reassessment proceedings, the Assessing Officer noted that the assessee had received unsecured loans aggregating to ₹75,50,000/- from the following four entities, stated to be controlled by Mr. Sushil Lahoti. The detail of the parties is reproduced as under:

Name of the entity providing accommodation entry	PAN	Amount in Rs.
Esquire Vyapaar Pvt. Ltd.	AABCE9245M	28,50,000
Indralok Agency Pvt. Ltd.	AACCI0219G	10,00,000
Gateway Agency Pvt. Ltd.	AADCG3632J	12,00,000
Shivdarbar Vanijya Pvt. Ltd.	AANCS8451K	25,00,000
Total Amount		75,50,000

4.4 The Assessing Officer, by notice dated 28.06.2021, called upon the assessee to explain the nature and purpose of the aforesaid transactions. In response, the assessee submitted that the loans were taken to meet its working capital requirements. It furnished loan confirmations, relevant bank statements, and e-mail correspondence with Mr. Sushil Lahoti. It was further stated in reply filed on 25.01.2022 that, since the loans were facilitated



through Mr. Lahoti, the confirmations were procured by him and subsequently forwarded to the assessee.

4.5 Notwithstanding the aforesaid, the Assessing Officer, by communication dated 02.03.2022, expressed the view that the documents submitted by the assessee were no more than routine papers and did not satisfactorily rebut the incriminating material unearthed during the search, including the statement of Mr. Lahoti that he had provided accommodation entries to various concerns. A show-cause notice was thus issued proposing to treat the said amount of ₹75,50,000/- as unexplained cash credit under Section 68 of the Act. In reply, the assessee submitted that the addition proposed was very huge and therefore specifically sought the opportunity to cross-examine Mr. Lahoti, asserting that the proposed addition was based solely on his untested statement and that the right to cross-examination formed an essential facet of natural justice. However, the Assessing Officer rejected this request and proceeded to make the addition of ₹75,50,000/- under Section 68 of the Act.

4.6 Aggrieved thereby, the assessee preferred an appeal before the 1d CIT(A), challenging both the validity of the reassessment proceedings as well as the merits of the addition. Before the CIT(A), it was contended that neither was the assessee furnished with a copy of the statement of Mr. Lahoti, nor was it afforded the



opportunity to cross-examine him, despite specific and timely requests to that effect. It was submitted that such denial amounted to a grave infraction of the principles of natural justice.

4.7 The ld. CIT(A), upon consideration of the material on record, found that the entire addition was predicated upon the uncorroborated statement of Mr. Sushil Lahoti, who had purportedly admitted to engaging in the business of providing accommodation entries. It was observed that the Assessing Officer had failed to adhere to the foundational requirements of law, namely. The Ld. CIT(A) observed that the Assessing Officer failed to adhere to either of two essential mandates :

(i) Ensuring fair process and compliance with natural justice by allowing cross-examination of Mr. Lahoti and

(ii) Discharging the Revenue's burden of proof after the assessee had submitted primary evidence.

4.8 The ld CIT(A), thus, held that the assessment order stood vitiated both on account of procedural impropriety and failure to substantiate the addition with independent and cogent evidence. Consequently, the addition made by the Assessing Officer was deleted. The relevant finding of the Ld. CIT(A) is reproduced 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. From the assessment order passed by the AO it is clear that the entire addition is based entirely upon the statement of Sh. Lahoti wherein he has stated that he is in the business of providing accommodation entries to clients in lieu of commission.

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 Sh. Lahoti and neither was the statement of Sh. Lahoti made available to the assessee. This tantamounts to using 'evidence' against the assessee behind his 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 recovered 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 it, where 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 an opportunity to the assessee to cross examine Sh. Lahoti who had alleged that he had provided accommodation entries to the appellant, the order of the AO has been vitiated as it violates a fundamental tenet of the principles of natural justice, namely, 'Audi Alteram Partem' 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 the person making the statement and thus enabling him to rebut the evidence being used against him. The presumption u/s 132(4A) can be drawn only against the person in whose case the search was authorised i.e. ShLahoti and from whom incriminating documents have been found and whose statement has been recorded. The presumption thus cannot be used against the appellant who was never subjected to a search.

The other issue which needs to be considered here is that the assessee had duly furnished loan confirmations and bank statements to the AO during the course of the re-assessment proceedings. Thus, the assessee discharged the initial onus cast upon him u/s 68 by the AO by furnishing details of the identity, credit worthiness of the lenders and the genuineness of the loan transaction. In other words, the onus was shifted back onto the AO and it was for him to advance evidence in order to rebut the evidence filed by the assessee. This the AO failed to do by not bringing a single piece of evidence to discount the evidence furnished by the assessee. This proposition of Income tax law that once the initial burden cast by section 68 is discharged, the AO



has to produce further evidence in order to be able to make the addition is supported by numerous decisions. In Hindustan Tea Trading Co. Ltd. 263 ITR 289(Cal), the Hon'ble High Court of Calcutta while examining the scope of powers of AO under section 68 of the Act held:

Section 68 of the income-tax Act, 1961, empowers the Assessing Officer to treat any sum found credited in the books of account of the assessee for any previous year, if the assessee fails to offer explanation about the nature and sources of such fund or if the explanation offered by the assessee is not, in the opinion of the Assessing Officer, satisfactory, as income from undisclosed sources and charge the same to tax as income of the assessee of that previous year. Therefore, it appears that the power of the assessing officer under section 68 is not an absolute one. It is subject to its satisfaction where an explanation is offered. The power is absolute where the assessee offers no explanation. The satisfaction with regard to the explanation is in effect an in-built safeguard in section 68 protecting the interest of the assessee. It provides for an opportunity to the assessee to explain the nature and source of the fund. Once it is explained, it is incumbent on the assessing officer to consider the same and form an opinion whether the explanation is satisfactory or not. The expression used in the section clearly lays the burden on the assessee to explain the nature and source of the fund. Unless an explanation is offered, the Assessing Officer is free to treat the fund as income of the assessee from undisclosed sources chargeable to tax. Once an explanation is offered, the Assessing Officer is bound to consider the same. Such consideration is guided by sound principles of law. The opinion so formed must be reasonable and based on materials and shall not be perverse. The extent of the power of the Assessing Officer while considering the materials produced by the assessee is very wide. It is a question of examining as to whether the apparent is real. The Assessing Officer is empowered to lift the corporate veil and examine the real nature of the transaction. In the process, he may exercise its power of examining the materials. He may require the assessee to produce further materials if so required. He may seek information from other sources on the basis of the material produced. In the process of enquiry, the assessee has no right of hearing. But the assessee has a right to challenge the conclusion arrived at on the basis of the enquiry made. The assessee may point out the perversity in the finding. It may question the validity of the process undertaken. It may point out that a particular material was not considered. It may also point out that the enquiry made was not reasonable or was half-heartedly done. The process of enquiry is such that the assessee has to offer the explanation and produce



the material in support of such explanation and then it can do no further. The onus then shifts on the Revenue to scrutinise the materials and form an opinion on the basis thereof. For the purpose of scrutinising the materials, it may utilise its powers to seek attendance of any witness or disclosure of any information in exercise of its power under section 131. It may seek information from other sources in exercise of its power under section 133. Once a reasonable enquiry is made, then the assessing officer can do no further except arriving at a conclusion on the basis of such materials. If the conclusion is adverse wholly or in part to the interest of the assessee, it is incumbent on the Assessing Officer to intimate or inform the conclusion arrived at to the assessee."

The Hon'ble Supreme court in case of CIT vs. P. Mohanakala [2007] 161 Taxman 169 (SC) while dealing with scope of provision of the section 68 of the Act held that "The opinion of the AO that the explanation furnished by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the assessing officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine quo non for forming the opinion." In other words, once the assessee submits primary evidence with regard to identity and credit worthiness of creditor and the genuineness of the transaction the onus shifts on the AO to consider the material provided and make independent inquiry in order to find out genuineness of the evidence or bring material contrary to fact explained by the assessee. The AO cannot reject the primary evidence furnished by the assessee without appreciating the facts available on record or without bringing contrary material to form the belief that primary document or explanation furnished by the assessee is not satisfactory."

From the above discussion, it is clear that the order of the AO suffers from fatal short comings. The order has been passed in violation of all the established principles of natural justice namely that the assessee will be given full opportunity to cross examine and rebut the evidence gathered behind his back and that he will be heard in that respect. Further, once the initial onus cast upon the assessee by the AO u/s 68 was discharged, the AO did not produce any evidence to rebut the assessee's submission but relied blindly on the statement made by Sh. Lahoti during the search conducted on Sh. Lahoti. Hence, the AO's order stands vitiated on both these counts and fails the test of appeal. The addition made by the AO of Rs. 75,00,000/- u/s 68 is hereby deleted and the assessee's appeal is allowed."



5. In the grounds raised in application filed under Rule 27 of the ITAT Rules, the assessee has challenged the validity of the reassessment on two grounds. **Firstly**, in the case of information has been originated from the search action and therefore, action of assessment should have been u/s 153C of the Act rather than section 147 of the Act. **Secondly**, the Assessing Officer had not followed the mandatory requirement of section 147 of the Act.

5.1 Regarding the first challenge of the assessee for validity of the reassessment completed u/s 147 of the Act is concerned, before the Ld. CIT(A), the assessee referred to the provisions of section 153C of the Act and submitted that information was obtained from the search and survey proceeding wherein it was revealed that the assessee had received accommodation entries in the form of unsecured loans from the company managed by Shri Lahoti. Before us, the core contention of the assessee is that information leading to the reopening of the assessment emanated from a search and seizure operation conducted in the case of Shri Sushil Lahoti. It is submitted that during the said operation, incriminating material was allegedly found indicating that the assessee had received accommodation entries in the form of unsecured loans from entities controlled by Shri Lahoti. Invoking the non-obstante clause of Section 153C, it is urged that the correct jurisdictional route would have been under that provision alone and not under Section 147. It was contention of the assessee that search conducted on Shri



Sushil Lahoti yielded documents, materials pertaining to the assessee, therefore, any assessment or reassessment if required must have been conducted strictly under the provisions of section 153C of the Act and not u/s 148 of the Act.

5.2 The Departmental Representative (DR), however, has countered this argument by submitting that no material pertaining to the assessee was actually recovered or seized during the search operation conducted on Shri Lahoti nor any information contained there in such seized material was found to be related to the assessee.. Rather, the only basis for initiating proceedings was the statement of Shri Lahoti recorded under Section 132(4), wherein he admitted to being in the business of providing accommodation entries through companies controlled by him. According to the DR, such a statement, in the absence of any seized document or asset relatable to the assessee, would not attract the provisions of Section 153C. In the reasons recorded, the Assessing Officer has mentioned about the statement of Shri Sushil Lahoti admitting of having engaged in providing accommodation entries through the companies controlled by him. As the information of statement of sh Lahoti was only forwarded to the Assessing Officer of the assessee, thus the conditions of section 153C of *material pertaining to the assessee and information contained therein related to assessee found in the course of search from party* is not fulfilled. Further, the Ld. DR submitted that statement recorded u/s 132(4) of the Act of



Shri Sushil Lahoti did not constitute any incriminating material as upheld by the Hon'ble Delhi High Court in decision dated 10/03/2016 in the case of **Harjeevlal Agrawal in ITA 8/2004**.

6. We have heard rival submissions of the parties and perused the relevant materials on record including paper book containing pages 1 to 388. It would be apposite at this stage to reproduce the relevant portion of Section 153C, which begins with a non-obstante clause and reads as under:

“Assessment of income of any other person. ⁶⁸

153C. ⁶⁹[(1)] ⁷⁰[Notwithstanding anything contained in [section 139](#), [section 147](#), [section 148](#), [section 149](#), [section 151](#) and [section 153](#), where the Assessing Officer is satisfied that,-

- (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, ⁷¹belongs to; or
- (b) **any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,**

a person other than the person referred to in [section 153A](#), then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person] ⁷²[and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of [section 153A](#), if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person ⁷³[for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of [section 153A](#)] :]

.....

.....”



6.1 From the plain reading of the above section it is clear that if (i) *any cash money, bullion, jewellery etc. belonging to the third person is found during the course of the search of searched person* or (ii) *any books of accounts or the documents pertaining to third person or any information contained therein related to the third person is found in the search of the searched person*, then only provisions of section 153C of the Act can be invoked and proceedings u/s 147 can be resorted in view of non-obstante clause in section 153 of the Act. The jurisdictional requirement under Section 153C is thus contingent upon (i) the recovery of assets belonging to the assessee, or (ii) the seizure of books or documents that pertain to or contain information relating to the assessee during the search of a third party.

6.2 In the case under consideration, the Ld. Counsel for the assessee has not filed a copy of reasons recorded. Before us, the assessee has filed a copy of the notice u/s 143(2) of the Act dated 28.06.2021 and a copy of show cause notice issued by the Assessing Officer on 02.03.2022, where there is a reference of the reasons recorded. The relevant part of the information available in show cause notice dated 02.03.2022, available on paper book page 64 is reproduced as under:

Subsequently, a credible information dt 04.3.2021 was received from the DCIT, Central Circle-2(2), Kolkata that a search & seizure operation was conducted in the case of Mr. Sushil Lahoti & his companions on 21.5.2018. A survey operation u/s 133A was also conducted at the premises of Mr. Sushil Lahoti group on



24.11.2015. During the course of such operations, it was revealed that Mr. Sushil Lahoti group companies are involved in providing pre-arranged accommodation entries in lieu of commission. These companies are controlled and managed by Mr. Sushil Lahoti. The Directors of these companies are dummy directors and they work on the directions of Mr. Sushil Lahoti. During the course of search & seizure and survey proceedings (supra), Mr. Sushil Lahoti has admitted in his recorded statement that he had provided accommodation entries in the form of bogus Unsecured Loans and Share Capital/Premium in lieu of commission. From perusal of the above information, it revealed that the assessee company had availed of accommodation entries in the form of fictitious unsecured loans from the companies controlled and managed by Mr. Lahoti as follows:

Name of the entity providing accommodation entry	PAN	Amount in Rs.
<i>Esquire Vyapaar Pvt. Ltd.</i>	AABCE9245M	28,50,000
<i>Indralok Agency Pvt. Ltd.</i>	AACCI0219G	10,00,000
<i>Gateway Agency Pvt. Ltd.</i>	AADCG3632J	12,00,000
<i>Shivdarbar Vanijya Pvt. Ltd.</i>	AANCS8451K	25,00,000
Total Amount		75,50,000

The aforesaid details gathered coupled with the data available with respect to the assessee company had led to the formation of belief that income to the extent of Rs 75,50,000/- has escaped assessment for the A.Y. 2017-18.”

6.3 On perusal of the extract of the reasons recorded, we find that there is no reference of any seized material found from the search of Mr. Sushil Lahoti and only reference of the information based on admission of Shri Sushil Lahoti that he had provided accommodation entry in the form of bogus unsecured loan in lieu of commission and the assessee was one of the beneficiary of the



unsecured loan from the entities managed and controlled by Shri Sushil Lahoti. In the instant case, the materials on record do not indicate that any such books of accounts or documents or assets were found in the course of search of Shri Lahoti that pertained to or related to the assessee. The reasons recorded for reopening — a portion of which was reflected in the show cause notice dated 02.03.2022 — only mention the *admission* of Shri Lahoti in his statement under Section 132(4), wherein he confessed to providing accommodation entries. There is no reference to any seized document relating to the assessee. Therefore, we are of opinion that the Assessing Officer has validly reopened the assessment u/s 147 of the Act. The Hon'ble Delhi High Court in the case of Harjeevlal Aggrawal (supra) has clearly held that statement recorded u/s 132(4) of the Act does not constitute an incriminating material. Since, no cash, money or valuable article or jewellery belonging to the assessee was found in the course of search of Mr. Sushil Lahoti and no books of accounts or the documents pertaining to the assessee or information contained therein related to the assessee was found from the premises of Shri Sushil Lahoti, therefore, provisions of section 153C of the Act are validly not invoked and thus the non-obstante clause was not applicable in the case of the assessee. Hence, reassessment proceedings has been validly initiated u/s 147 of the Act. The ground No. 1 of the application under Rule 27 is accordingly rejected.



7. Now, we take up the challenge of the assessee to the reassessment proceedings. The assessee has further challenged the reassessment proceedings on multiple grounds. It is firstly contended that the source of the information forming the basis of the AO's "reason to believe" was not disclosed or verified, and the reasons recorded were vague, incomplete, and lacked independent application of mind.

7.1 We have heard rival submission of parties on the issue in dispute and perused the relevant material on record. The Ld. Counsel for the assessee *firstly*, submitted that source of information was not referred in the reasons recorded. We find that the assessee had not provided a copy of the reasons recorded but from the materials placed before us — notably the show cause notice dated 02.03.2022 — it is evident that the AO received credible information from the Deputy Commissioner of Income-tax, Central Circle-2(2), Kolkata, indicating that the assessee had availed accommodation entries in the form of fictitious unsecured loans from entities controlled by Shri Lahoti. The information included specific names of companies, PAN details, and quantum of alleged bogus loans aggregating Rs. 75,50,000. He has also referred to the date of the letter of the DCIT. He has referred to the search and seizure action at the premises of Shri Sushil Lahoti and his admission that he was engaged in providing accommodation entries of the unsecured loans. In view of source of information being from



a credible source the contention of the assessee are rejected. Further, we find that the Hon'ble Supreme Court in *ACIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd.* [(2007) 291 ITR 500 (SC)] has laid down the principle that, at the stage of formation of belief under Section 147, the AO is only required to have relevant material from which a reasonable person could form a requisite belief that income chargeable to tax has escaped assessment. It is not necessary to establish the escapement of income to a final conclusion at the stage of recording reasons. Since in the case in hand material referred is relevant to the assessee, therefore, we do not find any error in the requisite belief recorded by the Ld. Assessing Officer. The assessee's argument that the AO did not possess the full statement of Shri Lahoti at the time of recording reasons remains unsubstantiated. No material has been brought on record to demonstrate that such a statement was unavailable or that the AO proceeded in absence of adequate information. On the contrary, the reasons recorded — as partly reproduced — indicate the AO's reliance on detailed inputs provided by the Investigation Wing. therefore, the allegation of the assessee are misplaced and based merely on the guess work. The assessee has nowhere brought on record whether he had asked for reasons recorded or copy of statement recorded from the Assessing Officer during the course of reassessment proceedings.

7.2 The Ld. Counsel for the assessee before us relied on the decision of the Hon'ble Bombay High Court in the case of Prashant



S. Joshi v. ITO [2010] 324 ITR 154 (Bombay HC) wherein it is held that *reasons which are recorded by the Assessing Officer for reopening in assessment are the only reasons which can be considered when the formation of the belief is impugned*. It is further held that *recording of the reasons distinguishes an objective from a subjective exercise of power*. We find that in the instant case before us, assessee has not filed any copy of the reasons recorded and therefore, allegation of the assessee cannot be substantiated.

7.3 Further, the Ld. Counsel referred to the decision of Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. v. R.B. Wadkar [2004] 268 ITR 332 (Bombay) wherein it is held that *reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons*. We find in the instant case, the assessee has not filed a copy of the reasons recorded, however from the extract referred by the Assessing Officer, we find that the reasons have been based on the relevant material and thus fulfilling the requirement laid down in the decision of the Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock brokers P Ltd (supra).

7.4 Upon careful consideration of the submissions advanced and the material available on record, we are satisfied that:



- The preconditions for invoking Section 153C are not met, as no material relating to the assessee was found during the search;
- The AO has recorded reasons based on specific and credible information that prima facie indicated escapement of income;
- The procedural safeguards envisaged under Section 147 have been adequately complied with;
- There is no material to support the claim that the information was unverified or that the reasons recorded were vague or non-specific.

7.5 Accordingly, the reassessment proceedings initiated under Section 147 of the Act are held to be legally valid. Both grounds raised in the application under Rule 27 stand rejected.

8. Now, we take up grounds of appeal raised by the Revenue challenging the merit of the addition. We find that the Ld. CIT(A) has mainly allowed the appeal of the assessee for the reason that the Assessing Officer has relied only on the statement of Mr. Lahoti and neither further inquiry was carried out nor opportunity of cross examination was provided. The relevant finding of the ld CIT(A) is reproduced 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. From the assessment order passed by the AO it is clear that the entire addition is based entirely upon the statement of Sh. Lahoti wherein he has



stated that he is in the business of providing accommodation entries to clients in lieu of commission.

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 Sh. Lahoti and neither was the statement of Sh. Lahoti made available to the assessee. This tantamounts to using 'evidence' against the assessee behind his 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 question was not recovered from the assessee's possession but was recovered 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 it, where 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 an opportunity to the assessee to cross examine Sh. Lahoti who had alleged that he had provided accommodation entries to the appellant, the order of the AO has been vitiated as it violates a fundamental tenet of the principles of natural justice, namely, 'Audi Alteram Partem' 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 the person making the statement and thus enabling him to rebut the evidence being used against him. The presumption u/s 132(4A) can be drawn only against the person in whose case the search was authorised i.e. ShLahoti and from whom incriminating documents have been found and whose statement has been recorded. The presumption thus cannot be used against the appellant who was never subjected to a search.

The other issue which needs to be considered here is that the assessee had duly furnished loan confirmations and bank statements to the AO during the course of the re-assessment proceedings. Thus, the assessee discharged the initial onus cast upon him u/s 68 by the AO by furnishing details of the identity, credit worthiness of the lenders and the genuineness of the loan transaction. In other words, the onus was shifted back onto the AO and it was for him to advance evidence in order to rebut the evidence filed by the assessee. This the AO failed to do by not bringing a single piece of evidence to discount the evidence furnished by the assessee. This proposition of Income tax law that once the initial burden cast



by section 68 is discharged, the AO has to produce further evidence in order to be able to make the addition is supported by numerous decisions. In Hindustan Tea Trading Co. Ltd. 263 ITR 289(Cal), the Hon'ble High Court of Calcutta while examining the scope of powers of AO under section 68 of the Act held:

Section 68 of the income-tax Act, 1961, empowers the Assessing Officer to treat any sum found credited in the books of account of the assessee for any previous year, if the assessee fails to offer explanation about the nature and sources of such fund or if the explanation offered by the assessee is not, in the opinion of the Assessing Officer, satisfactory, as income from undisclosed sources and charge the same to tax as income of the assessee of that previous year. Therefore, it appears that the power of the assessing officer under section 68 is not an absolute one. It is subject to its satisfaction where an explanation is offered. The power is absolute where the assessee offers no explanation. The satisfaction with regard to the explanation is in effect an in-built safeguard in section 68 protecting the interest of the assessee. It provides for an opportunity to the assessee to explain the nature and source of the fund. Once it is explained, it is incumbent on the assessing officer to consider the same and form an opinion whether the explanation is satisfactory or not. The expression used in the section clearly lays the burden on the assessee to explain the nature and source of the fund. Unless an explanation is offered, the Assessing Officer is free to treat the fund as income of the assessee from undisclosed sources chargeable to tax. Once an explanation is offered, the Assessing Officer is bound to consider the same. Such consideration is guided by sound principles of law. The opinion so formed must be reasonable and based on materials and shall not be perverse. The extent of the power of the Assessing Officer while considering the materials produced by the assessee is very wide. It is a question of examining as to whether the apparent is real. The Assessing Officer is empowered to lift the corporate veil and examine the real nature of the transaction. In the process, he may exercise its power of examining the materials. He may require the assessee to produce further materials if so required. He may seek information from other sources on the basis of the material produced. In the process of enquiry, the assessee has no right of hearing. But the assessee has a right to challenge the conclusion arrived at on the basis of the enquiry made. The assessee may point out the perversity in the finding. It may question the validity of the process undertaken. It may point out that a particular material was not considered. It may also



point out that the enquiry made was not reasonable or was half-heartedly done. The process of enquiry is such that the assessee has to offer the explanation and produce the material in support of such explanation and then it can do no further. The onus then shifts on the Revenue to scrutinise the materials and form an opinion on the basis thereof. For the purpose of scrutinising the materials, it may utilise its powers to seek attendance of any witness or disclosure of any information in exercise of its power under section 131. It may seek information from other sources in exercise of its power under section 133. Once a reasonable enquiry is made, then the assessing officer can do no further except arriving at a conclusion on the basis of such materials. If the conclusion is adverse wholly or in part to the interest of the assessee, it is incumbent on the Assessing Officer to intimate or inform the conclusion arrived at to the assessee."

The Hon'ble Supreme court in case of CIT vs. P. Mohanakala [2007] 161 Taxman 169 (SC) while dealing with scope of provision of the section 68 of the Act held that

"The opinion of the AO that the explanation furnished by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the assessing officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine quo non for forming the opinion." In other words, once the assessee submits primary evidence with regard to identity and credit worthiness of creditor and the genuineness of the transaction the onus shifts on the AO to consider the material provided and make independent inquiry in order to find out genuineness of the evidence or bring material contrary to fact explained by the assessee. The AO cannot reject the primary evidence furnished by the assessee without appreciating the facts available on record or without bringing contrary material to form the belief that primary document or explanation furnished by the assessee is not satisfactory."

From the above discussion, it is clear that the order of the AO suffers from fatal short comings. The order has been passed in violation of all the established principles of natural justice namely that the assessee will be given full opportunity to cross examine and rebut the evidence gathered behind his back and that he will be heard in that respect. Further, once the initial onus cast upon the assessee by the AO u/s 68 was discharged, the AO did not produce any evidence to rebut the assessee's



submission but relied blindly on the statement made by Sh. Lahoti during the search conducted on Sh. Lahoti. Hence, the AO's order stands vitiated on both these counts and fails the test of appeal. The addition made by the AO of Rs. 75,00,000/- u/s 68 is hereby deleted and the assessee's appeal is allowed."

8.1 We have heard rival submission of parties and perused relevant material on record including paper book filed by the assessee. We find that the assessee himself obtained confirmation in respect of four parties from Shri Sushil Lahoti and therefore, he was not justified in asking for cross-examination of Shri Sushil Lahoti and onus was on the assessee to produce him and substantiate that those companies were not controlled by him. The assessee has also filed a copy of affidavit by Shri Sushil Lahoti retracting his statement made during search, which is available on Paper Book page 385-387, therefore, also onus was on the assessee to produce him before the Assessing Officer for his examination by the assessee and cross-examination by the Assessing Officer. But no such exercise has been done by the assessee, therefore, the assessee has failed to discharge his onus. Further, we find that the Hon'ble Delhi High Court in the case of **Jansampark Advertising and marketing P Ltd in** ITA 525/2014 has held that if the assessing officer fails in carrying out the enquiries which are required in the matter, then the Ld. CIT(A) is under obligation to carry out such enquires and he cannot sit idle and allow relief to the either of party. The relevant part of decision is reproduced as under:



42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under [Section 148](#) issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in exercise of the power under [Section 250\(4\)](#). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld.

8.2 Since in this case the Ld. CIT(A) was required to carry out inquiry or verification for examining creditworthiness or genuineness of the transaction, which has not been carried out. From the financials of the four companies filed before us, we find that those companies are having meagre profit and only source of fund is by way of security premium received, but the security premium itself was not justified in those companies and therefore genuineness of the transaction was not established. All those inquiries were required to be conducted by the Ld. CIT(A) if the Assessing Officer failed in doing so. Therefore, in the facts and



circumstances of the case, we feel it appropriate to restore the matter involved in issue in dispute back to the file of the Ld. CIT(A) for carrying out necessary inquiry either himself or through the Assessing Officer and adjudicate the issue in dispute after providing adequate opportunity of being heard to the assessee. The grounds of appeal of the Revenue are accordingly allowed for statistical purposes.

9. In the result, the appeal of the Revenue is allowed for statistical purposes whereas the application under Rule 27 of assessee is dismissed.

Order pronounced in the open Court on 30/07/2025.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 30/07/2025
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai