

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI B.C. MEENA, ACCOUNTANT MEMBER
AND
SHRI A. T. VARKEY, JUDICIAL MEMBER**

ITA No. 4212/Del/2013 (Assessment Year: 2002-03)

ITA No. 4213/Del/2013 (Assessment Year: 2003-04)

ITA No. 4211/Del/2013 (Assessment Year: 2004-05)

ITA No. 4210/Del/2013 (Assessment Year: 2005-06)

DCIT,
Circle-31(1), 14th Floor,
E-2 Block, Pratayaksh kar
Bhawan, Civic Centre,
Minto Road,
New Delhi

(Appellant)

Heminder Kumari,
C/O D.B. Jain & CO.
Vs. Shakahar Building,
1-Ansari Road,
Darya Ganj,
New Delhi
PAN:AAJPK0331K
(Respondent)

Appellant by : G.H. Sema, Sr. DR
Respondent by : C.S. Agarwal, Adv
R.P. Mull, Adv

ORDER

PER BENCH

These four Revenue appeals involve consideration of common issues and therefore heard together and are being disposed off by a consolidate order.

2. To appreciate the facts and issue under consideration we take up the appeal for Assessment Year 2002-03. In this appeal the revenue has raised following grounds:-

- "1. The CIT(A) has ignored the material finding of the investigative agency who has found that the assessee's account was code named as "BIBA".
2. The CIT(A) has also not appreciated that the word "BIBA" is being used for an elder sisterly lady in Punjab and the assessee is the sister of Captain Amrinder Singh as per Punjab Vigilance Bureau Report.
3. The CIT(A) has further ignored the corroborative evidence mentioned in the report of Punjab Vigilance Bureau.

4. *The CIT(A) has erred in law by deleting the addition to the tune of Rs. 34,83,206/- made on account of unexplained cash credits/ deposits."*
3. The solitary issue emerging from the aforesaid grounds, is regarding additions of Rs. 34,83,206/- representing unexplained cash credit/debits held as income of the assessee.
4. The factual matrix is that the assessee filed her return of income for the assessment year under consideration on 08.08.2002, declaring a total income of Rs.10,92,888/-. The return filed by the appellant was processed u/s 143(1) of the Income Tax Act, 1961 (herein after 'the Act') which was not taken up for scrutiny and hence no order u/s 143(3) of the Act was passed. Thereafter, the AO received an information from the Assistant Commissioner of Income-tax, Central Circle-5, New Delhi vide letter dated 25.03.2009, whereby it was informed that one Sh. Chetan Gupta, R/o Maharani Bagh, New Delhi was arrested on 17.05.2007 vide FIR No. 5 dated 23.03.2007 by the Vigilance Bureau, Ludhiana in relation to the "Ludhiana City Centre Scam". As per this information, in the course of operation, a computer pen-drive was recovered from said Sh. Chetan Gupta. It was also informed that the names of certain persons appearing in the data of the said pen-drive were found and deciphered. As per the information, one name that appeared in the printout of the data on pen-drive was "BIBA" and "KIRAN/BIBA" the identity of whose was disclosed as Smt. Heminder Kumari, the assessee. From the printout of the ledger account in which the names "BIBA" and "KIRAN/BIBA" was entered into, which was made available to the AO from the data of the said seized pen-drive, the AO noticed that there were credits/ deposits in the accounts of "BIBA" and "KIRAN/BIBA" aggregating to Rs.34,83,206/- (34,29,206/- + Rs.54,000/-). The details contained in the printout of the ledger accounts of "BIBA" and "KIRAN/BIBNA" were as under:-

Date	Particulars	opening	BIBA Amount	Balance
	balance			1,15,52,426.00
Apr 02			1,50,000.00	
Apr 23			1,00,000.00	
June 15			50,000.00	
June 20			50,000.00	
June 30	2000		1,49,000.00	
Jul 12			1,00,000.00	

Aug 06		1,00,000.00	
Aug 09		5,00,000.00	
Aug 09	6000	2,85,000.00	
Sep 19		1,50,000.00	
Sep 29	BIBA APR-SEP JAGAT	8,49,099.00	
Oct 20		1,00,000.00	
Oct 31	INT/OCT		1,28,355.00
Nov 02		1,00,000.00	
Nov 09		1,00,000.00	
Nov 28	NOV		1,25,090.00
Dec 12		1,00,000.00	
Dec 31	DEC		1,24,090.00
Jan 22			18,00,000.00
Jan 25	1.1.14500	6,96,000.00	
Feb 08		1,00,000.00	
Feb 28	124090+11835, 18 FEB/ 10 Days		
Feb 28	ON/FEB/ 7 DAYS	3,204.00	1,35,925.00
Feb 28	JAN		
Mar 05		1,00,000.00	1,32,721.00
Mar 25		1,00,000.00	
Mar 28	MAR		1,33,926.00
	Closing Balance		
Total payment: 30333804.400 Credit: 14981632.00 Credit Balan1,19,47,828.00ce: 11947828.00			
		KIRAN/BIBA	
	Opening balance		2,00,000.00
Sep 29	APR-SEP		18,000.00
Sep 29	INT OCT-MAR		18,000.00
Oct 31	OCT		3,000.00
Nov 28	KIRAN/NOV		
Dec 12	UPTO DEC	45,000.00	
Jan 31	JAN		3,000.00
Jan 31	DEC		3,000.00
Feb 28	KIRAN/FEB		3,000.00
Mar 28	MAR		3,000.00
	Closing balance		2,09,000.00
Total payment:45000.00 Credit:254000.00 Credit Balance:209000.00"			

5. The AO observed that these credits/ deposits totaling to Rs.34,83,206/- remained un-reflected and unexplained in the return of income filed by the appellant for the assessment year under consideration. As such the AO issued a notice dated 26.03.2009 u/s 148 of the Act after recording reasons as required u/s 147 of the Act and obtaining necessary approval u/s 151 from the Addl.

Commissioner of Income-tax, Range-31, New Delhi. In compliance to the said notice, the assessee filed a return of income on 18.05.2009 declaring an income of Rs. 10,92,888/- as declared in the original return of income filed on 08.08.2002.

6. The AO vide questionnaire dated 09.05.2012 asked the assessee to explain the source of credits/ deposits appearing in the printout of the ledger accounts pertaining to "BIBA and KIRAN/BIBA" and also to show cause as to why these credits/ deposits be not added in her income as un-reflected and unexplained credits/ deposits for the assessment year under consideration.

7. In response to the same, vide her submissions dated 24.05.2012, the assessee denied having made any deposits with Sh. Chetan Gupta and further denied having received any interest. Thereupon, the AO asked the appellant to produce Sh. Chetan Gupta for his personal deposition. The appellant however, vide her reply dated 08.06.2012 stated that since she had already denied any deposit having made with Sh. Chetan Gupta, the onus of producing him was on the department.

8. The AO, rejected the explanation of the assessee and made the addition by concluding as under:-

"On 17.5.2007, one Sh. Chetan Gupta, a Delhi-based businessman was arrested vide FIR NO.5 dated 23.3.2007, PS Vigilance Bureau Ludhiana pertaining to Ludhiana City Center and kept in judicial custody. The Vigilance Bureau recovered a computer pen drive Sh. Chetan Gupta in which computerized accounts of hawala transactions of about 148 odd people were found. From the perusal of records in the form of pen drive and print outs the said pen drive received from the Punjab Vigilance Bureau, there appeared various entries in the various names in the said documents pertaining to F.Y. 2001-02. Further, from the perusal of letter No. 217-19/SPIFS-I/Unit-III Ludhiana dated 12.11.2007 of Superintendent of Police, Vigilance Bureau, FS-I, Unit-II, Ludhiana, it is noticed that out of various names; identities of some of the persons have been deciphered by the Punjab Vigilance Bureau as Capt. Amrinder Singh and his family members including Smt Haminder Kumari, sister of Capt. Amrinder Singh. The account name of Smt. Haminder Kumari was BIBA and KIRAN/BIBA. Further perusal of the Charge Sheet dated 7.12.2007 filed in the case revealed that Sh. Chetan Gupta was looking after the money transactions related to Capt. Amrinder Singh and his family members including Smt. Haminder Kumari, sister of Capt. Amrinder Singh and was also charging/paying interest on his various transactions. The transactions have been verified by various statements of the employees of Sh. Chetan Gupta as mentioned in the Charge Sheet. Also, a letter F. No. ADIT/Unit-VI(I)/Chetan Gupta/07-08/46 dated 28.7.2008 of Asstt. Director of Income Tax (Inv.), Unit-VI(I), New Delhi, further establishes the identity of BIBA as Haminder Kumari on the basis of information gathered at a camp office held at Ludhiana on 13 .2.2008. In fact, the case or transaction of assessee

should not be seen in isolation as these are part of the proceed received by the entire group. The assessee appears to be beneficiary of the transaction on account of her relationship with the main person. In such cases, most of the time, only clues are found and in the instant case also the Punjab Vigilance Bureau has reached a logical conclusion by linking the threads of the case.

A notice u/s 131 dated 30.5.2012 was also issued in the name of Sh. Chetan Gupta for his personal deposition in the case of the assessee. In response, a letter dated 11.6.2012 sent through M/s. Vipin Aggarwal & Associates, the authorized representative, Shri Chetan Gupta showed his inability for personal deposition.

Keeping in view the extensive enquiries and investigations carried out by various agencies and the above facts, and also keeping in view that the credits/deposits totaling to Rs. 34,83,206/- being un-reflected and unexplained in the return of income filed by the assessee, I hold that amount of Rs. 34,83,206/- being unexplained credits/deposits as income from other sources and is added to the income of the assessee."

9. On appeal, the Id CIT(A) has deleted the addition by holding as under:-

"10. I have considered the facts of the case and written submissions of the appellant. On perusal of the details, I find that the addition was made on account of unexplained investment by invoking the provisions of section 69 of the IT Act, 1961. The provisions of section 69 of the IT Act, 1961 reads as under: "Wherein the financial year, immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of accounts, if any, maintained by him from any source of income, and the assessee offers no explanation about the nature and the source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year".

10.1 It is a point to note that the word "investment" has not been defined in section 69 of the IT Act, 1961 and has to be construed in general meaning. In the instant case, the appellant denied having made any investment (credits/deposits) with Sh. Chetan Gupta. A perusal of section 69 envisages two pre-requisite conditions before an addition can be made under this section. The first pre-requisite is that the appellant should have made an "investment" and the second is that such "investment" should remain "unexplained". In the present case, according to the Assessing Officer, the appellant transacted her unaccounted money amounting to RS.34,83,206/-. The basis of the same is stated to be the information received from the Asstt. Commissioner of Income-tax, Central Circle-5, New Delhi, which in turn is based on a communication received from the Vigilance Bureau, Punjab. As per this information, the Assessing Officer was informed that on 17.05.2007, one Sh. Chetan Gupta was arrested in FIR NO.5 dated 23.03.2007 by the Vigilance Bureau, Ludhiana in connection with Ludhiana City Centre Scam. As per this information, in the course of the operation by the Vigilance Bureau, a computer pen drive was stated to be recovered from Sh. Chetan Gupta. On

the basis of the above information, the Assessing Officer proceeded to issue notice u/s 148 of the IT Act after recording the reasons. According to the Assessing Officer, the information contained details of the deposits made by the appellant with Sh. Chetan Gupta and the same represented unaccounted income of the appellant. In the course of the assessment proceedings, when the appellant was confronted with the said information, the impugned transactions were denied. It is seen that the appellant not only denied the transactions but also vested the onus on the department for enforcing the personal deposition of Sh. Chetan Gupta. However, on page 1 to 4 of the paper book filed by the appellant which is placed on record is a copy of the statement of Sh. Chetan Gupta recorded on oath on 09.03.2009 and 16.11.2009 (Asstt. Commissioner of Income-tax, Central Circle-12, New Delhi) u/s 131 is perused. During this examination, the IT Authorities enquired from Sh. Chetan Gupta about the transactions found in the pen drive stated to have been recovered from him. The said person Sh. Chetan Gupta not only denied the recovery of the pen drive from him but also denied any transaction with the appellant. Firstly, the appellant denied any transactions with Sh. Chetan Gupta. Secondly, the claim of the Assessing Officer is based on the statement of Sh. Chetan Gupta and therefore it clearly indicates that he is a witness in the appellant's case. During the course of the assessment proceedings, the Assessing Officer issued summons u/s 131 for personal deposition of Sh. Chetan Gupta. Vide letter dated 11.06.2012, Sh. Chetan Gupta expressed his inability for appearing before the Assessing Officer. Thereafter, the Assessing Officer did not make efforts to enforce the attendance of Sh. Chetan Gupta. However, the only material brought on record was the information received from the Vigilance Bureau, Ludhiana that showed investment made by the appellant with Sh. Chetan Gupta which were not independently proved by the Assessing Officer with corroborative evidence. It is only on the basis of the testimony of Sh. Chetan Gupta, the assessing Officer made an addition on account of unexplained investment. Thirdly, I also find that Sh. Chetan Gupta denied recovery of pen drive and also the impugned transactions in the statement recorded by the IT Authorities. Even if it is accepted that a pen drive was recovered from Sh. Chetan Gupta, it only amounts to a third party evidence and cannot be relied upon without any corroborative evidences. Reliance is placed in the judgment of Hon'ble Supreme Court in the case of Kishan Chand Chellaram, Hon'ble Delhi High Court in the case of SMC Share Brokers Ltd. and S.M. Aggarwal and also of the Hon'ble Punjab and Haryana High Court in the case of Chiranji Lal Steel Rolling Mills. The information received by the Assessing Officer at the best was to be regarded as a prima facie material, but cannot be construed as conclusive for utilizing the same against the appellant to fasten any tax liability because the same was required to be corroborated by credible and independent evidence which was not done in the present case. Therefore, under these circumstances, in my opinion, the Assessing Officer did not prove conclusively that an impugned investment was made by the appellant, due to the fact no material was brought on record by the Assessing Officer independently linking the information with his fact finding enquiry/investigation.

11. At this point, a reference is made to other cases where addition was

made in similar circumstances on the basis of the data found on the pen drive stated to be recovered from Sh. Chetan Gupta. In the case of Sh. Raninder Singh for the assessment year 2001-02, addition was made by the Income-tax Officer, Ward-31 (4), New Delhi based on information contained in the stated pen drive seized from Sh. Chetan Gupta and the information was provided by ADIT, Investigation, Unit-VI(1), New Delhi, which was in turn based on the report of Vigilance Bureau, Ludhiana (punjab). The said addition was deleted by the CIT(A)-XXVI, New Delhi vide his order dated 28.4.2009 in appeal no,81108-09, This order of CIT(A) was upheld by the Hon'ble ITAT, Delhi Bench-F, New Delhi vide their order dated 23.12,2009 in ITA Nos.2965 and 3196/Del/2009. The relevant findings of the Hon'ble ITAT are reproduced here under:

"As regards merits of the addition, there is no evidence in the possession of the revenue authorities to prove that the assessee ever paid cash to Shri Chetan Gupta except the so called report of ADIT (Investigation), Ludhiana, which in turn is based on the report of Superintendent of Police, Ludhiana. However, neither the report of SP, Ludhiana is available to the Assessing Officer much less to the assessee nor any statement was recorded by ADIT (Investigation) from Sh. Chetan Gupta to corroborate that any cash was paid by the assessee to Sh. Chetan Gupta, On the contrary Sh. Chetan Gupta on his deposition before the Assessing Officer clearly denied having received any cash. Shri Chetan Gupta also denied having given any statement admitting receipt of cash. Therefore, in absence of any evidence on record, the addition was not sustainable. It is strange to note that the Assessing Officer having recorded the statement of Sh. Chetan Gupta chosen to remain silent. This proves that in the statement of Shri Chetan Gupta there was no adverse factor affecting the tax liability of the assessee, Accordingly, the addition was rightly deleted by the learned CIT(A)."

7. The above order of the Hon'ble ITAT was also confirmed by the Hon'ble High Court of Delhi vide their order dated 28.2.2011 wherein it was held as under:-

"A pen drive of one Mr. Chetan Gupta was seized as per which the assessee had received certain money. On the basis of information contained in the said pen drive, addition was made in the income of the assessee under Section 69 of the Income Tax Act. CIT(A) set aside the order of the Assessing Officer and deleted the addition on the ground that reliance cannot be placed on pen drive. More so, that Mr. Chetan Gupta, had denied payment to assessee in his statement recorded under Section 131, ITAT has upheld this order on the following terms:-

As regards merit of the addition, there is no evidence in the possession of the revenue authorities to prove that the assessee ever paid cash to Shri Chetan Gupta except the so called report of ADIT (Investigation), Ludhiana, which in turn is based on the report of the Superintendent of Police, Ludhiana. However, neither the report of the SP, Ludhiana is available to the Assessing Officer much less to the assessee nor any statement was recorded by ADIT

(Investigation) from Sh. Chetan Gupta to corroborate that any cash was paid by the assessee to Sh. Chetan Gupta. On the contrary, Sh. Chetan Gupta on his deposition before the Assessing Officer clearly denied having received any cash. Shri Chetan Gupta also denied having given any statement admitting receipt of cash. Therefore, in absence of any evidence on record, the addition was not sustainable. It is strange to note that the Assessing Officer having recorded the statement of Sh. Chetan Gupta chosen to remain silent. This proves that the statement of Sh. Chetan was no adverse factor affecting the tax liability of the assessee. Accordingly, the addition was rightly deleted by the learned CIT(A).

We find no infirmity or illegality in the aforesaid order. No substantial question of law rises for consideration. Accordingly, the present appeal is dismissed."

On the basis of the information sought by the appellant through RTI, that has been filed in the paper book, I find that the department has not filed any SLP and therefore, the order of the Hon'ble High Court of Delhi has attained finality.

12. I also find that additions were made in similar circumstances on the basis of the data found in the pen drive seized from Sh. Chetan Gupta, in the cases of Maharaja Shri Amarinder Singh and Sh. K. Natwar Singh, the husband of the appellant, where the said additions were also deleted in appeals.

13. Therefore, respectfully following the decision of Hon'ble High Court of Delhi which was rendered Vide order dated 28.02.2011 on identical facts and circumstances in the case of Sh. Raninder Singh, Hon'ble ITAT, Chandigarh 'B' Bench Vide order dated 30.06.2010 in the case of Maharaja Sh. Amarinder Singh in IT Act, 1961 No. 505/CHD/2009 for assessment year 2001-02 passed on identical facts and circumstances, CIT(A) XXX, New Delhi Vide order dated 26.03.2013 passed in appeal nos. 1181 and 1152/2012-13 for assessment years 2003-04 and 2004-05, in case of Sh. K. Natwar Singh, appellant's husband, I hold that the impugned addition made by the Assessing Officer is liable to be deleted on similar facts and circumstances. Accordingly, the addition of RS.34,83,206/- made by the Assessing Officer is therefore deleted. This ground of appeal is therefore, allowed."

10. Aggrieved by the said order of the Id CIT(A), the revenue is before us.

11. The Id DR contended that the addition was rightly made by the AO and was based on evidence retrieved from a pen-drive recovered from Sh Chetan Gupta by the Vigilance Bureau, Punjab. Shri Chetan Gupta had admitted initially that he was looking after the transactions relating to family members of Capt Amrinder Singh and assessee is sister of Capt. Amrinder Singh. Thus in the face of the aforesaid evidence, Id CIT(A) was not justified to interfere with the addition made by the AO.

The Id DR wants us to set-aside the order of the Id CIT(A) and restore the order of the AO. On the other hand the Id Sr. Advocate Shri C.S.Agarwal appearing for the assessee, relied upon the finding of the Id CIT(A) and stated that matter is fully covered by the order of this Tribunal in the case of Capt. Amrinder Singh brother of the assessee. He thus prayed that the order deleting the addition be upheld.

12. We have heard both the parties and have perused the record and carefully gone through the case-laws cited by both the sides. In the instant case the addition of Rs.34,83,206/- was based on certain entries reflected and retrieved from a pen-drive recovered from Shri Chetan Gupta. According to the Revenue, the seized pen-drive contains computerized accounts of hawala transactions of about 148 people including the account of the assessee, whose identity was denominated as 'BIBA' & 'KIRAN BIBA'. Based on the said entries retrieved from the pen-drive additions were made also in the hands of Shri Raninder Singh S/o. Capt. Amrinder Singh. In the said case, the co-ordinate bench of this Tribunal had examined similar facts as that of the assessee and held as under:-

"7. As regards merits of the addition, there is no evidence in the possession of the revenue authorities to prove that the assessee over paid cash to Shri Chetan Gupta except the so called report of ADIT (Investigations), Ludhiana, which in turn is based on the report of Superintendent of Police, Ludhiana. However, neither the report of SP, Ludhiana is available to the Assessing officer much less to the assessee nor any statement was recorded by ADIT (Investigation) from Sh. Chetan Gupta. On the contrary Sh. Chetan Gupta on his deposition before the Assessing Officer clearly denied having received any cash. Shri Chetan Gupta also denied having given any statement admitting receipt of cash. Therefore, in absence of any evidence on record, the addition was not sustainable. It is strange to note that the Assessing Officer having recorded the statement of Sh. Chetan gupta chosen to remain silent. This proves that in the statement of Shri Chetan Gupta there was no adverse factor affecting the tax liability of the assessee. Accordingly, the addition was rightly deleted by the learned CIT(A)."

13. The aforesaid order was affirmed by the Hon'ble High Court of Delhi vide order dated 28.02.2011.

14. Furthermore, even in the case of Capt. Amrinder Singh, the co-ordinate Bench of this Tribunal had examined this matter and vide order dated 30th June 2010 deleted the additions. In the said order the bench had referred to the statement of Shri Chetan Gupta and noted as under:-

"The relevant questions put by the Assessing Office and the replies of Shri Chetan Gupta thereto, are as under:-

Q3. Please state as to status of your transaction with Maharaja Amrinder Singh from the period Financial Year 1999-2000 to 2006-07.

A. I have to state that I had never any transaction with Maharaja Amrinder Singh during abovesaid period or thereafter.

Q.4. Is there any case pending against you under IPC lodged by SP Vigilance Bureau, Ludhiana. If yes, please state what comments were recorded from you by the police and also state what documents were recovered from you and impounded/ seized by them.

A. As far as I remember, In March 2007 an FIR was lodged against me at Ludhiana in connection with Ludhiana City Center scam. Nothing was recovered from me. However, the police claimed that a pen-drive recovered from me which is not correct. I have already denied this allegation of police, during the proceeding before IT authorities as well as Distt. Session Judge, Ludhiana.

Q.5. I am showing you a letter written to DIT(Inv.) Ludhiana by SP, Vigilance Bureau Unit-II Ludhiana as per which you were maintaining A/cs of about 148 odd people who had black money dealing with you including Maharaja Amrinder Singh and his family members, presence of which reveals that you were engaged in Hawala business and payments were routed through your concerns/companies through cheques as maintained In the letter: Please explain the nature of entries pertaining to Maharaja Amrinder Singh made through your abovesaid concerns.

A. As already stated, the entries found in so called pen-drive do not pertain to me and no case of entry or transaction with Maharaja Amrinder Singh can be said through me or my company/ concerns.

Q6. As stated above, a copy of a/c in the name of Maharaja Amrinder Singh for financial year 200-02 was got printed from the pen drive record by police as per which, In one a/c O/B is shown Rs.5 lacs and C/B in nill after making transfer entry of Rs. 5 lacs as on 31st July. In the next a/c opening & closing balance are shown as Rs.2,25,000/-. Similarly, an a/c found is Partiala Post in which opening balance is shown 3.5 lacs and closing balance is shown at Rs.4,73,800/- after making three entries of Rs.26,200/-. Please explain the nature of these entries, if maintained by you in the a/c of Mah. Amrinder Singh.

A. I have already denied the recording of any pen-drive. Therefore, no question of explaining the above entries arises."

13. From the aforesaid replies, it is evident that Shri Chetan Gupta has denied any transactions with the assessee, and in fact Q.No.3 reproduced above, covers the period under our consideration."

15. In the light of the aforesaid statement, the c-ordinate Bench of the Tribunal was pleased to order as under:-

"14. Considering the aforesaid factual matrix. In our considered opinion, it does not stand established that the assessee has made the impugned investment. We say so for the reason that the burden to establish the existence of impugned investment was on the Revenue, which, in the present case has not been discharged. Firstly, assessee denied the impugned transaction.

Secondly, the claim of the Assessing Officer is based on the alleged evidence found on Shri Chetan Gupta, and quite clearly said witness has not been confronted to the assessee at any stage during the course of assessment, although the same was specifically pleaded by the assessee. The said person is the witness of the revenue because it is on the basis of his testimony, It has been held that the assessee made the impugned investment. Therefore, non-affording of cross-examination makes the use of such evidence by the Revenue, as untenable. In this connection, we may refer to the Judgment of the Hon'ble Delhi High Court In the case of CIT Vs. Ashwani Gupta, 322 ITR396 (Del), which followed Its earlier decision In the case of SMG Share Brokers Ltd. (supra). As per the Hon'ble High Court, once there was violation of the principles of natural justice, in as much as seized material was not provided to an assessee nor was cross-examination of the person on whose statement the Assessing Officer relied upon granted, then such deficiencies would amount to denial of opportunity and would be fatal to the proceedings.

Thirdly In this case, Shri Chetan Gupta has denied recovery of the pen-drive and also the impugned transactions in the statement recorded by the Assessing officer on 16.11.2009, so however, even if it is accepted that the pen-drive was recovered from shri Chetan Gupta, then, it only amounts to a third-party evidence and could not be straightaway relied upon without being tested in cross-examination or on the basis of any corroborative evidence. For the aforesaid proposition, we are fortified by the judgment of the Hon'ble Supreme Court in the case of Kisan Chand Chella Ram (supra), that of the Hon'ble Delhi High court in SMC Share Brokers Ltd. (supra) and S.M. Aggarwal (supra) and, also of the Hon'ble Punjab & Haryana High Court in the case of Chiranjil Lal Steel Rolling Mills (supra). The information received by the Assessing officer from his investigation Wing, at best, be regarded as a prima-facie material, but could not be construed as conclusive for use against the assessee to fasten any tax liability, because the same was required to be corroborated by credible and independent evidence or was required to be tested in cross-examination by the assessee, quite clearly none of these aspects have done by the Revenue in this case. Therefore, it is under these circumstances, that we have observed earlier that the Revenue has not proved that the impugned investment has been made by the assessee. In the light of above, the essential pre-requisite of Section 69 of the Act is not satisfied in this case."

16. The Id DR in the course of hearing before us, has not pointed out or shown any fact or material, so as to enable us, to come to a different opinion. In view of the above, and the order of the co-ordinate bench and the order of the High Court, we are not inclined to interfere with the reasoned order of the Id CIT(A).

17. As such, the impugned order is confirmed. The appeal of the Revenue is disallowed.

18. Now we come to appeal a Nos. 4213/Del/2013 & 4210/Del/2013

19. The issues and facts involved in all the other 3 appeal are identical, therefore, we are inclined to sustain the order of the Id CIT(A) and therefore we dismiss all the aforesaid appeals of the Revenue.

20. In the result the appeal is dismissed.

Order pronounced in the open court on 29.08.2014.

-Sd/-

**(B.C. MEENA)
ACCOUNTANT MEMBER**

Dated:29/08/2014

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

-Sd/-

**(A. T. VARKEY)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, New Delhi