

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी” , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH “B”, CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री राजपाल यादव, उपाध्यक्ष एवं श्री कृणवन्त सहाय, लेखा सदस्य
BEFORE: SHRI. RAJPAL YADAV, VP & SHRI. KRINWANT SAHAY, AM

आयकर अपील सं. / ITA No. 485/Chd/ 2024
निर्धारण वर्ष / Assessment Year : 2012-13

Malkiat Agro Industries 01 Cantt Road, Nabha 147201 Punjab	बनाम	The DCIT Circle Mandi Gobindgarh
स्थायी लेखा सं. / PAN NO: AABFM3457E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate and
Shri K.K. Singla, C.A.
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT DR

सुनवाई की तारीख/Date of Hearing : 31/01/2025
उद्घोषणा की तारीख/Date of Pronouncement : 01/04/2025

आदेश/Order

PER KRINWANT SAHAY, A.M:

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/NFAC, Delhi dt. 19/04/2024 pertaining to A.Y. 2012-13.

2. In the present appeal assessee has raised various grounds of appeal on account of initiation of proceedings u/s 148 and also on merits.

3. Briefly the facts of the case are that, the assessee is carrying on the business of manufacturing and sale of Harvesting Combines and other Agricultural Implements in the status of partnership firm, since 1988 and filing the returns on the basis of audited books of accounts. Due to the nature of business, majority of the customers are farmers from agricultural sector and return for the year was filed at an income of Rs. 66,61,860/- with the ACIT/DCIT, Circle Sangrur. The said return was filed on the basis of audited books of accounts and the same was processed u/s 143(1).

4. The sequence leading to reopening of the case u/s 148 are that the notice u/s 133(6), dated 08.02.20219 was received from the ITO, Nabha for verification of financial transactions with regard to cash deposits in the regular bank accounts of

the assessee, to which, the assessee replied by way of letter, dated 18.02.2019 and furnished the copies of the bank statements of his business where the cash deposit was there and it was further stated as under: -

"The source of cash deposits in the banks is mainly out of cash sales and receipts from sundry debtors. The cash deposits have been duly accounted for in the books of accounts."

5. Thereafter, nothing was received from the AO. Notice u/s 148, dated 28.03.2019 was issued by the ITO, Ward- Nabha for Assessment year under consideration for which, the return was filed in response to notice and copy of the reasons as may have been recorded was asked for.

6 Before us, the following grounds of appeals have been taken:-

"1. That the Ld. CIT(A), NFAC, Delhi has erred in confirming the order of the Assessing Officer, Circle Mandi Gobindgarh in the reassessment proceedings as initiated by the ITO, Ward Nabha u/s 148 and also confirming the addition of Rs. 12,39,90,680/- against the returned income of Rs. 66,61,860/-.

2. a). That the ITO, Ward Nabha has erred in issuing the notice u/s 148 without there being any reason to believe that the income of the assessee had escaped assessment just on the basis of alleged information available with the department.

b). That the Ld. ITO, Ward Nabha has not applied his mind, but has merely relied upon the information available with the department and which reopening is not valid in view of the Judgement of Delhi High Court in the Meenakshi Overseas, reported in 395 ITR 677, Signature Hotels (P) Ltd. Vs ITO, reported in 338 ITR 51 and Judgement of ITAT, Amritsar Bench, Amritsar in the case of M/s Holyfaith International Pvt. Ltd.

c). That the Ld. ITO, Ward Nabha has failed to consider and apply his mind to the detailed reply submitted during the course of proceedings u/s 133 (6) prior to the issue of notice u/s 148 and, thus, the very basis of formation of reason to believe, the AO ignoring all such bank accounts, in which, there has been cash deposits, based on the audited set of books of accounts as declared in the original return and, thus, there is failure on the part of Assessing Officer to apply his independent mind and only relying upon alleged information.

3. Notwithstanding the above said ground of appeal, the ITO, Ward Nabha has wrongly mentioned about the cash deposits of Rs. 18,52,71,560/- against the correct cash deposits in the bank accounts to the tune of Rs. 12,39,90,680/- and, thus, there was wrong reason to believe that the income of the assessee had escaped assessment and, thus, the reopening is bad in law as per binding judgments of Chandigarh Bench of the ITAT and of various High Courts and Other Benches of the ITAT across the country.

4. a). That though, the assessee requested for the supply of the reasons for reopening as recorded by the Assessing Officer by way of letter, dated 22.04.2019 and the copy of the reasons were supplied only alongwith the Show Cause Notice issued on 19.11.2019 at the fag end of completion of assessment, which was completed on 25.11.2019 and, thus, the finding of the Ld.CIT(A) in para 7.1.3 that the appellant has failed to object to the proceedings u/s 147 during assessment proceedings is devoid of any valid consideration and that finding deserves to be set aside and the assessment as framed u/s 148 deserves to be quashed.

b). Notwithstanding, the above said ground of appeals, the ITO, Ward Nabha who had issued the notice u/s 148 on 28.03.2019, did not have any valid jurisdiction to issue the notice u/s 148 as the jurisdiction of the assessee lies with the ACIT/DCIT, Mandi Gobindgarh and on the strength of notice u/s 148 as issued by non- jurisdictional ITO,

Ward Nabha, the assessment so framed u/s 148/143(3) by the ACIT/DCIT, Mandi Gobindgarh, deserves to be quashed.

5. Notwithstanding the above said ground of appeal, the notice u/s 148 having been issued beyond four years without there being any tangible material on record, deserves to be quashed, irrespective of the fact, whether the assessment have been framed within four years or beyond four years and, as such, the reopening having been merely made on account of change of opinion, which is not permitted as per binding judgment of Madras High Court in the case as reported in 447 ITR 357, which has been confirmed by the 'Apex Court' in 447 ITR 370 and also by way of judgment of 'Apex Court' in the case of 'Kalpataru Land Pvt. Ltd.'

6. That the approval as granted by the Ld. PCIT, Patiala sanctioning the notice u/s 148, being in a mechanical manner, without any judicious application of mind, the reopening of assessment u/s 147 as framed deserves to be quashed on account of non-application of mind by the concerned PCIT while granting approval u/s 151.

7. The Assessee has also raised following grounds on merits:

7. Notwithstanding the above said ground of appeal, it is submitted that the confirmation of addition by the CIT(A) in respect of cash deposits out of regular sales of the assessee as per audited books of accounts is against the facts and circumstances of the case and the Ld. CIT(A) has erred in confirming the addition as made by the Assessing Officer only on surmises and conjectures.

8. That the Ld. CIT(A) has failed to appreciate that due to the nature of business, where the sales of Combines/spare parts are mainly made to Agriculturists and cash deposits during the year are regular feature and compare favorably well with the earlier years, being out of declared sales in the audited books of accounts.

9. That the Ld. CIT(A) has failed to appreciate that the documentary evidences in the shape of copies of accounts of each customers, alongwith sale bills, duly signed by each customer and such sales having been recorded in the regular books of accounts, ignoring the documentary evidences and confirmation of addition is against the facts and circumstances of the case.

10. That the Ld. CIT(A) has failed to appreciate that all such cash sales has been declared in the return of income to VAT department, which is a State Govt. department, wherein such sales have been accepted and VAT assessment for Asstt. Year 2012-13 has since been completed and that documentary evidence have been ignored summarily.

11. a) That even otherwise, no addition of cash deposits to the tune of Rs. 12,39,90,680/- was liable to be made, since the books of accounts are duly audited and such books of accounts have been accepted both by the Assessing Officer and CIT(A) and, such books of accounts have not been rejected u/s 145(3) and, thus, as per the judgment in the case of Jurisdictional High Court in the case of Ludhiana Steel Rolling Mills, 295 ITR 111 and in the case of Om Overseas, 315 ITR 185, wherein it was held impugned addition were not liable to be made.

b). That the Ld. Assessing Officer have failed to appreciate that there was requisite stocks available with the assessee in respect of 'Combines' and 'spare parts' out of which, the sales have been made and the balance closing stock as on 31.03.2012 have been accepted by the Assessing Officer and the balance stock Carried forward to next year, which stands accepted and, as such, in view of the binding judgment of Hon'ble Delhi High Court in the case of Akshit Kumar, 197 DTR 121, Agson Global (P) Ltd., 65 taxmann.com 51 (Delhi) and judgment of Jurisdictional Chandigarh Bench in the case of 'Charu Aggarwal', Fashion Zone, no such addition on account of cash deposits out of sale proceeds recorded in the books of accounts is called for.

c). That the confirmation of addition by the CIT(A) is again illegal/arbitrary because the addition as made by the Assessing Officer of the sales as recorded in the books of treated, as alleged unexplained cash credits, which is unlawful since, the sales recorded in the books of accounts cannot be subject matter of addition as 'unexplained credit'.

12. Notwithstanding the above said ground of appeal, the addition of Rs. 12,39,90,680 on account of cash deposits is not justified at all because such amount having been recorded already in the turnover of the assessee towards credit side of Manufacturing & Trading Account and further making the addition on account of 'cash deposits' would amount to double addition as per binding judgment of Gujarat High in the case of President Industries, 258 ITR 654 and of Hon'ble Bombay High Court in the case of CIT Vs Surat Cotton, 202 ITR 932.

13. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."

8. The Ld. Counsel argued before us that the bank accounts, where the cash deposits made are regular bank accounts of the assessee, and such deposits are duly accounted for in the books of accounts of the partnership firm. They are mainly on account of the sale of Combines, Agricultural Implements. Since, the majority of the sales are to the farmers and their associates, majority of the farmers and their associates used to pay cash against the Combines/Agricultural Implements sold to them.

9. With regard to Ground No.2, a, b, c and Ground No.3, which deals with the reopening of the case u/s 148, it was argued that in the copy of the reasons, there is mention of some ITD Data Base Information, regarding the cash deposit of Rs. 18,52,71,560/- for which the case was reopened. In fact, no documentary evidence of the details of cash deposits were available. The said deposit of cash sales in the bank accounts are not supported by evidence. Further, it was mentioned that since no scrutiny assessment u/s 143(3) had been made, thus, the proceedings were initiated u/s 147.

10. It was argued before us that in reply to notice u/s 133(6) the source of bank deposit was shown out of cash sales and receipt of sundry debtors. No further query was made and the AO had merely relied upon the information available with him, which was not valid in view of the judgment of (a) Hon'ble Delhi High Court in the case of Meenakshi Overseas, reported in 395 ITR 677, (b) Signature Hotels (P) Ltd. Vs ITO, reported in 338 ITR 51, (c) Judgement of ITAT, Amritsar Bench, Amritsar in the case of M/s Holyfaith International Pvt. Ltd. in ITA No. 181/Asr/2017 and (d) judgment of ITAT, Mumbai Bench, in the case of Allied Engineers & Elastomers Vs ITO in ITA No. 1687/Mum/2024. It was further argued that there was no failure on the part of the assessee.

10.1 It was further argued that wrong reason to believe have been formed by the Assessing Officer for reopening of the case. Since the deposit in the bank accounts

were only to the tune of Rs. 12,39,90,680/-, for which, the addition has been made by the Assessing Officer.

11. The Ld. Counsel of the assessee relied upon a number of judgments of the Jurisdictional Bench of the ITAT, Chandigarh Bench and Gujarat High Court and Bombay High Court in the following cases :

S.No.	Name of Judgement
1.	Judgment of The Hon'ble Jurisdictional Bench of ITAT Chandigarh in the case of Smt. Monika Rani in ITA no. 582/chd/2019 dated 28.02.2020.
2.	Judgement of the Hon'ble Amritsar Bench, of ITAT Amritsar (Jalandhar Camp), in the case of Gaurav Joshi Vs. ITO as reported at (2019) 55 CCH 0083.
3.	Hon'ble Jurisdictional High Court in the case of CIT vs. Atlas Cycle Industries reported at 180ITR 319.
4.	Sagar Enterprises vs. ACIT (2002) 257 ITR 335 (Gujarat High Court)
5.	Harjeet Singh Vs ITO (ITAT Delhi), order dated 12.11.2018, in ITA No. 2013/DEL/2015
6.	KMV Collegiate Sr. Sec. School v. ITO (2017) 163ITD 653 (Asr.) (Trib.)
7.	Baba Kartar Singh Dukki Educational Trust v. ITO (2016) 158 ITD 965 (Chd.)(Trib.)
8.	Van Oord Dredging and Marine Contractors BV V/s ADIT, in ITA No. 495/MUM/2016 - MUM-TRIBUNAL
9.	Shri Ram Mohan Rawat V/s Income Tax Officer in ITA No.1014/JP/2018 -JAIPUR-TRIB.
10.	Shri Allen De Noronha V/s ACIT, in ITA NO.338/LKW/2015 - LUCKNOW-TRIB.
11.	Fortune Metaliks Limited vs DCIT, ITA No. 1090/Chd/2019 dated 12.01.2021-CHDTrib.
12.	Judgement of Bombay High Court in the case of Ankita A Choksery Vs ITO, reported in 411 ITR207.

11.1. Further, it was argued on Ground No.4, a, b that the notice u/s 148 was issued by the ITO, Ward, Nabha deserves to be quashed, since the ITO, Nabha did not have the valid jurisdiction to issue the notice u/s 148. The jurisdiction of the assessee lied with ACIT/DCIT, Mandi Gobindgarh. The Ld. Counsel also gave the figures of the return of income for the earlier years in order to substantiate the valid jurisdiction before the ACIT/DCIT, Mandi Gobindgarh. As under:-

<u>Assessment Year</u>	<u>Returned Income</u>
2010-11	55,21,270/-
2011-12	67,95,650/-
2012-13	66,61,860/-

It was further brought to our notice that the ITO Nabha realizing her mistake, transferred the file to the ACIT/DCIT, Mandi Gobindgarh, who ultimately framed the assessment u/s 143(3)/148 and no fresh notice u/s 148 was issued by the ACIT/DCIT, Mandi Gobindgarh.

11.2. The assessee relied upon the judgments of the Jurisdictional Chandigarh Bench of the ITAT as under on the jurisdiction:-

i). *Sh. Raman Pillai Sivasankara Pillai Vs the DCIT, International Taxation, Chandigarh in ITA No. 770/Chd/2019 vide order, dated 20.01.2025.*

ii). *The DCIT, Circle, Chandigarh (International Taxation) Vs Sh. Manjeet Singh in ITA No. 512/Chd/2022 vide order, dated 15.10.2024.*

11.3 The Ld. Counsel also argued that in the case of 'Raman Pillai', the Hon'ble Bench on similar facts and circumstances also relied on various other judgments.

11.4 Lastly, it was argued before us that even though original assessment has been framed u/s 143(1) still there has to be reason to believe that the income of the assessee has escaped assessment, for which, the assessee relied on following judgments, wherein, the assessment was framed originally u/s 143(1) and lateron, the assessment was sought to be reopened by way of notice u/s 148 and such reassessment proceedings were quashed as per following judgments:-

i). *Shiva Exports Vs ITO, 27 CCH 742 (Chd. Trib.)*

ii). *CIT Vs Orient Crafts Ltd. reported in 354 ITR 536 (Delhi High Court)*

iii) *Samrat Plywood Ltd. Vs ACIT, 87 ITR (Trib.) 102 (Chandigarh)*

Thus, it was argued that the notice u/s 148 be quashed both on account of jurisdiction and on wrong reason to believe and non-application of independent mind by the AO.

12. On merits, the assessee has taken the ground of appeals from ground No.7 to ground No. 12. It was argued before us that during the course of assessment proceedings, the questionnaire was issued, dated 19.11.2019 with regard to source of cash deposit of Rs. 12,39,90,680/-, against the alleged cash deposits mentioned in the reasons recorded u/s 148 to the tune of Rs. 18,52,71,560/-, copy of which is placed at paper book. The details of cash receipt from various parties on account of sale of Harvester Combines, spare parts was filed. It was further submitted that in case of any further verification is required then, opportunity be afforded to the assessee. Copies of the bank accounts from the books of accounts were submitted. However, no further query was raised by the AO and the AO made the addition of unexplained cash credit.

12.1 It was vehemently argued that before the CIT (A) by way of application under rule-46-A, copies of the sale bills, copies of accounts of customers from whom

the cash has been received against the sales with their name have been furnished. It was further argued that the deposit of cash in the bank accounts was not a new phenomenon and during the earlier years also, there was cash deposits out of the sales made by the assessee

<i>Assessment Year</i>	<i>Amount of cash deposits in the Bank</i>
2010-11	12,87,58,500/-
2011-12	09,07,73,000/-

Such evidences were admitted and in the remand report, the AO only mentioned that the identity of the party and Aadhar Card had not been submitted. And it was argued that since the sales have been accepted, which was the modus operandi of the business, there should not be any doubt with regard to the deposit of cash in the regular bank account of the assessee. It was also argued that even the assessee furnished the detailed submissions during such remand proceedings also and which have not been considered by the Ld. CIT(A).

12.2. Finally, it was submitted that all such sales in cash have duly been disclosed in the VAT returns and by making the addition of cash deposits, amounts to double addition, since already sales have been reflected in the credit side of the trading account.

12.3. It was also argued that the Ld. CIT(A) has arbitrarily without pointing any defect, has dismissed the appeal of the assessee. Books of accounts of the assessee has not been rejected and, thus, no addition could be made if the books of accounts have not been rejected as per the judgment of Jurisdictional Punjab & Haryana High Court in the case of M/s Ludhiana Steel Rolling Mill, reported in 295ITR 111 and M/s Om Overseas of Punjab & Haryana High Court. It was further brought to our notice that the opening stock, purchases, sales and closing stock have been accepted by the AO therefore, there is no basis of making the addition of unexplained cash credit on account of cash deposits in the regular bank account of the assessee. The assessee relied upon various judgment of Delhi High Court in the case of PCIT Vs Akshit Kumar in ITA No. 348 of 2019, reported in 197 DTR 121, M/s Agson Global Pvt. Ltd., Vs PCIT (Central)-3, Charu Aggarwal & Others Vs DCIT, reported in 96 ITR (Trib.) 0066 (Chandigarh). It was also argued that once, the sales have been accepted and cash sales have been deposited in the bank accounts of the assessee, then, there is no justification of making the addition on account of cash credit:-

- i). *Fashion Zone Vs DCI in ITA No. 331/Chd/2023, dated 20.03.2024.*
- ii). *ACIT Vs Mahendra Kumar Agarwal as reported in (2023) 104 ITR (Trib.) 455 (Jaipur).*
- iii). *ACIT Vs Chandra Surana, reported in(2023) 104 ITR (Trib.) 503 (Jaipur)*
- iv). *Mahesh Kumar Gupta Vs ACIT in 151 taxmann.com 339 (Jaipur Trib.)*

Thus, in nutshell, it was argued that both on jurisdictional issue and on merits, the Ld. CIT(A) was not justified in dismissing the appeal of the assessee.

13. The Ld. CIT(DR) justified the action of the AO in issuing the notice u/s 148 by ITO, Nabha and also argued that even if, the case has been transferred to ACIT/DCIT, Mandi Gobindgarh, the concerned Officer at Mandi Gobindgarh has rightly framed the assessment. It was further argued that original assessment has been framed u/s 143(1) and no opinion has been expressed and, as such, the AO was fully justified in reopening the case u/s 148 after due application of mind. With regard to wrong figure of cash deposits mentioned in the reasons to the tune of Rs. 18,52,71,560/-, it was argued by the Ld. CIT (DR) that correct addition have been made of the cash deposits to the tune of Rs. 12,39,90,680/- and, thus, the reopening has been made correctly. On merits, the reliance was placed on the order of AO and CIT(A) and justified the action of the CIT(A) in dismissing the appeal of the assessee.

14. We have carefully considered the rival submissions and gone through the assessment order and appellate order, 'Paper Books and Judgement Sets', furnished by the Ld. Counsel of the assessee. We have also gone through, the reasons as recorded by the AO, Ward-Nabha for reopening of the case u/s 148. The facts are not disputed that the assessee is carrying on the business of manufacturing and sale of Harvester Combines and sale of spare parts and there is history of cash sales in the earlier assessment years as mentioned above. The cash deposits in Asstt. Year 2010-11 and 2011-12 were to the tune of Rs. 12,87,58,500/- and Rs. 09,07,73,000/- and during the year under consideration, they were to the tune of Rs. 12,39,90,680/-. It is also a fact that the returns for earlier years were filed declaring an income of more than Rs. 50 lacs, thus, the issue of notice u/s 148 ought to have been issued by the ACIT/DCIT, Mandi Gobindgarh, with whom the correct jurisdiction lied and the ITO, Nabha did not have any jurisdiction over the case of assessee. As such, the issue of notice u/s 148, dated 28.03.2019 is bad in law and deserves to be quashed. The issuance of notice u/s 148 goes to the root of assumption of jurisdiction by the AO

concerned and the ITO, Ward- Nabha after issuance of notice u/s 148 realizing her mistake, he transferred the file to the ACIT/DCIT, Mandi Gobindgarh, who ultimately framed the assessment on the strength of earlier notice u/s 148, dated 28.03.2019 of ITO, Ward Nabha, the ACIT/DCIT should have issued a fresh notice u/s 148 for assumption the jurisdiction and, thus, the assessment proceedings as framed by the ACIT/DCIT, Mandi Gobindgarh are required to be quashed.

15. Similar issue was there in the case of Raman Pillai in ITA No. 770/Chd/2019m, wherein, the notice u/s 148 was issued by ITO, Ward-3(1), Chandigarh but, lateron, he transferred the file to DCIT (International Taxation), who framed the assessment and under such circumstances, the notice u/s 148 was quashed and while delivering that judgment, the following finding had been recorded in the case of 'Raman Pillai':

i). *The DCIT Vs Sh.Manjeet Singh, as reported in ITA No.312/Chd/2022 (ITAT Chandigarh, dated 15.10.2024).*

"15. We have considered the arguments of Id. Counsel of the assessee and the Id. DR as well as the brief synopsis and written submissions along with the judgments relied upon by both the sides and also the various case laws as cited before us. It is a fact borne out from record that prior to the issue of notice u/s 148 vide notice dated 28.03.2019 for the assessment year under consideration that the assessee is a non-resident as per the facts stated above by the Id. Counsel and the documents submitted before us for Assessment Year 2011 -12. It is also a fact that the assessee is a citizen of USA and is holding American Passport and notice u/s 148 was issued by the non-jurisdictional ITO and as per the judgment of the Delhi ITAT in the case of Mukesh Kumar and of the Chandigarh Bench and Delhi Bench of the ITAT and the other judgments of the Bombay High Court and Rajasthan High Court, as cited supra, we have no hesitation in holding that the Assessing Officer Ward-3(4), Ludhiana did not have valid jurisdiction to issue the notice u/s 148, since it was in the knowledge of the department earlier that the assessee was a non-resident and, even the return for AY 2011-12, had been filed, earlier to the notice issued u/s 148 for the year under consideration and the Assessing Officer, International Tax had proceeded with the framing of the assessment without issuing fresh notice u/s 148 and, thus, the assessment as framed by the Assessing Officer, International Tax, is bad in law. We are fortified by the judgment of co-ordinate bench in the case of Sh. Mukesh Kumar as cited supra in which it has been held as under:

"The issue of valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act; therefore, the assessment made pursuant to such notice is bad in law. In support of this proposition we rely upon the cases of Hon'ble Apex Court- in the cases of Y. Narayana Chetty Vs. ITO, 35 ITR 388, 392 (SC); CIT Vs. Maharaja Pratap Singh Bahadur, 41 ITR 421 (SC); and CIT Vs. Robert, 48 ITR 177 (SC). In the light of the above titled principle of law, we have no hesitation to quash the reassessment proceedings since there was no valid notice pursuant to which the reassessment proceeding was made in the present case. Accordingly, the appeal filed by the appellant is allowed."

The same view has been taken in the following cases:-

- *The DCIT vs. Shri Manjeet Singh as reported in ITA No. 512/Chd/2022 (ITAT Chd, 15.10.2024)*

- *Shri Manjeet Singh vs. The DCIT as reported in ITA No. 867/Chd/2018 (ITATChd. 17.12.2019)*
- *Sh. Tirlak Singh vs. The DCIT as reported in 3995/Del/2018 ITAT Delhi dated 08.12.2021*
- *Nimir Kishore Mehta v. Assistant Commissioner of Income-tax in [2024] 161 taxmann.com 553 (Bombay High Court)*
- *Saroj Sangwan vs. Income-tax Officer [2024] 162 taxmann.com 704 (Delhi - Trib.) [17-05-2024]*
- *Sunil Chablani vs. CIT (International Taxation) as reported in CTR in (2024) 38 NYPTTJ 1009 (ITAT Jaipur)*
- *Mukesh Kumar Agarwal vs. Income-tax Officer [2022] 143 taxmann.com 139 (Jaipur - Trib.) [27-07-2022]*
- *Adarsh Rice Mill vs. Income-tax Officer [2024] 167 taxmann.com 695 (Raipur - Trib.) [29-11-2022]*
- *Sh. Sunil Kumar in ITA NO.1069/CHD/2004 of Chandigarh Bench.*

16. Besides the above, we also find that there is a mistake in reason to believe by the Assessing Officer, because in the reason so recorded, the amount of cash deposits has been mentioned at Rs. 18,52,71,560/- and which was in actual Rs. 12,39,90,680/- Assessee's reliance on various judgments, are very much relevant to the facts and circumstances of the case and in the judgment of Gaurav Joshi in ITA No. 274/Asr/2018, reported in 197 TTJ, 946, similar facts were there, wherein, the cash deposits in assessee's bank account was less than the amount mentioned in the reopening notice and it was held that the reasons recorded by the AO were not emerging from the record available with him and the AO having recorded the reasons which were not found to be valid and, therefore, the reassessment framed was quashed. Similar finding has been given in various other judgments. The Chandigarh Bench of the ITAT, in Baba Kartar Singh Dukhi Educational Trust and Others as cited above, the findings are the same.

17. On merits of the case, it is a fact that during the course of proceedings u/s 133 (6) and later on, assessee had submitted the correct cash deposits in the Bank accounts, which was stated to be out of the sales of Harvester Combines and its spares and such sales have been disclosed in the regular books of accounts of the assessee and even copies of the ledger accounts of the parties to whom, the sales have been made, alongwith the sale invoices issued to the customers, giving description of the item sold, amount of sale, address of the party and signatures of the buyers, have been submitted. During the proceedings before the CIT(A), the matter was remanded to the AO and during such remand proceedings, even the assessee appeared before AO and filed the submissions, alongwith necessary

evidences of such sales. Even, there is cash sales due to the nature of business of the assessee as stated above and cash sales, are part of the manufacturing and trading account and the said cash realized out of the sale of stocks, available with the assessee. There is no justification by the CIT (A) to uphold the addition of Rs.12,39,90,680/- as unexplained cash credit. The judgment of Delhi High Court in the case of Akshit Kumar, Agson Global Pvt. Ltd. and Chandigarh Bench of the ITAT and Jaipur Bench of the ITAT are squarely applicable to the facts of the case. Further, the books of accounts of the assessee have not been rejected either by the AO or by the CIT (A) and if the books of accounts have not been rejected, there was no justification in making the addition as per binding judgment of the Jurisdictional High Court in the case of M/s Ludhiana Steel Rolling Mills, reported in 295 ITR 111. Thus, we are of the considered view that both on legal ground of issuance of notice under section 148 by a non jurisdictional AO and on merit also, the addition of Rs. 12,39,90,680/- as sustained by the CIT(A) on account of deposits in the bank account cannot be sustained.

18. Thus, assessee's appeal on this issue is allowed.

19. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 01/04/2025

Sd/-

राजपाल यादव
(RAJPAL YADAV)

उपाध्यक्ष/VICE PRESIDENT

Sd/-

कृणवन्त सहाय
(KRINWANT SAHAY)

लेखा सदस्य/ ACCOUNTANT MEMBER

AG 01/04/2025

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar