

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 44 & 45/Asr/2021

Assessment Years: 2012-13 & 2014-15

Asstt. C.I.T.,
Central Circle,
Amritsar

(Appellant)

Vs. M/s Punjab Rice Land Pvt.
Ltd. Chabaal Road,
Tarn Taran

[PAN: AAACP 9645B]

(Respondent)

C. O. No. 4/Asr/2022

(Arising out of ITA No. 44/Asr/2021)

Assessment Year: 2012-13

M/s Punjab Rice Land Pvt.
Ltd. Chabaal Road, Tarn
Taran

[PAN: AAACP 9645B]

(Appellant)

Vs. Asstt. C.I.T.,
Central Circle,
Amritsar

(Respondent)

Appellant by : Sh. Jatinder Nagpal, Adv. & Sh. Nimish Nagpal, CA

Respondent by: Sh. Rohit Mehra, CIT DR

Date of Hearing: 19.10.2022

Date of Pronouncement: 15.11.2022

ORDER

Per Bench:

These appeals have been filed by the Revenue and Cross Objection
filed by the assessee against the order even dated 23.04.2021 passed by

the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana (hereinafter referred to as 'the CIT(A)', in respect of Assessment Years 2012-13 & 2014-15.

2. The department has raised the following grounds of appeal in ITA No. 44/Asr/2021:

- "1. Whether the Ld.CIT(appeals) has erred in law and on the facts and circumstances of the case by deleting the addition of Rs. 3,03,81,804/- out of Rs.3,21,96,804/- on account of bogus purchases made by the assessee company?*
- 2. Whether the Ld. CIT(Appeals) has erred in law and on the facts by confirming the purchases as genuine, ignoring the admittance of Mr. Raman Kumar Arora in his application filed before ITSC wherein all such transactions in aggregate Rs.9,819 Crores which have been admitted as accommodation entries provided by Mr. Raman Arora which overrides the claimed genuineness of paper trails of the assessee?*
- 3. Whether the Ld. CIT(Appeals) has erred in law and on the facts of the case in not taking the cognizance of statement of facts filed by Mr. Raman Arora on 06.02.2019 before ITSC which is full and true and his statement u/s 132(4) under the I.T. Act?*
- 4. Whether the Ld. CIT(Appeals) has erred in law and on the facts in observing that AO has made addition on the basis of statement of Sh. Raman Kumar in some other case, ignoring the facts that assessment has been made on the basis of documents found during search, analysis of bank account in line with his statement recorded in respect of beneficiaries and ITSC application of Mr. Raman Kumar Arora ?*
- 5. Whether the Ld. CIT(Appeals) has erred in law and on the facts on relying on stock register even after confirming the addition on account of bogus purchases from M/s Raghveer Singh Davinder Kumar ?*

6. *Whether the Ld. CIT(Appeals) has erred in law and on the facts saying that export sales of assessee not in doubt, even after confirming the bogus purchases from M/s Raghveer Singh Davinder Kumar?*
7. *Whether the Ld. CIT(Appeals) has erred in law and on the facts of case that the then AO has accepted the purchases in A.Y. 2011-12 ignoring the fact that later on entry provider had gone to Hon'ble ITSC accepting that the concerned bank accounts were used for providing accommodation entry?*
8. *The Appellant craves leave to add or amend the grounds of appeal on or before is heard and disposed off."*

3. Grounds of appeal in ITA No. 45/Asr/2021

- “1. *Whether the Ld. CIT(Appeals) has erred in law and on the facts and circumstances of the case by deleting the addition of Rs. 1,69,98,970/- on account of bogus purchases made by the assessee company?*
2. *Whether the Ld. CIT(Appeals) has erred in law and on the facts by confirming the purchases as genuine, ignoring the admittance of Mr. Raman Kumar Arora in his application filed before ITSC wherein all such transactions in aggregate Rs.9,819 Crores which have been admitted as accommodation entries provided by Mr. Raman Arora which overrides the claimed genuineness of paper trails of the assessee?*
3. *Whether the Ld. CIT(Appeals) has erred in law and on the facts of the case in not taking the cognizance of statement of facts filed by Mr. Raman Arora on 06.02.2019 before ITSC which is full and true and his statement u/s 132(4) under the I.T. Act.*
4. *Whether the Ld. CIT(Appeals) has erred in law and on the facts in observing that AO has made addition on the basis of statement of Sh. Raman Kumar in some other case, ignoring the fact that assessment has been made on the basis of documents found during search, analysis of bank account in line with his statement recorded in respect of beneficiaries and ITSC application of Mr. Raman Kumar Arora?*
5. *Whether the Ld. CIT(Appeals) has erred in law and on the facts of case that the then AO has accepted the purchases in A.Y. 2011-12 ignoring the*

fact that later on entry provider had gone to Hon'ble ITSC accepting that the concerned bank accounts were used for accommodation entry?

6. *The Appellant craves leave to add or amend the grounds of appeal on or before is heard and disposed off."*
4. The assessee has raised the following cross objections for AY 2012-

13:

1. *That the Id. CIT(A) has grossly misdirected himself in law and on facts, in upholding the validity of order passed u/s 153A r.w.s 143(3), by not appreciating the assessee's contentions that order is in gross violation of the principles of Natural Justice being passed without confronting the assessee or providing the copies of the statements relied upon by the assessing officer.*
2. *That the Ld. CIT(A) has erred in confirming the additions of Rs. 18,15,000/- made by the AO on the basis of documents and statements which were not confronted to assessee during the course assessment proceedings and copies of which were supplied post assessment order u/s 153A. The Ld. CIT(A) has committed a grave legal error in upholding the additions made in violation of the principles of natural justice by the AO which renders the assessment order null and void.*
3. *That the Id. CIT(A) misconstrued the facts and the legal position of this case, to uphold the addition of Rs. 18,15,000/- as made by the AO, alleging that the purchases made by assessee from the party M/s Raghuvveer Singh Davinder Kumar were bogus.*
4. *That when neither the stock tally nor the sales made were disputed or books of accounts were rejected, holding the purchases of Rs. 18,15,000/- from M/s Raghuvveer Singh Davinder Kumar bogus by Ld. CIT(A) was prime facie uncalled for, when the assessee has brought sufficient evidence on record to evident the purchase made from the said party.*
5. *That the observations in the body of the order are opposed to the true facts and circumstances of the case and Ld. CIT(A) has erred in law and*

in facts in confirming the addition of Rs. 18,15,000/- as bogus purchases without verification of the actual facts of the case and consideration of the evidence brought on record by the assessee.

6. *That Mr. Hitesh Jain, being the sole witness of revenue, ought to have been allowed cross examination by the assessee, which having not been allowed by the AO even when asked for, rendered the impugned assessment illegal, being in gross violation of sacred principles of natural justice. The Id. CIT(A) has erred in not holding the impugned order bad on this score.*
7. *That the CIT(A) has further erred in law in and in facts in confirming the entire additions of the alleged bogus purchases by the assessee when no sales of the assessee has been rejected by the AO. That under no circumstances the entire purchases should have been added to the income of the assessee.*
8. *That the appellant/cross objector reserves the right to amend, add or alter any of the grounds of appeal before or at the time of hearing of appeal.*

5. The sole and common issue being involved, on identical facts in the department appeals and CO of the assessee pertains to the addition made on account of bogus purchases. Therefore, all these appeals were heard together and disposed of by this consolidated order.

6. Briefly facts are that the Assessing Officer (in short "the AO) on the basis of the statement of Sh. Raman Arora regarding providing accommodation entry, rejected the reply of the assessee comprises of invoices, freight bill, Form H, blank cheque and analysis of bank statement, the arguments of the assessee and held that these concerns may have

been involved in accommodation entries and accordingly held that may be the assessee transactions are genuine, does not hold good because the modus-operandi as narrated by Sh. Raman Arora as well as Sh. Hitesh Jain holds true in the case of assessee. The AO, being not satisfied with the submissions of the assessee held that the assessee has taken accommodation entries against bogus purchases from M/s Raghuvver Singh Devinder Kumar, M/s Dashmesh Agro Exports and M/s Viroo Mai Mulkh Raj Jain Rice Mill amounting to Rs. 18,15,000/-, Rs. 48,29,678/- and Rs. 2,55,52,126/- respectively during the year consideration. Accordingly, the AO rejected the contention of the assessee regarding maintaining the complete stock record and acceptance of the same while passing order u/s 143(3) and disallowed the purchases amounting to Rs. 3,21,96,804/- and added to the income of the assessee for the assessment year 2012-13, holding that the assessee has taken accommodation entry against these bogus purchases without actual delivery of goods as being unsubstantiated.

7. The aggrieved assessee went before the Ld. CIT(A) who has granted part relief to the assessee on merits by observing as under:

“The facts of the case, the basis of addition made by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR has submitted that a search was conducted on 25.05.2017 at only the business premises of the assessee company but nothing incriminating was found and assessments were completed vide order dated 27.12.2019 and no addition was made for the search year i.e. assessment year 2018-19 and also no addition was made in assessment year 2016-17 & 2017-18. As per the AR, the additions made in the assessment year 2012-13 to 2015-16 are not based on any incriminating material found during the search but merely on the allegation in the appraisal report that purchases made from three parties M/s. Viroomal Mulkh Raj, M/s. Dashmesh Agriculture Exports and M/s. Sona Chandi Agro Processors were allegedly sham transactions which was based on statement of one Sh. Raman Kumar recorded by Investigation Wing and the AO. The AR submitted that these statements were not provided to the assessee despite repeated requests. It is further submitted that the predecessor AO had summoned Sh. Raman Kumar on 08.10.2018 and Sh. Raman Kumar had clearly denied of having given any such statement that he had provided accommodation entry or bill to the appellant. It is further claimed that in his statement Sh. Raman Kumar clearly stated that he never worked for M/s. Punjab Riceland Pvt. Ltd. and has not provided any bill of M/s. Viroomal Mulkh Raj, M/s. Dashmesh Agriculture Exports and M/s. Sona Chandi to the assessee and also stated that he worked for M/s. DRRK Food Pvt. Ltd. and M/s. R S Rice Mills. The AR further submitted that the appellant has independently provided sufficient documents to prove the existence of all the three concerns engaged in business of selling of Rice and all documentary evidence of purchases, transportation of goods, stock inventories, payment proof, utilization of payment for purchases were also provided and stated that not a single penny in cash in lieu of cheque issued for payment were withdrawn/received by the appellant by any manner. It is also submitted that it was explained that 90% of the sales of the appellant concern are exports only and none of the sales were doubted or doubtful. Moreover, no discrepancy was found in stock in any of the year including the year of search and contended that the addition of alleged purchase without physical delivery is mere baseless suspicion and there is no ground for addition made by the AO. The AR has referred to the submission made before the AO and submitted that complete explanation and document with regard to various queries raised by the AO during the assessment proceedings, clarifying the facts & circumstances of the case were duly submitted.”

The AR referred to submission filed before the AO whereby detailed submission regarding M/s. Viroomal Mulkh Raj and M/s. Dashmesh Agro was given and further referred to letter submitted before the AO regarding purchases from M/s. Raghuveer Singh Davinder Kumar and asking the statement of Sh. Hitesh Jain, further asking for statement of Sh. Raman Kumar in relation to purchases from M/s. Viroomal Mulkh Raj and M/s. Dashmesh Agro. After considering the submissions, the additions are discussed below.

Bogus purchase accommodation from M/s. Raghuveer Singh Devinder Kumar

Regarding the addition of Rs. 18,15,000/- made by the AO during the assessment year 2012-13 for purchases made from M/s. Raghuveer Singh Devinder Kumar, the AR submitted that the addition has been made on the basis of documents which were not confronted to the assessee and even copies of the same were not supplied to the assessee, a request for which was duly made as reproduced in the remand report also and the same were supplied after the assessment order was already passed. It is also argued that the assessee was never confronted with the statement etc. which were relied upon by the AO and the same has been provided after completion of the assessment and argue that the order has been passed in violation of principal of natural justice. It is alternatively argued that the AO has not doubted the sales and even no discrepancy was found in the stocks and even the books of accounts are neither questioned nor rejected. It is further argued by the AR that even otherwise in such situation, 100% addition is not sustainable and only profit element embedded in such purchase could be added to the income of the assessee and placed reliance on various judgments.

During the appellate proceedings, the AR supplied document like purchase bills, transport receipt and ledger account of this party. One of the purchase bill, is reproduced below:

TIN: 07860334121		All Subject to Delhi Jurisdiction CASH/CREDIT		Ph: 9350290869	
		RAGHUVEEER SINGH DEVINDER KUMAR			
WHOLE SALE GRAIN MERCHANTS & COMMISSION AGENTS					
2263-66/15, 1st Floor, Gali Raghunandan, Naya Bazar, Delhi-110006					
B/E No. 4265		Date 26-9-11			
M/S Punjab Rice Land P. Ltd.					
Chhabal Road Jagan Jagan C. Anandia					
TIN/CST No. 08741151230					
Broker					
Truck No. HR45-2658		GR/R No. 1955			
From Delhi		To (Amrit Sar)			
Sl. No.	PARTICULARS	WEIGHT	RATE PER QTL.	Amount Rs.	P.
436	Kath Rice	90-00	1500/-	135000	-
P.N.B. A/C-195000210002258					
R.G.S. → PNB0025900					
Delivery at: <i>श्री 555 इलाहाबाद रोड</i> <i>मंडला 213, नई दिल्ली कर्माल (द)</i>					
G.TOTAL				135000	-
E. & O.E		For Raghuveer Singh Devinder Kumar			

It is seen that the address is of Naya Bazar, Delhi and there is no landline number mentioned. Only a mobile number 93502-90869 is mentioned. In the presence of AR, during the appellate proceedings, a call was made at this mobile number 93502-90869 and the respondent was found to be from Kurukshetra, Haryana (and not from Delhi) and he was not aware about the transaction. Further, he showed ignorance about the assessee. These facts were confronted to the AR and the AR had no satisfactory reply and submitted that he has nothing say in the matter. It is also noted that the goods were transported upto Tarawari,

Karnal whereas the assessee is located in Tarn Taran. Tarn Taran is a separate District whereas in the bill the transport is shown from Delhi to Amritsar. A careful look at the documents regarding purchases shown from M/s Raguveer Singh Devinder Kumar do not inspire the confidence of genuinity. The assessee has regular purchasers from nearby places like Amritsar parties and has shown only five bills from the Delhi party on 24.09.2011, 25.09.2011 and on 26.09.2011 and the payment was also made on 28.09.2011 as per the ledger account submitted by the AR. There is nothing on record as how the assessee came in contact with this party and who was the mediator. The agent has already stated that he was using this concern, only for providing accommodation entries. In the rejoinder to the report of the AO, the AR alternatively argued that only GP may be applied on these purchases, however, it is to be noted that in case of such bogus purchases debited to the account of the assessee, whole of the sum is to be disallowed. Under the facts & circumstances of the case and after looking the bill filed by the AR and enquiries done in the presence of AR during the appellate proceedings, the addition of Rs. 18,15,000/- made by the AO is found sustainable and hence confirmed.

Bogus accommodation entry with the help of Sh. Raman Arora

Regarding M/s. Dashmesh Agro Exports, it was submitted that the purchases are genuine and there was no cash withdrawal against assessee's payment. It is claimed that M/s. Dashmesh Agro Exports was the existing party during the year and purchases made were genuine. It is also submitted that the payments made by the assessee had gone to different account of M/s. Dashmesh Agro Exports then the account mentioned by Sh. Raman Arora in respect of M/s. Dashmesh Agro Exports, which was allegedly used by him for providing accommodation entries. It is further submitted that complete bills giving the name of the broker and invoice having stamp of ICICI Bank accounts were also submitted along with the newspaper cutting showing taking over of premises of M/s. Dashmesh Agro Exports by PNB Zonal Office. The complete details of utilization of funds given to that party were also given. It was contended that the examination of all the invoices shall reveal that on the reverse of the invoice that stock are checked by the staff who put his signature also and shortage, if any, noted on the reverse of the bill which have been deducted while making payment to the party.

It was further submitted that M/s. Viroomal Mulkh Raj was an existing concern where survey u/s 133A was conducted by the department and is being assessed in Range-IV, Amritsar and also mentioning history of its creation and

rating, complete account with bank statement and bank certificate, complete stock fojtally, invoice with checking on reverse, transportation evidence with RC verifications/proof of export of rice directly under Insurance cover, copying of clearing agents invoice, copy of credit rating, banker certificate of beneficiary account of seller along with the tabulation of utilization of each & every payments given to the seller party. It was contended that the examination of all the invoices, shall reveals that on the reverse of the invoice that stock are checked by the staff who put his signature also and shortage, if any, noted on the reverse of the bill which have been deducted while making payment to the party.

The AR submitted that the assessment was made without considering the request of the assessee for providing statement recorded of Sh. Raman Kumar, however as per the AR, these were supplied vide letter dated 16.01.2020 and the assessee was never confronted with the material in the possession of the AO. It is also argued that the AO was requested to provide the direct and independent enquiries made by him regarding non-existence of these parties and transactions of the assessee company and third party enquires with those parties. The AR submitted that clearly the addition has been made on conjectures and surmises and argued that the assessee has discharge its burden by providing all the details of the existence of the parties as well as the genuineness of the parties. As per the AR, the export of rice is proved on record and more than 90% is export only and rice has been sent to the port under insurance cover and copy of insurance policy was filed. As per the AR, it has also been proved on record that no cash was withdrawn by the assessee against purchase invoice by placing the bank statement of the parties from whom the purchases were made. The AR further submitted that in the assessment year 2011-12, the AO reopened assessment and made independent enquiries and even the assessment records of those parties were called, the AO made direct enquiry from market committee and also recorded statement of Sh. Raman Kumar. As per the AR, the AO wrote to DDIT (Inv.), for any material in his possession including any statement of Sh. Raman Kumar which could suggest that the purchases made are sham entries. Considering all the facts, no addition was made for the assessment year 2011-12 and the purchases made from M/s. Viroomal Mulkh Raj and from M/s. Dashmesh Agro Exports were considered as genuine. The AR enclosed the copy of the assessment order for assessment year 2011-12. It is stated that during this year too, the AO was provided with such documents to show that the purchases were genuine but the AO ignored the same and proceeded to make the assessment by assuming that the purchases made are not genuine. As per the AR, even the statement of Sh. Raman Kumar, report of the Inspector and statement in the case of M/s. Raghuvveer Singh Devinder Kumar was never confronted to the

assessee. The AR reproduced the statement of Sh. Raman Kumar recorded by DCIT, Central Circle, Amritsar on 08.10. 2018 as under:-



Page 05 of the statement:

Q. आपको ज्ञात हो कि सर्च को दौरान आयकर अधिनियम कि धारा 132(4) तथा सर्च के 131(1A) के तहत आपका बयान दर्ज किया गया था जिस दौरान आपने कहा था के अपने M/S DRRK Foods Pvt. Ltd. व M/S R S Rice Mills तथा M/S Punjab

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M/s. Punjab Rice Land Pvt. Ltd., Ludhiana
Appeal No. 10238/CIT (A)-5/ Ldh/(227)/ 2019-20
Assessment Year 2012-13, u/s 153A/143(3)

(63)

Rice Land Pvt. Ltd. के लिए दलाली का काम किया था और फर्जी बिल (Bogus Bills) प्रदान करवाते थे। इसके बारे में आपका क्या कहना है।

A. जहा तक मुझे याद है मेरी पहले भी तीन बार DDIT (Investigation) के समक्ष बयान दर्ज की जा चुकी है, जहां मैंने ये बयान दिया था कि मैं M/S DRRK Foods Pvt Ltd व M/S R S Rice Mills के लिए काम किया करता था और मुझे इसके बदले दलाली (Brokerage) मिलती थी। पर जहां तक मुझे याद है, मैंने कभी भी M/S Punjab Rice Land Pvt. Ltd. के लिए काम नहीं किया है और ना ही ऐसा कोई बयान दिया है।

Page 12 of the statement:

Q. आपने अपने बयान में कहा है कि आप M/S Punjab Rice Land Pvt Ltd. के लिए कोई काम नहीं किया है परन्तु Appraisal Report देखने पर पता चलता है कि अपने M/S Dashmesh Agro Export, M/s Sona Chandi Agro व M/s Viroo Mal Milk Raj के माध्यम से M/s Punjab Rice Land Pvt Ltd के लिए काम किया है और उपरोक्त फर्मों के माध्यम से फर्जी बिल (Bogus Bills) प्रदान किया है। कृपया स्पष्ट करे।

A. जैसा कि मैं पहले भी बता चुका है मैंने कभी भी M/s Punjab Rice Land Pvt Ltd के लिए कोई काम नहीं किया है और ना ही उपरोक्त तीनों फर्मों के माध्यम से कोई फर्जी बिल M/s Punjab Rice Land Pvt Ltd को प्रदान किया है।

As per the AR, the AO was asked even after post assessment, to provide any information in his possession which could indicate that purchases are not genuine but as per the AR, the AO simply mentioned that it is already proved

during the search regarding connivance of those parties and the assessee company for taking accommodation entries. As per the AR, the entire basis of doubting the purchase was statement of one Sh. Raman Kumar who was also the broker of M/s. DRRK Food Pvt. Ltd. and M/s. RS Rice Mills Pvt. Ltd., on the presumption that he was dealing with the assessee. The AR argued that, however, in all his statement Sh. Raman Kumar has admitted proving accommodation entries to those parties and denied having given any accommodation entry/dealing with the assessee. As per the AR, the AO has not discharge the onus casted on him to prove that the purchases are not genuine and relied upon Supreme Court judgment. It is further submitted that the statement relied upon by the AO were only supplied post assessment and perusal of the statement of Sh. Raman Kumar shows that the observation of the AO are mere hypothetical. Further, as per the AR, there was no difference in stock found during the search and filed a copy of the assessment order for the assessment year 2018-19 where no addition on account of stock variation was made and argued that the addition has been made by the AO during this year in violation of principal of natural justice.

A copy of the submission was sent to the AO for comments and the remand report submitted by the AO was provided to the appellant and in the rejoinder, the AR has given point-wise rebuttal on the observation of the AO. It is reiterated by the AR that the addition was made by relying on the statement of Sh. Raman Kumar but Sh. Raman Kumar provided list of parties to whom he has provide accommodation entries and name of the assessee is not appearing in such parties. Apart from this, he has categorically stated that he did not provide any accommodation entry to the appellant assessee company. As per the AR, the observations made by the AO are erroneous and opposed to actual fact and circumstances of the case and contended that the observations are merely on guess work, which are not at all tenable. The AR gave remarks on the observation of the AO made in the assessment order to put the point that these are erroneous and contrary on actual facts and the same are hypothetically applied in the case of the assessee and gave a para-wise remarked on the observations of the AO. The AR also argued that the AO placed reliance on certain judicial decisions in support of erroneous addition and gave remarks against each such reference and argued that the addition were made by the AO by placing reliance on the judicial decision which are completely in contrast to the facts & circumstances of the appellant. The AR argued that the AO has made the addition of purchases without appreciating the fact that the assessee is in possession of complete documents which were produced during the assessment

proving existence and genuineness of the said parties and also the fact that goods were actually delivered to the assessee and the same were duly accounted for in the stock records maintained by the assessee which are not questioned by the AO at all. As per the AR, the assessee proved the genuineness of the transactions by means of direct evidence and it was on the part of the revenue to prove that the transactions are bogus, however the AO did not carried out any direct investigation and relied upon the statement of broker which was also not recorded in direct investigation relating to the assessee. The AR quoted various case laws to support his contention that the addition made by the AO was not called for. The AR argued that the AO made addition on the basis of incorrect observation, completely disregarding the document submitted by the appellant to prove the existence as well as genuineness of the parties from whom the purchases were made.

It is relevant to mention here that the case of the assessee for the assessment year 2011-12 was reopened after the search and the AO passed order dated 29.12.2018 as under:-

"The assessee company is involved in the business of Rice Sheller. The return of income in this case u/s 139 of the Act was filed on 28.09.2011 declaring of Rs.77,66,950/-. Thereafter income of the assessee is assessed u/s 143(3) of the I. T. Act, 1961 at Rs.81,66,950/-. Later on, search u/s 132 of the Income Tax Act was conducted in this case on 24.05.2017 and a number of documents/loose papers and books of accounts were seized during the course of search. Subsequently the group was centralized with Central Circle, Amritsar and proceedings have been initiated u/s 153A for A.Y. 2012-13 to A.Y.2018-19.

Later on, this office received information from the Investigation Wing of the Department, Amritsar for A.Y.2011 -12(not within the preview of 153A) and subsequently the case was reopened u/s 148 of the I.T. Act, 1961 on the basis of following reasons:

"Reasons for reopening of the assessment in case of M/s Punjab Rice Land Pvt. Ltd.:

Brief details of information collected/ received by the AO:-

Information has been received from the office of ADIT (Inv.), Amritsar that the assessee company has made bogus purchases from various bogus and defunct firms operated by Sh. Raman Arora alias Raman Dalai through various bank accounts in the name of such firms. As per information, the total bogus purchases booked by the assessee concern during the F. Y 2010-11 are as under:

SL No.	Bogus concern from Where bogus purchases were booked	Amount (In Rs.)	F. Y
01	M/s Viroo Mai Mulkh Raj	1,38,05,431/-	2010-11
02	M/s. Dashmesh Agro Exports Khushi Agro	27,71,702/-	2010-11
	Total	1,65,77,133/-	

There is another information that the assessee company has received Rs. 86,25,29,622/- against the export of rice (sales) during the F. Y 2010-11 from M/s Gautam General Trading LLC based in Dubai (U.A.E) which is owned by Sh. Sanjiv Aggarwal & his son Sh. Gautam Aggarwal. Sh. Sanjiv Aggarwal is the brother of Sh. Rajiv Aggarwal who is one of the directors of M/s Punjab Rice Land Put Ltd. M/s Gautam General Trading is a sister concern of M/s Punjab Rice Land Pvt Ltd., Chabal Road, Tarn Taran.

Enquiries made and findings of the AO:

During the course of post search proceedings to verify the purchases, statement of Sh. Raman Arora was recorded u/s 131 of the IT Act, 1961 wherein he deposed that he has operated various bank accounts in the name of various bogus/ defunct firms to facilitate the modus operandi of bogus purchases. M/s Punjab Rice Land Pvt. Ltd. is one of the concern which has booked bogus purchases from the aforesaid two bogus firms amounting to Rs. 1,65,77,133/- in the F. Y 2010-11. Perusal of the bank transactions of the aforesaid two firms also reveal that amount against bogus purchases is deposited in the bank account through transfer and the same is withdrawn in cash either on the same day or the very next day. This pattern of transactions in the bank account of the firms further strengthens the fact that assessee is just rotating its transactions against the

purchases through a middle man Sh. Raman Arora to claim bogus expenses in the form of purchases.

*Further, to verify the genuineness of transaction of Rs. 86,25,29,622/- between M/s Punjab Rice Land Put Ltd and M/s Gautam General Trading, the assessee was asked to furnish the nature of this transaction along with quantitative and qualitative details of the shipment but the assessee failed to furnish any reply. Even in response to summons, the assessee could not furnish any reply to substantiate its transaction. Also, summons were issued to Sh. Sanjiv Aggarwal and Sh. Gautam Aggarwal, the owners of M/s Gautam General Trading to verify the genuineness of the foreign remittances made by them to the assessee company. Despite several opportunities, they failed to furnish any document in support of this transaction. Thus it is clear that, the assessee company has been routing its unaccounted funds in the guise of payments received against the export made to sister concern. Hence the foreign remittances **Rs. 86,25,29,622/-** received by the assessee company from the foreign sister concern remains unexplained and shall be taxed in the hands of M/s Punjab Rice Land Pvt. Ltd.*

Conclusion:-

From the above discussions, I am of the firm opinion that the assessee company has claimed bogus expenses in the form of purchases to the tune of Rs. 4,15,20,133/- and unexplained receipts to the tune of Rs. 86,25,29,622/- has escaped taxation for the A. Y. 2011-12. Accordingly this is a case fit for issuance of notice u/s 148 of the Income Tax Act, 1961 for the A. Y 2011-12.

On the basis of the facts as stated above, I have reasons to believe that income chargeable on tax exceeding Rs. 1 lac has escaped assessment, as the assessee has not disclosed fully and truly all material facts necessary for assessment for the relevant assessment year. Hence, a notice u/s 148 read with section 147 for reopening of assessment is required to be issued in this case.

In this case more than four years have lapsed from the end of assessment year under consideration. Hence, necessary sanction to issue notice u/s 148 has been obtained separately from Pr. CIT (Central) as per the provisions of section 151 of the Act."

Notice u/s 148 of the I.T.Act,1961 was issued on 30.03.2018 and served on assessee on 30.03.2018. In response to the notice u/s 148, assessee e-filed his return on 26.12.2018 at a income of Rs. 77,66,950/-.

Notice u/s 143(2) was issued on 15.10.2018, fixing the case for hearing on 23.10.2018. In response, assessment proceedings were attended by representative of the assessee Sh. Jatinder Nagpal, Advocate from time to time and furnished the required information and placed on the record.

During the course of assessment proceedings, the assessee has furnished reply time to time in response to the reasons recorded. The assessee has complied with all the information called for time to time. The reply/information furnished by the assessee is examined & placed on record.

Books of a/c are also examined in detail vis-a-vis stock ledger bills and vouchers. On the perusal of the reply along with supporting documents furnished by the assessee company nothing adverse is found. Hence income assessed u/s 3) vide order dated 04.02.2014 is accepted.”

Office Note:

1. The issues related to the reasons for reopening of the case have been duly examined while framing assessment record.
2. During the year, the assessee company has export rice to M/s. Gautam General Trading LLC based in Dubai(UAE), which is owned by Sh. Sanjiv Aggarwal, who is brother of one of the director of the Assessee company i.e. Sh. Rajiv Aggarwal and received amount only against export of Rice. In this regard the assessee company furnished the respective invoices, custom clearances, Bank Certificates in Form No. I, which are examined and placed on record.
3. The average net realization price per QUNTL for domestic sales comes to Rs. 2,789.21 and on the other hand the average net realization price per QUNTL for exported sales comes to Rs. 3,997.30. The realization from exports is much better than domestic market. Hence no adverse cognizance is drawn.
4. The statement of Sh. Raman Arora, who is accommodate entry provider, is taken on oath during the course of proceedings dated 08.10.2018. In his statement Sh. Raman Arora had specifically denied to have undergone any transaction with M/s Punjab Rice Land Pvt. Ltd. Further the statements of Sh. Raman Arora taken by Investigation Wing of Amritsar 86 transferred to this office, there was no instance or any discussion or any admission by the Sh.

Raman Arora for undergoing any business transaction with the assessee company.

- 5. Reference is called from the O/o the DDIT, Investigation Wing, Amritsar to provide the relevant statement of Sh. Raman Arora vide which he admitted to provide bogus entry of purchase to Assessee Company. However Investigation wing of Amritsar on dated 26.12.2018 only passed information that the assessee company deal with the concerns i.e M/s Viroo Mai Mulkh Raj Rice Mills 86 M/s Dashmesh Agro Exports, which are bogus concerns and further indulge in receiving accommodate entries from Sh. Raman Arora. However, in this regard no specific or direct evidence is furnished with this information.*
- 6. From the record it is observed that during the year assessee company made a turnover of Rs.11,18,37,31,543/- and purchases of Rs.106,17,50,291/- out of which assessee company has made purchases of Rs.42,78,844/- from M/s Viroo Mai Mulkh Raj 86 purchases of Rs.62,70,720/- from M/s Dashmesh Agro Exports only. Further, It is gathered from respective ITO wards that M/s Viroo Mai Mulkh Raj Rice Mills (Prop. Sh. Oulshan Jain) a M/s Dashmesh Agro Exports are regular assessee and have filed their returns of Income for business for A.Y.2011-12.*
- 7. Sh. Rajiv Aggarwal director of M/s Punjab Rice Land Pvt. Ltd have duly filed Affidavit dated 28.12.2018 and therein denied to have any link with Sh. Raman Arora and further any indulgence with him for any sham transaction.*

As mentioned in the assessment order, the assessee made purchases amounting to Rs. 2,55,52,126/- during the assessment year 2012-13 and Rs. 37,92,000/- during the assessment year 2015-16 from M/s. Viroo Mai Mulkh Raj. The purchases were also made from the said party, in the immediate preceding years i.e. AY 2011-12 amounting to Rs 1,38,05,431/-. The reassessments were initiated after search on the assessee, the purchases made from the party M/s Viroo Mal Mukh Raj were accepted by AO in reassessment proceedings vide order dated 29.12.2018. However, in the AY 2012-13 & AY 2015-16, the addition has been made by the AO for purchases made from the said party under the heading "Bogus Purchases entry with the help of Sh. Raman Kumar". It is important to note that nothing pertaining to the assessee/appellant is found from Sh. Raman Kumar either for purchases, sales or payments. Sh. Raman Kumar in his statement has stated that he has no connection with the Assessee Appellant

and has clearly denied having given any accommodation entries to the assessee appellant. It is relevant to note that the AO in the AY 2011-12 has also referred to statement of Sh. Raman Kumar in which he has clearly denied that no such accommodation entries were provided by him to the assessee appellant. The assessee Appellant in the proceedings u/s 153A r w section 143(3) on being questioned about the purchases made from the said concern, in his detailed replies along with documentary evidences filed with the Assessing officer provided all the copies of Purchase Invoices, Confirmation of Truck numbers from Vahan, Reverse Side of purchase invoices duly mentioning the weight confirmation, Stacking details, Shortages if any, Cash discounts deducted and even so the delivery address in many cases of C&F agent wherefrom the goods were exported. The Goods were even dispatched with the insurance cover of the appellant which was also provided to the AO. Moreover, on invoices the name of the actual broker and his contact details were also mentioned which was not Raman Dalai. Sufficient material with regards to the existence of the said Firm was already filed which included all the Financials data including Audit Reports, Credit Rating Reports, Bank Statements, PAN records, ROC Records, Sanction Letters including Charges recorded for the facilities availed from the Banks. Not only this a tabular chart indicating each, and every payment made in the bank account of M/s Viroo Mai Mulkh Raj and their utilization thereof is also filed. The AO in the body of the order has refused to admit the statement of Sh. Raman Kumar where he denies any connection with the Assessee Appellant, the AO has stated in his order that the statement was not recorded in the case of the assessee and therefore the same cannot be relied upon. Whereas the AO has made addition on the basis of the statement of Sh. Raman Kumar taken in some other case and has applied the modus operandi followed by him in some other case as it is in the case of the assessee appellant. It is relevant to note that out of the total turnover about 80 to 90% is export. The AO in the assessment order has not established a single fact of cash withdrawal from the account of M/s Viroo Mai Mulkh Raj for transfer to the Assessee.

Further, regarding M/s Dashmesh Agro Exports, the Assessee made the purchases of Rs.48,29,678/- in the AY 2012-13, Rs. 79,56,360/- in the AY 2013-14 & Rs.60,93,750/- in the AY 2014-15. The assessee in the immediate preceding years i.e. AY 2011-2012 made the purchases amounting to 1,65,77,133/-. The reassessments were initiated after search on the assessee, the purchases made from the party M/s Dashmesh Agro Exports were accepted by DCIT CC in reassessment proceedings vide order dated 29-12-2018. However, in the AY 2012-13, AY 2013- 14& AY 2015-16, the addition has been made by the AO for purchases made from the said party under the heading

"Bogus Purchases entry with the help of Sh. Raman Kumar". It is important to note that nothing pertaining to the assessee/appellant is found from Sh. Raman Kumar either for purchases, sales or payments. Sh. Raman Kumar in his statement has stated that he has no connection with the Assessee Appellant and has clearly denied having given any accommodation entries to the assessee appellant. It is relevant to note that the AO in the AY 2011-12 has also referred to statement of Sh. Raman Kumar in which he has clearly denied that no such accommodation entries were provided by him to the assessee appellant. The assessee Appellant in the proceedings u/s 153A r.w.s section 143(3) on being questioned about the purchases made from the said concern., in his detailed replies along with documentary evidences filed with the Assessing officer provided all the copies of Purchase Invoices, Confirmation of Truck numbers from Vahan, Reverse Side of purchase invoices duly mentioning the weight confirmation, Stacking details, Shortages if any, Cash discounts deducted, K-I form indicating the payment of market fees on paddy, Receipt of market committee for the fee paid, H form and even so the delivery address in many cases of C&F agent wherefrom the goods were exported. Moreover, on invoices the name of the actual broker and his contact details were also mentioned which was not Raman Dalai. Sufficient material with regards to the existence of the said Firm was already filed which included PAN records as well as the newspaper cutting of PNB Zonal Office for the auction of properties of said party on 01-07-2015. Not only this a tabular chart indicating each, and every payment made in the bank account of M/s Dashmesh Agro Exports and their utilization thereof is also filed. The AO in the body of the order has refused to admit the statement of Sh. Raman Kumar where he denies any connection with the Assessee Appellant, the AO has stated in his order that the statement was not recorded in the case of the assessee and therefore the same cannot be relied upon. Whereas the AO has made addition on the basis of the statement of Sh. Raman Kumar taken in some other case and has applied the modus operandi followed by him in some other case as it is in the case of the assessee appellant. It is relevant to note that out of the total turnover about 80 to 90% is export. The AO in his order has not established a single fact of cash, withdrawal from the account of M/s Dashmesh Agro Exports for transfer to the Assessee.

The AO during the reassessment for assessment year 2011-12, carried out independent enquiries at her own level after receipt of information from the Investigation Wing. However, the AO in assessment year 2012-13 to 2015-16 did not carried out any independent enquiry and simply relied upon findings mentioned in the appraisal report, ignoring the fact that enquires were carried out by his predecessors during reassessment proceedings for Assessment Year

2011-12 when the case was reopened u/s 148 after the search. And on the basis of same information as conveyed by the DDIT, the predecessor AO concluded during the reassessment proceedings that the transactions of purchase by the assessee from M/s. Viroo Mai Mulkh Raj and M/s. Dashmesh Agro Exports are genuine and the Investigation Wing could not provide any material to support the allegation of accommodation entries through Sh. Raman Dalai who has already denied having any dealing with the assessee. Under the facts & circumstances of the case, the addition of Rs. 3,03,81,804/- made by the AO for the assessment year 2012-13 is not found sustainable and therefore deleted.”

8. The Ld. DR for the department supported the assessment order. He contended that the Ld. CIT(appeals) has erred in law and on the facts and circumstances of the case by deleting the addition of Rs. 3,03,81,804/- out of Rs.3,21,96,804/- on account of bogus purchases made by the assessee company; that he has erred in law and on the facts by confirming the purchases as genuine, ignoring the admittance of Mr. Raman Kumar Arora in his application filed before ITSC wherein all such transactions in aggregate Rs. 9,819 Crores which have been admitted as accommodation entries provided by Mr. Raman Arora which overrides the claimed genuineness of paper trails of the assessee; that the Ld. CIT(Appeals) has erred in law and on the facts of the case in not taking the cognizance of statement of facts filed by Mr. Raman Arora on 06.02.2019 before ITSC which is full and true and his statement u/s 132(4) under the I.T. Act; that the Ld. CIT(Appeals) has erred in law and on the facts in observing that AO has made addition on the basis of statement of Sh. Raman Kumar in some

other case, ignoring the facts that assessment has been made on the basis of documents found during search, analysis of bank account in line with his statement recorded in respect of beneficiaries and ITSC application of Mr. Raman Kumar Arora; that the Ld. CIT(Appeals) has erred in law and on the facts on relying on stock register even after confirming the addition on account of bogus purchases from M/s Raghveer Singh Davinder Kumar; that the Ld. CIT(Appeals) has erred in law and on the facts saying that export sales of assessee not in doubt, even after confirming the bogus purchases from M/s Raghveer Singh Davinder Kumar and that the then AO has accepted the purchases in A.Y. 2011-12 ignoring the fact that later on entry provider had gone to Hon'ble ITSC accepting that the concerned bank accounts were used for providing accommodation entry. However, the Ld. DR has failed to file documentary corroborative evidence or judicial precedent or establish any link to incriminating material and categorical denial of providing any accommodation entry toward purchases to the appellant assessee in rebuttal to the finding of the Ld. CIT(A).

9. Per contra, the defendant Ld. Counsel supported the impugned order. He submitted that the assessee appellate M/s Punjab Riceland Pvt Ltd is a regular income tax assessee who has filed his returns of income u/s 139(1)

and has already been assessed u/s 143(3). A search was conducted on 25/05/2017 on the appellant at Chabbal Road, Tarn Taran where not only the appealing company but other associated concerns are working in the search, nothing incriminating was found and the assessment for all the assessment years u/s 153A has been completed vide order dated 27/12/2019 by the ACIT central circle, Amritsar. No additions have been made in the year of search i.e. AY 2018-19 and in assessment year 2016-17 and 2017-18. The additions made in AY 2012-13 to AY 2015-16 are not based on any incriminating material found during search but are based merely on the allegations in the appraisal report that purchases made from the parties i.e. M/s Viroomal Muikh Raj Jain Rice Mills, M/s Dashmesh Agro Exports and M/s Sona Chandi Agro Processors were mere sham transactions. The allegation of DDI investigation were based on the statements recorded of one Sh. Raman Kumar. Copies of such statements were not provided to the appellant assessee despite repeated requests and were even not supplied or confronted to the assessee before passing assessment order which is under appeal. The predecessor DCIT Central Circle II had summoned Sh. Raman Kumar on 08-10-2018 who has clearly denied of having given any such statement that he had provided any bill or accommodation entry to the appellant. Shri Raman Kumar has

categorically in his statement to the DCIT Central Circle on 08-10- 2018 in which he clearly stated that he has never worked for Punjab Riceland Pvt Ltd or has provided any bills of M/s Dashmesh Agro Exports, M/s Sona Chandi or M/s Viroomal Mulkh Raj to M/s Punjab Riceland Pvt Ltd and he also stated that he used to work for M/s DRRK Foods Pvt Ltd and M/s R S Rice Mills. The appellant had independently provided sufficient documents in proof of the existence of the respective parties as all the three of them were existing sellers engaged in the business of selling of rice. All the documentary evidence of purchase, transportation of goods, stock inventories, payment proof, the utilization of the payments for the purchases by the seller parties etc. were all provided and it was also categorically stated that not a single penny in cash in lieu of cheques issued for payment were withdrawn/received by the appellant by any manner. Moreover, it was also explained that 90% of the sale of the appellant concern are exports only and none of the sales were doubted or are doubtful. Moreover, no discrepancy was found in stock in any of the year including the year of sale. Under the prevalent facts the addition of alleged purchases without physical delivery of goods is a mere baseless suspicion and there is no ground for the additions made by the assessing officer. Under the facts of the case no addition is called for, therefore the

assessee pleaded for the deletion of arbitrary addition so made on mere conjectures and surmises.

10. Heard both the sides, perused the material on record and the impugned order. Admittedly, the assessee M/s Punjab Riceland Pvt. Ltd is a regular income tax assessee and It has filed his returns of income u/s 139(1) for the year under consideration which has been assessed u/s 143(3) accepting the disputed purchases as genuine for the year under consideration. Consequent to a search conducted on 25/05/2017, although, nothing incriminating documents were found and the assessment for all the assessment years' u/s 153A has been completed vide order dated 27/12/2019 by the ACIT central circle, Amritsar. Further No additions have been made in the year of search i.e. AY 2018-19 and in assessment year 2016-17 and 2017-18. However, the additions were made in respect of the AYs 2012-13 to AY 2015- 16 merely based on the allegations in the appraisal report that purchases made from the parties i.e. M/s Viroomal Mulkh Raj Jain Rice Mills, M/s Dashmesh Agro Exports and M/s Sona Chandi Agro Processors were mere sham transactions, without reference to any incriminating material found during search. These allegations of DDI investigations were based on the statements recorded of one Sh. Raman

Kumar where copies of such statements were not provided to the appellant assessee despite repeated requests and even not confronted to the assessee before passing assessment order. Over and above, subsequent to the search, the predecessor DCIT Central Circle- II, had summoned Sh. Raman Kumar on 08-10-2018, before whom, he has clearly denied of having given any such statement that he had provided any bill or accommodation entry to the appellant. Shri Raman Kumar in his statement to the DCIT Central Circle recorded on 08-10-2018 clearly stated that he has never worked for Punjab Riceland Pvt. Ltd or has provided any bills of M/s Dashmesh Agro Exports, M/s Sona Chandi or M/s Viroomal Mulkh Raj to M/s Punjab Riceland Pvt Ltd and on the contrary, he stated that he used to work for M/s DRRK Foods Pvt Ltd and M/s RS Rice Mills.

11. The Ld. CIT (A) observed that the AO did not carried out any independent enquiry in respect of the assessment year 2012-13 to 2015-16 and he simply relied upon findings mentioned in the appraisal report, ignoring the fact that enquires were carried out by his predecessor DCIT, CC-II, during reassessment proceedings for Assessment Year 2011-12 when the case was reopened u/s 148 after the search. And on the basis of same information as conveyed by the DDIT, the predecessor AO

concluded during the reassessment proceedings that the transactions of purchase by the assessee from M/s. Viroo Mai Mulkh Raj and M/s. Dashmesh Agro Exports are genuine and the Investigation Wing could not provide any material to support the allegation of accommodation entries through Sh. Raman Kumar, Dalal (broker) who has already denied having any dealing with the assessee. In our view, under the facts and circumstances of the case, the CIT(A) was justified in deleting addition of Rs. 3,03,81,804/- and Rs. 1,69,98,970/- made by the AO in respect of the assessment year 2012-13 and 2014-15 respectively.

12. From the above, it is evident that the appellant had independently provided sufficient documents in proof of the existence of the respective parties as all the three of them were existing sellers engaged in the business of selling of rice. All the documentary evidence of purchase, transportation of goods, stock inventories, payment proof, the utilization of the payments for the purchases by the seller parties etc. were all provided, and it was also categorically stated that not a single penny in cash in lieu of cheques issued for payment were withdrawn/received by the appellant by any manner.

13. It is seen that 90% of the sale of the appellant concern are exports only and none of the sales were doubted or are doubtful. Moreover, the Ld. DR couldn't not point out any discrepancy in the stock in any of the year including the years of sale under consideration. In our view, under the peculiar facts of the case, the addition of alleged purchases without physical delivery of goods is held to be a mere suspicion of the AO and as such there was no ground for the additions. In view of the matter, we find no infirmity or perversity on facts in the order of the Ld. CIT(A). Therefore, we concur with the observation and finding of the Ld. CIT(A) and Accordingly, the impugned order of the Ld. CIT(A) in deleting the addition made on account of bogus purchases in respect of the assessment year 2012-13 and 2014-15 is upheld.

14. In the above view, we find no merit and substance in the grounds of both the appeals of department and hence, same are rejected.

15. In CO 4/ASR/2022, the assessee has challenged CIT (A) order in respect of the Assessment Year 2012-13 confirming the additions of Rs. 18,15,000/- made by the AO on the basis of documents and statements which were not confronted to assessee during the course assessment

proceedings and copies of which were supplied post assessment order u/s 153A.

16. The Ld. AR argued that Id. CIT(A) has grossly erred in law and on facts, in upholding the validity of order passed u/s 153A r.w.s 143(3), by not appreciating the assessee's contentions that order is in gross violation of the principles of Natural Justice being passed without contraverting the assessee and providing the copies of the statements relied upon by the assessing officer; that the Ld. CIT(A) has erred in confirming the additions of Rs. 18,15,000/- made by the AO on the basis of documents and statements which were not confronted to assessee during the course assessment proceedings and copies of which were supplied post assessment order u/s 153A; that the Id. CIT(A) misconstrued the facts and the legal position of this case, to uphold the addition of Rs. 18,15,000/- as made by the AO, alleging that the purchases made by assessee from the party M/s Raghuv eer Singh Davinder Kumar were bogus; that Mr. Hitesh Jain, being the sole witness of revenue, ought to have been allowed cross examination by the assessee, which having not been allowed by the AO even when asked for, rendered the impugned assessment illegal, being in gross violation of sacred principles of natural justice and that the Ld. CIT(A)

has committed a grave legal error in upholding the additions made in violation of the principles of natural justice by the AO which renders the assessment order null and void.

17. Admittedly, Ld. CIT(A) has not appreciated the facts while confirming the addition of Rs. 18,15,000/- as bogus purchases. The AO has not rebutted the contention of the assessee that Mr. Hitesh Jain, being the sole witness of revenue, ought to have been allowed cross examination by the assessee. It is apparently clear that the AO has denied the opportunity to the assessee to cross examine the witness even when it was specifically asked for, and further the AO has not rebutted the documents and statements which were used against the assessee for addition during the course of assessment proceedings.

18. On similar facts, the coordinate Bench in the case of M/s Supertech Forgings (India) Pvt.Ltd., Jalandhar vs. DCIT, in ITA Nos.563/Asr/2018, Assessment Year 2010-11 vide order dated 25/08/2021, has observed as under:

“24. Though, we had allowed the appeal of the Assessee on the legal ground, we deem it appropriate to discuss the case of the Assessee on merit also. The Assessing Officer made the additions/reopening of assessment were made by the Assessing Officer solely on the basis of the statement recorded by the investigating wing of Shri Madan Lal Pahuja on 07.01.2015. The recording of the statement was the foundation fact as

whole case of the Assessing Officer revolves around that statement. The said statement recorded by the investigating wing is not sacrosanct and was required to be proved on the anvil of cross-examination during the assessment proceedings. The Assessee, after receiving the copy of the statement on 08.12.2017 had requested the Assessing Officer to permit the Assessee to cross-examine Shri Madan Lal Pahuja. However, the notice sent through the Inspector for recording the statement of Shri Madan Lal Pahuja had not yielded any result as he failed to turned up for examination and cross-examination during the re-assessment proceedings. In our opinion, the statement recorded by the investigating wing cannot form the basis of making the addition unless it is proved in accordance with www.taxguru.in www.taxguru.in 51 ITA Nos.563/Asr/2018 law in the assessment proceedings. It was the duty of revenue to produce the witness namely Shri Madan Lal Pahuja as the revenue was relying upon his statement. In our opinion, the onus to produce and examine a witness is on a party who reliance rest on him and not on the other party. The Assessing Officer cannot shift his onus to produce the witness and, in our view, the AO's onusto produce Shri Madan Lal Pahuja would not shift on the Assessee.

25. Further, once the Assessing Officer of Shri Madan Lal Pahuja had accepted the sales made to the Assessee in the Assessment Order dated 20.12.2017 passed under Section 143(3) read with 147 of the Act, then the said purchases (sale of Shri Madan Lal Pahuja) cannot be disputed by the Assessing Officer of the Assessee. The abovesaid fact was brought to the notice of the Assessing Officer. However, neither the Assessing Officer nor the CIT (A) had considered the abovesaid fact. Further, both the Lower Authorities had not disputed that the purchases were made by the Assessee from the same parties in subsequent assessment years i.e. 2011-12 & 2012-13 and the Assessment Orders were provided to the Lower Authorities. In our opinion, this is contrary to law laid down by the Hon'ble High Court of Punjab & Haryana in the matter of Leaders Valve (supra). Further, we are of the opinion that nothing has been brought on record by the Assessing Officer or by the CIT (A) to prove that the invoices were issued by the other three concerns namely (1) M/s Lovy Steel & Allied Industries, Dr. Bansal Clinic, sector-3C, Mandi Gobindgarh, (2) Sh. Jatinder Kumar Prop. M/s Shree Nath Ispat Udyog, Bank of India Road, Mandi Gobindgarh, and (3) M/s Shree Radhey Steel & Alloys. As recorded hereinabove, the Assessment Order was passed in the case of Shri Madan Lal Pahuja by applying the www.taxguru.in www.taxguru.in 52 ITA Nos.563/Asr/2018 GP Rate of 1.2% on total turnover of Rs.12.43 Crores. The sales were accepted by the department which were duly reflected in the VAT forms. However, by alleging that vehicle numbers mentioned on some of the invoices is not matching, that cannot be a reason to doubt the purchases more particularly when the sales of the Shri

Madan Lal Pahuja and purchases by the Assessee in the VAT assessment in respect of all the parties were accepted. Further, the revenue has not doubted the quantitative details provided by the Appellant and has not pointed out any discrepancy in the same. The Respondent Revenue had denied the sales on the basis of 7 sample vehicle registration only despite the fact that the Assessee had provided 33 bills to the Assessing Officer and further the Assessee had submitted that the goods were purchased from these parties and has provided the registration certificate in respect of the other 26 vehicles. The total amount of the seven bills for which the AO had suspicion was for Rs.53,72,955/- only. Undoubtedly the sale of the Assessee had not been doubted by the department. Once the sales of the Assessee have not been doubted and only a fraction of the purchase of Rs.53,72,955/- was doubted then the entire purchase cannot be added in the income of the Assessee. In the light of the decision of the Hon'ble Gujarat High Court in the matter of Bholanath Polyfab [355 ITR 290], even the GP on the amount of sale of Rs.53,72,955/- cannot be added in the hands of the Assessee as the sales made by Shri Madan Lal Pahuja and others were accepted by the department in the Assessment Order passed under Section 143(3) of the Act. Once the sales have been accepted in the hands of the seller, the same cannot be doubted in the hands of the purchaser.

26. Further, as mentioned hereinabove, the Assessee has requested for cross examination of Shri Madan Lal Pahuja and the same was not provided to the Assessee and therefore for not providing the opportunity to cross examine a person whose statement was recorded by the investigating wing and relied upon by the Assessing Officer, itself is a reason to quash the entire assessment. For the aforesaid proposition, we may rely upon the decision of the Hon'ble Supreme Court in the matter of Andaman Timber Limited Vs CCE [2015] 62 Taxman.com3 (Supreme Court)."

19. In the present case, the Assessee has requested for cross examination of Shri Hitesh Jain but the same was not provided to the Assessee. In our view, when the assessee was not provided an opportunity to cross examine a person whose statement was recorded by the investigating wing and relied upon by the Assessing Officer, for the addition of Rs. 18,15,000/- alleging that the purchases made by assessee from the

party M/s Raghuvveer Singh Davinder Kumar were bogus, itself is a reason to quash the entire assessment in view of principles of natural justice.

20. It is settled law that it was not for the authorities or the Tribunal to presuppose as to what could be the subject matter of the cross-examination. The assessee was entitled to cross-examine the party/witness with a view as to discredit them. Not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the AO was based upon the statements given by the aforesaid witness. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority.

21. The Hon'ble Supreme Court in the matter of 'Andaman Timber Limited Vs CCE', [2015] 62 Taxman.com3 (Supreme Court) has observed that failure to give the assessee the right to cross-examine witnesses whose statements are relied upon results in breach of principles of natural justice. It is a serious flaw which renders the order in a nullity.

22. In view of the factual matrix and judicial precedent, we hold that the impugned addition of Rs.18,15,000/- on account of bogus purchases based on statement of Sh. Hitesh Agrawal, the sole witness who was not allowed to be cross-examine by the assessee is a serious flaw which makes the assessment order nullity inasmuch as it amounted to violation of principles of natural justice. Accordingly, the addition of Rs. 18,15,000/- is deleted.

23. In the result, both the appeals of the revenue are dismissed and the CO of the assessee is allowed.

Order pronounced in the open court on 15.11.2022

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr/PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)

- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy
By Order