

**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. No. 287/Asr/2018
Assessment Year: 2014-15

M/s Ganesh Rice Mills Jalalabad Road, Muktasar. [PAN:AACF G1896J] (Appellant)	Vs.	The Dy. C. I. T. Circle-II, Bhatinda (Respondent)
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Appellant by: Sh. Sudhir Sehgal, A. R.
Respondent by: Sh. Rohit Mehra, CIT DR

Date of Hearing: 09.02.2023
Date of Pronouncement: 15.02.2023

ORDER

Per Anikesh Banerjee, J. M.:

The instant appeal was filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeal), Bhatinda [in brevity the CIT(A)], bearing Appeal No. 239-IT/16-17 dated 21/03/2018, passed u/s 250(6) of the Income Tax Act, 1961 [in brevity the Act], in respect of Assessment Year 2014-15. The impugned order was emanated from the order of the Id. Deputy Commissioner Income Tax, Circle-II, Bhatinda (in brevity AO) passed u/s 143(3) of the Act, dated 27.12.2016.

2. Tersely, we advert the fact of the case the assessee is firm & is engaged in the business of rice seller. The return of Income for the impugned assessment year was filed by declaring income of Rs. 30,03,000/-. The case of the assessee was selected for scrutiny through CASS on account of “Low net profit shown from large gross receipt”. The assessment was completed u/sec 143(3) of the Act at income of Rs.15,95,44,120/- i.e after making an addition of Rs. 15,65,41,118/-by rejecting the audited books of accounts of the assessee. Appeal was filed before the Id. CIT(A) against the order of the AO. The Id. CIT(A) partly allowed the appeal. The addition was restricted amount to Rs. 15,54,20,000/- against the assessee. Being dissatisfied on the order of appeal, the assessee has agitated the grounds before us.

The status of the issues on account of which additions were made by the Id. AO is as follows:

S.No	Issues on account of which additions have been made	Amount (Rs.)	CIT(A)	ITAT
1.	Rejection of books of accounts u/sec 145(3) of the Act	NA	Ground Rejected	In appeal
2.	Introduction of own cash by showing bogus sales (Addition made u/sec 68 r.w.s 115BBE of the Act)	15,54,20,000/-	Ground Rejected	In appeal
3.	Applying GP rate of 11.87% (But the addition of Rs. 2,72,17,362, were covered by the AO in addition of Rs. 15,54,20,000/- and no separate addition was made)	NA		
4.	Disallowance of expenses (1/4 th and 1/5 th) as debited in P& L A/c	11,21,118	Ground Allowed	NA
5.	Addition of Rs. 1,00,000/- on account of alleged amount paid to Sh Rajesh Dhawan (But the addition of Rs. 1,00,000, was covered by the AO in	NA		

	addition of Rs. 11,21,118/- and no separate addition was made)	
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3. ARGUMNETS

Issue-1-Rejection of books of accounts u/sec 145(3) of the Act:-

In argument Id. Counsel for assessee, Mr. Sudhir Sehgal, placed that survey operation was carried out at the premises of the assessee. The Id. AO alleged that the assessee had made bogus sales of rice to M/s Vasudev Sales Corporation (Prop Rajesh Dhawan) during the year. The copy of account of M/s Vasudev Sales Corporation is enclosed in the **APBat page-46-47**. The Assessing Officer further alleged that, cash was deposited in the Bank account of M/s Vasudev Sales Corporation (Prop Rajesh Dhawan) as maintained with Fazilka Co-op Bank and the same was transferred to the assessee's Firm against the sales made by the assessee.

Mr. Sehgal further argued that the Id. AO held that the entire cash as deposited in the bank account of M/s Vasudev Sales Corporation (Prop Rajesh Dhawan), belongs to the Assessee. The total transaction of assessee with the party during the impugned year was Rs. 15,54,20,800/-. The Id. Counsel in argument invited our attention in the order of the Id. AO page-12paragraph 2.5.

“2.5 A survey u/s 133A of the Act was carried out simultaneously at the business premises of Sh Rajesh Dhawan on 14.12.2016 at Ferozepur and his statement was recorded. In his statement, he disposed that he was engaged in the business of sale of surgical goods further lust 20 years. He was specifically required to explain weather he has any relation with M/s Vasudev sales corporation. The relevant question and reply of Sh Rajesh Dhawan are reproduced below: -

Q: - Have you any relation with M/S Vasudev Sales Corporation, Ferozpur?

Ans. Sir, ShGurpal Singh, resident of Jalalabad & Sh Joginder Singh, Jalalabad, accountants of M/s Ganesh Rice Mills, Muktsar came in lily contact, who offered me money (monetary benefit) in lieu of opening of Bank account & issuing signed blank cheques to them. Due to financial crises, I accepted their offer and applied for issuing cheque books from the Fazilka Central Co-operative Bank, Jalalabad. After opening Bank Account in it, I received the cheque book from the Fazilka Central Co-operative Bank, Jalalabad & the same cheque books were handed over to. the said persons after duly signing on it. Against the such activity, I received Rs 1 lakh per annum from the said persons. Sir, I have never deposited a single penny in my account in the Fazilka Central Co-operative Bank, Jalalabad. I have never withdrawn any amount from the said Bank. The Bank was operated bt the said party i.e. M/S Ganesh Rice Mills' itself.

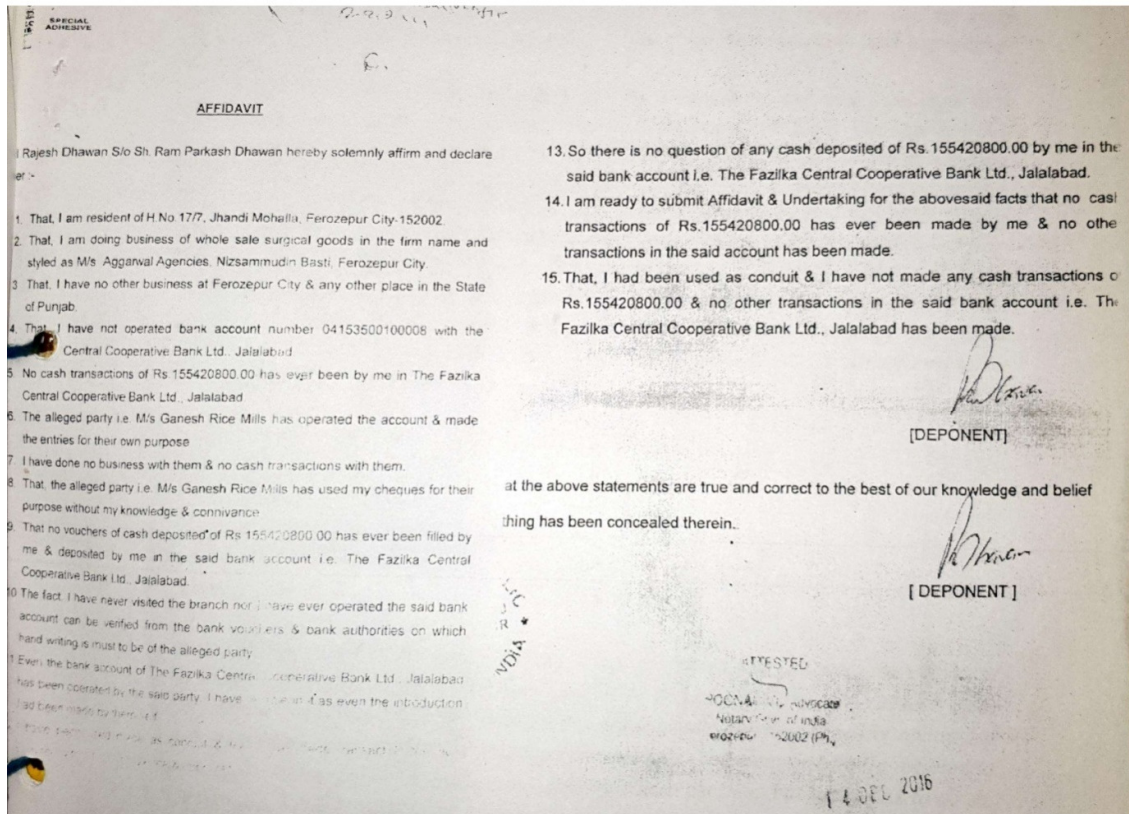
Q: Please state why the such transactions have been made by you in lieu of a penny amount. Do you know that such transactions are illegal & even leads to prosecution?

Ans: Due to financial crisis and to meet both ends. I do not know the consequences of the transactions made by the said party.

Q: Have you made any purchases from M/S Ganesh Rice Mills, Mukatsar during the financial year 201314 and onwards?

Ans: I have not made any purchases from M/S Ganesh Rice Mills, Mukatsar during the financial year 2013-14 & onwards.

Sh Rajesh Dhawan also filed an affidavit, confirming his above depositions during the course of assessment proceedings. The statement of Sh Rajesh Dhawan and his affidavit were duly confronted to the assessee and copies thereof were provided to the assessee on 22.12.2016 and he was required to explain. The affidavit filed by Sh Rajesh Dhawan is reproduced as under: -



3.1 In argument Mr. Sehgal placed that the books of accounts of the assessee was rejected U/s 145(3) of the Act by the Id. AO in allegation that the assessee had fabricated the truck freight receipts& at the time of survey, no stock was available at the premises of the assessee.

3.2. The Id. Counsel, Mr. Sehgal has invited our attention in paragraph 2.1 of the assessment order which is reproduced as below.

“2.1 There wasaspecific information about the assessee that the assessee had deposited large amounts of cash in Fazilka Central Co-operative Bank, Jalalabad during the year under consideration. In view of the information and in view of the fact that the assessee failed to produce books of account, sale/purchase vouchers and copies of Bank account, it was inferred that the assessee was knowingly concealing the facts and was not co-operating in finalizing the assessment. In order to bring true facts of the case on record, a survey u/ s 133A of the Act was carried out at the

business premises of the assessee on 14.12.2016. During the course of survey, no account books, sale/ purchase vouchers or expenditure vouchers for any year were found maintained at the business premises of the assessee. No explanation about the non-maintenance of books of account at the business premises of the assessee was furnished by the assessee. However, cash book and ledger accounts for the period 2013-14 were found maintained on computer of the assessee. A copy of account with M/S Fazilka Co- Op bank Jalalabad was obtained from assessee's computer on which the account books was maintained by the assessee for F.Y. 2013/14. As per the copy of account, the account was opened by the assessee on 14.03.2014 with a cash deposit of Rs 5,500/- and its closing balance as on 31.03.2014 was only Rs 6,300/-. From the account, it is clear that the account was opened only for the purpose of making specific entries and no other transaction was made through this account. A total amount of Rs. 15,54,20,800/- was shown as received from M/S Vasudev Sales Corporation, Ferozepur between the period from 15.03.2014 to 22.03.2015 i.e within a period of 7 days. The whole of such amount was transferred to the following concerns during the year itself on various dates-

S.S. Enterprises, Jalalabad	Rs.3,62,93,300/-
Narinder Joson & Co., Jalalabad	Rs.6,11,56,000/-
Amrinder & Sons, Jalalabad	Rs. 2,00,00,000/-
Gurkirat Enterprises, Jalalabad	Rs. 2,00,00,000/-
Nawab Trading	Rs. 1,07,06,700/-
Josan Food Pvt. Ltd.,	Rs. 2,00,00,000/-”

The Id. Counsel, Mr. Sehgal further placed the observation of the Id. CIT(A) in appeal order page-11 & 12

“4.3 I have given careful consideration to the above and find that the question of bogus sales and consequential sale amount finding entrance into books of account was under consideration of Hon'ble jurisdictional High Court in the cases of **Self Knitting Works Vs. CIT [2014] 51 taxmann.com 137 (P & H) and CIT vs. Sanjay Chhabra 120121 21 taxmann.com 221 (Punjab & Haryana)**. It has been concluded and adjudicated in these cases that in the event where any assessee fails to establish the sales as a transaction, thereafter any amount found credited in the books of account of the assessee would be treated as unexplained cash credit. In the present case, the appellant has not come forward to substantiate the claim with the help of **independent evidence** that the sales transactions were genuine. Merely because the books of accounts were showing transactions of sale which on the ground were found

to be bogus for the reasons mentioned by the Assessing Officer in the assessment order, no benefit can be given to the appellant. There is no strength in the other part of the contention of the appellant that the assessee rice mill was lawfully in possession of rice which was sold even assuming not to Vasudev Sales Corporation but to any other party which would have generated the matching amount of cash. This argument is fallacious because in order to support this argument the appellant is relying upon the same books of account **which have been rejected**. The availability of stock is also doubtful particularly in view of the fact that on a subsequent date when a survey was conducted no stock was available for that year. This raises suspicion in the mind of the Assessing Officer that as per part of practice, the appellant is introducing its own cash without there being any stock available for sale. This suspicion was confronted by the

Assessing Officer to the appellant in the course of assessment proceedings providing him an opportunity to rebut the same with the help of credible documents like stock register but the appellant failed to produce the day to day availability of stock which could generate cash with it by making sales if not to Vasudev Sales Corporation but to any other party. This alternative plea of the appellant is thus not acceptable. Resultantly, the Assessing Officer was justified in treating the entire cash amount deposited in the accounts of Vasudev Sales Corporation which has been brought back in the books of account of the appellant through banking channel as unaccounted cash credit.

I have also considered the other part of the assessment order where in by rejecting the books of account the Assessing Officer calculated the additional profit on account of low gross profit rate but did not make any separate addition by considering that the same is covered under the above-mentioned addition of cash credit/bogus sales. The view taken by the Assessing Officer is completely judicious and therefore cannot be disturbed.

The above mentioned grounds of appeal are **dismissed**.

6.0 Ground of Appeal no. 7: This ground of appeal is related to ad hoc addition of Rs.11,21,118/- made by the Assessing Officer being disallowance of various expenses debited to profit and loss account as an ad hoc addition. In the course of appellate proceedings it has been vociferously contested that the addition has been made by the Assessing Officer without any justification and pointing out the defect.

I have given careful consideration to the contention above and also read the relevant part of assessment order. The Assessing Officer without pointing out any defect in the claim of the appellant has disallowed the expenses on surmises and conjunctures. It is settled principle of law that the claim expenditure cannot be denied until and unless it is proved that either the claimed expense is bogus or not for the purposes of business. The Assessing Officer has not based his disallowance on any independent enquiries; therefore such addition cannot be sustained and hence deleted. The ground of appeal is **allowed**.

7.0 Ground of Appeal no. 8: In the assessment proceedings, the Assessing Officer made an addition of Rs. 1 lakh being unexplained expenditure incurred by the appellant being the payment made by the assessee company to above-mentioned Sh. Rajesh Dhawan for opening a bank account in the name of Vasudev Sales Corporation for facilitation of the appellant company. The Assessing Officer made no separate addition but covered it under the above- mentioned disallowance of Rs. 11,21,118/-.

*I have given careful consideration to the merit of addition as above and find that Sh. Rajesh Dhawan has stated to have received the award said amount in view of his services but even this disallowance cannot be sustained without any further enquiry and confrontation to the appellant. Even though no separate addition has been made, therefore from the computation of income viewpoint this ground of appeal is infructuous and for statistical purposes stated to be **dismissed.**”*

3.3. In argument the Id. Counsel, Mr. Sehgal mentioned that in the same paragraph 2.1, the Id. AO stated that Cash Book & ledger for the year 2013-14 were maintained by assessee in the computer from where copy of account of Fazilka Co-op Bank was obtained. In paragraph No.2.8 of the assessment order, the Id. AO has himself stated that the cash book, ledger, sale bills along with Freight receipts of rice sold to Vasudev Sales Corp. have been produced on 22-12-2016. Under paragraph No.2.9, the Id. AO states that freight receipts issued by (i)The Muktsar Truck Operators Union, Muktsar, (ii) Raja Goods Transport Co., Jalalabad, (iii) Delhi Rajasthan Freight Carrier, Jalalabad and (iv) Jalalabad Road lines, Jalalabad (W) were produced. It was explained by assessee that freight on sale of rice was paid by the purchaser.

It is stated that the report of the Inspector was not provided to the assessee. However, on page No.19 under paragraph No.2.9 of the assessment order, the Id. AO has mentioned that report of the Inspector was confronted to the assessee

vide order-sheet entry dated 26-12-2016. However, without giving reasonable time to submit the reply, the AO completed the assessment on 27-12-2016 which shows that justice was not imparted to the assessee as adequate time to rebut the report of the Inspector was not provided.

The AO only completed the formality of confronting without waiting for the reply which proves that there is a denial of principle of natural justice. Respectfully Reliance in this regard is being placed on the judgment of:

Sona Builders vs. Union of India 251 ITR 197 (S. C.). The relevant paragraphs are extracted as follows: -

“6. There is no doubt in our mind that on both counts there has been a gross breach of the principles of natural justice because adequate opportunity to meet the case made out in the notice was not given to the appellants.

7. Having regard to the statutory limit within which the appropriate authority has to act and his failure to act in conformity with the principles of natural justice, we do not think we can remand the matter to the appropriate authority. We must set his order aside.

8. The appeal is, accordingly, allowed. The judgment and order under appeal is set aside. The order of the appropriate authority dated 31-5-1993 is quashed.”

M/s. Fortune Metaliks Ltd. in ITA No. 82/Chd/2021 for A.Y. 2016-17

The self-serving statement and affidavit of Shri Rajesh Dhawan Prop. M/s Vasudev Sales Corp. by itself does not establish that whatever has been stated by him is true and whatever has been stated by the assessee is not correct so long as such depositions are not supported with documentary evidence.

It is a matter of common knowledge that no person who is engaged in the business for about 20 years would open a bank account at the instance of two

ordinary persons and hand over blank-cheque book to the assessee after affixing his signatures.

There is also no evidence on record to establish that Shri Rajesh Dhawan allegedly received Rs. 1 lac only from the assessee for doing this illegal activity.

On the other hand, the sequence of events shows that Shri Rajesh Dhawan has given his statement and affidavit to wriggle out from his tax problem and entangled the assessee for nothing.

The deposit slips were not provided to the assessee during the course of assessment proceedings and there is no corroborative evidence for such allegation.

In this regard, it is stated that vide letter placed at **APB page 48-49**, the AO was informed that the said Shri Rajesh Dhawan was a witness of the Department, the same may please be produced for cross-examination but this was never done by the Id. AO.

3.4. The Id. Counsel further argued that the books of accounts of the assessee have been rejected merely on the basis of doubts that the cash as deposited in the bank account of M/s Vasudev Sales Corporation belongs to the assessee. Besides that there is no defect in the books of accounts of the assessee which are duly audited and complete stock tally being maintained by the assessee. There is no specific defect pointed out by the Id. AO.

Reliance in this regard is being placed upon the following Judgments wherein the order of the Id. AO rejecting the books of accounts of the assessee have been quashed by the Hon'ble Courts and book results have been accepted:

- a) **Assistant Commissioner of Income Tax Vs. Roopchand Tharani, Hon'able High Court of Chhattisgarh, (2012) 249 CTR 0326, Held:**

“Assessing Officer not justified in rejecting assessee's books of account without pointing out any specific error in books”

- b) **In Case of Nyasa vs. Assistant Commissioner of Income Tax, Delhi (2012) 33 CCH 0579 (Del-ITAT)**

- c) **Hon'able jurisdictional High court in the case of CIT vs. Om Overseas, 173 Taxman 185, (P & H)**

“In the absence of any illegality or perversity in the finding of fact arrived at by the CIT(A) and the Tribunal that the assessee's books of account were rejected by the AO and the addition was made without pointing out any specific defect in the books of account, impugned addition was rightly deleted and no substantial question of law arises for determination.”

4. **Issue-2, the application of section 115BBE for addition U/s 68.**

In argument the Id. Counsel has mentioned that the provisions of sec 68 of the Act are not at all applicable in the case of the Assessee.

The amount of Rs. 15,54,20,000/- pertains to the sales as made by the assessee to M/s Vasudev Sales Corporation. The entire amount has been received by the assessee through banking channels. The assessee is not concerned about the

bank account of M/s Vasudev Sales Corporation. If cash has been deposited in the Bank account of M/s Vasudev Sales Corporation, it would not mean that the cash belongs to the assessee as the amount has been received by the assessee after the deposit of cash by the party. The question regarding the source of cash and the applicability of the provisions of sec 68 of the Act must only be in the hands of the M/s Vasudev Sales Corporation and not in the hands of the assessee.

The assessee is maintaining regular books of accounts and such amount of sales have been recorded in the regular books of accounts.

The Id. AO has only doubted the cash as deposited in the books of M/s Vasudev Sales Corporation and has linked the same with the assessee. The assessee has only realised his Debtors against the sales made by the assessee.

4.1. The Id. Counsel, Mr. Sehgal further argued that the Id. AO has not at all doubted the Opening stock and the purchases of the Assessee. Even the Opening stock is accepted by the department at the time of finalizing the assessment proceedings for AY 2013-14. The copy of complete audited Balance Sheet for AY 2013-14 with stock statement, **APB page 1-17**. The assessment order U/s 143(3) for AY 13-14 dated 29.02.2016 is enclosed in the **APB at page-18-22**.

The sales were accepted during the assessment for AY 13-14. It is an admitted fact that the assessee's stock has reduced on account of sales as made by it. So,

the fact that the sales have been made by the assessee to M/s Vasudev Sales Corporation cannot be denied.

4.2. The assessee's books of accounts are duly audited, and the assessee has duly been maintaining quantitative stock details as part of Balance Sheet and Audit report. The copy of the same is forming part of the **APB at page-23-38** (specific page-35). It is a matter of fact that the Id. AO has even accepted the sales as declared by the assessee as at the time of passing the assessment order, the Id. AO has also applied a GP rate of 11.87% on the sales as declared by the assessee. So, the Id. AO has been making the addition only for the sake of making the addition. It is an admitted fact that there cannot be any double addition as the assessee has already credited the entire sales in the profit & loss account. It was further submitted that since the sales proceeds had already been accounted for in the trading account and the said deposits in the Bank Account were out of the sales and complete stock tally was there.

The assessee respectfully relied on the following case laws:

- *Andaman Timber Industries vs. CIT reported in Civil Appeal No. 4228 of 2006 dated 2nd of September 2015, 127 DTR 0241 (SC).*
- *Dhakeshwari Cotton Mills reported in 26 ITR 0775 (SC)*
- *CIT vs. Om Overseas 315 ITR 185 (P & H)*
- *CIT vs. K.C.Malhotra 304 ITR 0149 (P&H).*

The relevant paragraph of the order is extracted as below: -

“8. It is, thus, evident that the Tribunal has gone into all possible details and, thereafter, recorded the findings in favour of the assessee. It is well-settled that this Court, while exercising appellate jurisdiction under section 260A of the Act cannot arrogate to itself the function of recording a finding by re-appreciating evidence taking a view different than the one recorded by the Tribunal. It is well-settled that

merely because another view is possible, would not constitute a basis for us to reverse the findings after re-appreciating evidence. In that regard; we place reliance on a judgment of Hon'ble the Supreme Court in the case of Santosh Hazari v. Purushottam, Tiwari [2001] 251 ITR 84. Therefore, we are of the view that no opportunity is provided to set aside the findings recorded by the Tribunal that the amount of Rs. 13,56,000 has been deposited by the sons of the assessee, which was realized after selling the pilferage stocks outside the books of account. There is no merit in the appeal as no substantive question of law for its admission would arise."

4.3. In argument, it is placed that the assessee is even liable to provisions of VAT and the book results of the assessee have even been accepted by the Sales Tax/VAT department. Even at the time of survey proceedings, the department has accepted that the closing stock as on 31.03.2016 had been sold before the survey. So, the stock as on 31.03.2016 has again been accepted by the department at that time. Further, the department had even recorded the statement of the partner of the assessee, Sh. Pushpinder Singh, wherein again the trading in between the assessee and M/s Vasudev Sales Corp has been admitted. A copy of the survey statement is enclosed in the **APB at page-134-143.**

4.4. Reliance in this regard is being placed upon the following Judicial Pronouncement:

Bansal Rice Mills vs ITO, 78 ITD 326 (ITAT, Chandigarh Third Member Bench). The relevant finding of bench is extracted as follows:-

"Assessee-firm was engaged in buying paddy and milling it for supply of rice to Government as also for sale in open market - An information was received from the ADI that the assessee had shown bogus sale of paddy to the tune of Rs. 4,20,184 to a party 'G' - Assessing Officer added certain deposits made by assessee to its income treating the same as undisclosed income under section 68/69A - These deposits were traced to transaction of paddy weighing 2509.65 qtls. shown as sale to 'G' by

assessee - It was finding of both Assessing Officer and Commissioner (Appeals) that source of these deposits was traceable to above paddy which was not actually sold to 'G' but was actually milled by assessee and disposed of in open market - Whether addition was unsustainable as actual deposit of this amount in books of account was not doubted - Held, yes - Whether no addition could be sustained even if said deposits were treated as on account of bogus sale since sale proceeds already stood accounted for in assessee's manufacturing, trading and profit account - Held, yes"

b) ITAT Visakhapatnam Bench in the case of **ACIT, Central Circle-1,**

Visakhapatnam Vs. Hirapanna- Jewellers [2021] 128taxmann.com 291

c) Hon'ble Delhi High Court vide recent judgment pronounced on

19/01/2022 in the cases of **Pr. CIT(Centra)-3 vs. M/s Agson Global Pvt. Ltd.**

ITA No. 68-73/2021

d) **M/s. Kalaneedhi- JewellersLLPvs DCIT in ITA No. 311/Chd/2021**

order dated 25.03.2022

4.5. The entire basis of making the addition is the statement of Sh. Rajesh Kumar wherein he has denied regarding any dealings with the assessee. The said statement of Sh. Rajesh Kumar had been recorded at the back of the assessee and no opportunity was given to cross examine him. The assessee has duly requested the department for the same. Relevant copy of reply is placed in the **APB at Page-48-49.**

4.6. Reliance in this regard is being placed upon the following Judgments wherein it has been held that the statements taken at the back of the assessee cannot be used for making additions unless a chance to cross examine has been given to the assessee. It has also been held that the Id. AO cannot make such additions only on the basis of surmises and conjectures: -

- i) **Shri Sanjay Singhal vs DCIT in ITA No. 708,710,711/Chd/2018** order dated 20.09.2021
- ii) **Parkash Chand Kothari vs. DCIT as reported in 94 ITR (Trib.) 49 Jaipur Bench**
- iii) **Great India Steel Fabricators in ITA No. 746/Chd/2014** dated 03.03.2017
- vii) **CIT, Delhi vs. SMC Share Brokers Ltd. (2007) 288 ITR 345 (Del)**

The observation of the Hon'ble Delhi High Court is extracted as below:-

“6. Learned counsel for the revenue relied upon One-up Shares & Stock Brokers (P.) Ltd. v. R.R. Singh, CIT [2003] 262 ITR 275¹ to contend that the statement of Manoj Aggarwal had evidentiary value, as observed by the Bombay High Court. There is no doubt that the statement of Manoj Aggarwal had evidentiary value but weight could not be given to it in proceedings against the assessee without it being tested under cross-examination. In the absence of the statement being tested, it cannot be said that it should be believed completely to the prejudice of the assessee. Under the circumstances, we do not think that the judgment relied upon by the learned counsel carries him any further.

7. We are of the opinion that the Tribunal was right in its view that in the absence of Manoj Aggarwal being made available for cross-examination, despite repeated requests by the assessee, his statement could not be relied upon to his detriment.

8. No substantial question of law arises for our consideration.”

(Emphasis supplied)

4.7. The Assessing Officer has totally assumed the things that the cash as deposited in the bank account of M/s Vasudev Sales Corporation belongs to the assessee. So, the addition has been made by the A.O. on the basis of the surmises and conjectures ignoring the evidence produced before him. Thus, the addition made on the doubt, surmises and conjectures have no legs to stand and reliance is being placed on the following judgments: -.

- (i) **LalchandBhagatAmbica Ram vs CIT 37 ITR 288 (SC)**
- (ii) **ACIT V/s Claridges Investments and Finances P. Ltd. 2007 18 SOT 390**
- (iii) **CIT V/s DaulatramRawatmuti 1973 87 ITR 349 (SC)**

4.8. The Id. Counsel in argument placed that the case laws as relied upon by the Id. CIT(A) are not applicable in the case of the assessee. The assessee has filed in paper book which is extracted as follows:

Judgments as relied upon by the CIT(A)	Non applicability in the case of the Assessee
<p><u>Self Knitting Works vs CIT 51 taxmann.com 137 (Punjab HC)</u> <i>Assessee contended that stocks which had deteriorated because of prolonged storage for want of export orders, were sold in lots against cash receipts to realize blocked funds - Tribunal, noticed that in relevant sale bills there was no mention of any quantity sold - Name of parties to whom goods were sold was also missing - There were totalling errors in each bill and mode of transportation of those goods also could not be explained by assessee - Tribunal concluded that genuineness of transaction could not be established and relevant credit of Rs. 37.30 lakhs in profit and loss account was as cash credit in nature of cash credit - Whether Tribunal was justified in sustaining addition</i></p>	<ul style="list-style-type: none"> • <i>The case law as relied upon by the CIT(A) is based on cash sales but the case of the Assessee is entirely different and entire amount has been received through banking channels.</i> • <i>The cash sale parties were missing in the case law as relied upon by CIT(A). But in the case of the Assessee the Assessee has made the sale to a party which is not missing but the party is denying the purchase as he has deposited cash in the bank account to make payment to the Assessee.</i> • <i>No cash has been deposited in the bank account of the Assessee.</i> • <i>If any cash has been deposited by M/s Vasudev Sales Corp, the question of source of the said cash must have been done from him.</i> • <i>The Assessee has received sale amount through banking channel and the same cannot be doubted.</i>
<p><u>CIT vs Sanjay Chhabra 21 taxmann.com 221 (P&H HC)</u> <i>Assessee was engaged in business of a commission agent and derived income by way of commission from sale of vegetables and fruits on behalf of farmers and traders - During course of survey at business premises of one J, it was found</i></p>	<ul style="list-style-type: none"> • <i>The facts of the case law as relied upon by the CIT(A) are entirely different as in the said case Sh Sanjay Chhabra has not shown the sales made to “J” in the books of accounts.</i>

<p><i>that assessee had made certain sales of apples to J - Since sale was not verifiable, Assessing Officer made addition of amount of sale to income of assessee as unexplained investments under section 69 - On appeal, Commissioner (Appeals) deleted said addition holding that only commission on sales made to J could be added to assessee's income - Tribunal upheld order of Commissioner (Appeals) - Whether since assessee was unable to show that amount of sales was either entered in books of account or was ever surrendered by his father as claimed by him, Tribunal erred in law in taking only profit of unexplained transactions as undisclosed income instead of taking investment in said transactions into account</i></p>	<ul style="list-style-type: none"> • <i>In the case of the Assessee, the Assessee has duly shown the sale of rice as made to M/s Vasudev Sales Corp.</i> • <i>The entire payment of the sales as made by the Assessee has been received through banking channels.</i>
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5. The Id. DR vehemently argued & relied on the order of both the revenue authorities. In argument Id. DR placed that the Id. Assessing Officer further held that, as no stock register is maintained by the assessee, the figures of sales, purchase and closing stock are not subject to verification.

6. We heard the rival submissions and relied on the documents available on the record. The assessee is the trader of rice. The entire amount received from the party, M/s Vasudev Sales Corp. through the banking channel. In assessment and in appeal proceedings there are no discrepancies found in the stock of the assessee including the closing and opening stock. In the paper book, the assessee has submitted the detail of the stock before the bench, **APB page 35 to 36**. The ledger account by mentioning quantitative details of goods is placed in **APB page-39-43**. All the documents are part of the proceedings before the lower authority. There is no question about the purchase of the goods which was duly sold by the assessee to the party. During the hearing the Id. Counsel

for the assessee has submitted year wise GP ratio in respect of turn over. The chart of GP ratio is annexed herewith:

chart of G.P. Rate

ASSESSMENT YEAR	G. P. RATE
2013-14	7.98%
2014-15	7.89%
2015-16	7.89%

6.1. The entire addition is made on the statement recorded from Mr. Rajesh Dhawan prop. M/s. Vasudeva Sales Corp. But the statement recorded in survey u/s. 133 was not served to assessee. The entire gross sales amount to Rs.15,65,41,118/- was duly declared in the turnover of the assessee during the filing of return. There are no discrepancies in the purchase or in stock of the assessee. The only discrepancies found in sales on the basis of recorded statement of the party which was finally added back to the total income of the assessee. The books of accounts are rejected u/s. 145(3) of the Act without finding any lacuna in the books of assessee. We respectfully relied on the order of the jurisdictional High Court in the case of **CIT vs. Om Overseas** & Hon'ble high Court of Chattisgarh **ACIT Vs. Roopchand Tharani**, *suprato* find that there is no specific discrepancy for rejecting books of accounts by the assessee u/s. 145(3). So, grounds taken by the assessee- in this context is fully allowed.

6.2. Related to the addition on the basis of statement of the party is uncalled for. The assessee was not allowed to cross examination of the party before the addition. We respectfully relied on the order of the Hon'ble Apex court in the case of **Sona Builders & Andaman Timber Industries**, *supra*. The reasonable opportunity for the assessee was denied without allowing cross verification of the party. The assessee already informed and prayed to the revenue for the said verification of the party who had made the statement against him. The revenue relied on the judgement in the appeal order which was confronted by the Id. Counsel for assessee in the submissions, During the hearing before ITAT, the Revenue was asked to produce any contrary judgement against the submissions of assessee. But they were unable to submit any contrary judicial finding before the Bench. The Id. AO has totally assumed that the cash was deposited in the bank account of the party belongs to the assessee. So the additions have been made by the Id. AO on the basis of the surmises and conjectures, ignoring the evidence produced before him by the assessee. There is lack of cogent evidence in respect of addition of sales of the assessee, respectfully relied on, **Lalchand Bhagat Ambica Ram**, *supra*. The assessee cannot be taxed doubly in same amount which was already declared in the return of income. The Id. AO has already calculated the GP ratio @ 11.87% which is working out at Rs. 2,72,17,362/-. But there is no separate addition was made. We find the continuity in the GP ratio in the preceding and succeeding years with impugned assessment year of the assessee. The Id. Counsel has fully relied in the order of

Gujrat High Court in the cases of **President Industries, 258ITR 654**, wherein it was held:

“The amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represent the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that the investment by way of incurring cost in acquiring goods which have been sold has been made by the assessee and that has also not been disclosed, the question whether entire sum of undisclosed sales proceeds can be treated as income, answers by itself in the negative”.

(Emphasis supplied)

6.3. The assessee disclosed the entire sales, payment was received through banking channel. The assessee is not at all beneficial of the said amount. The stock of goods and purchase was duly accepted in the order of assessment and in the subsequent assessment order. The entire submissions were submitted before the revenue authorities by the assessee including stock statement and the details of purchase. The recorded statement of the parthad the evidentiary value. But without the cross examination, the statement is itself in *nullity*, respectfully relied on **SMC Share Brokers Ltd, supra**. The addition cannot be made mere on the basis of doubts or conjecture. We are setting aside the appeal order passed by the Id. CIT(A). Considering the above, the addition amount of Rs 15,54,20,000/- is quashed.

7. In the result the appeal of the assessee **ITA No. 287/ASR/2018** is allowed.

Order pronounced in the open court on 15.02.2023

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

**Sd/-
(Anikesh Banerjee)
Judicial Member**

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Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(A),
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T
- (6) The Guard File

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By Order