

**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.697to 699/Asr/2019
Assessment Years: 2005-06 to 2007-08**

M/s Gold Star Pharmaceutical Pvt. Ltd. Pratap Bazar [PAN: AAFFG0074M] (Appellant)	Vs.	ITO-Ward-1, Moga. (Respondent)
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**I.T.A. Nos. 560 to 561/Asr/2017 & ITA 681/Asr/2019
Assessment Years: 2005-06, 2007-08 & 2006-07**

Smt. Richa Kawatra, 1479, St. No.3, New Sodhi Nagar, Moga. [PAN: AWLPK7960Q] (Appellant)	Vs.	ITO-Ward-2, Moga. (Respondent)
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**I.T.A. Nos. 607/Asr/2017 & ITA No.680/Asr/2019
Assessment Years: 2006-07 & 2007-08**

Roshan Lal Kawatra S/o Sh. Kashmir Chand C/o Suraj Medical Agencies Court Road, Moga. [PAN:ACFPL4726K] (Appellant)	Vs.	ITO-Ward-2, Moga. (Respondent)
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**I.T.A. Nos. 608/Asr/2017
Assessment Years: 2007-08**

Ashok Kumar C/o Suraj Medical Agencies Near Town Hall, Court Road, Moga [PAN: AKJPL7041G] (Appellant)	Vs.	ITO-Ward-1, Moga. (Respondent)
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I.T.A. No.233/Asr/2018
Assessment Year: 2006-07

Narinder Kumar Kawatra S/o Kashmir Chand C/o M/s Suraj Medical Agencies Court Road Moga. [PAN: ACUPK8203D] (Appellant)	Vs.	ITO-Ward-2, Moga. (Respondent)
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I.T.A. No. 691/Asr/2019
Assessment Year: 2006-07

Kashmir Chand S/o Sh. Mathura Dass, Prop. Suraj Medical Agencies, Court Road Moga. [PAN: ABBPC2625D] (Appellant)	Vs.	ITO-Ward-1, Moga. (Respondent)
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Appellant by	Sh. Tarun Bansal, Adv.
Respondent by	Sh. RadheyShyam Jaiswal, Sr. DR

Date of Hearing	09.05.2023
Date of Pronouncement	12.05.2023

ORDER

Per: Bench:

A batch of appeal of the different assesseees was filed against the order of the Id. Commissioner of Income Tax (Appeals)-3, Ludhiana,[in brevity the ‘CIT (A)’] order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act]. The impugned orders were emanated from the order of the Id. Income Tax Officer, Ward-1, Moga,(in brevity the Id. AO), order passed u/s 143(3)/144 of the Act.

2. At the outset, all the appeals are filed under the same factual backdrops as well as the under the same issue related to the reopening u/s 148 of the act on basis of report of Central Bureau of Investigation (in short “CBI”). Considering the request of both the parties in ITA No. 697/Asr/2019 is taken as a lead case.

3. The assessee has filed the grounds of appeal with appeal petition. But later filed amended grounds and prayed for acceptance. The prayer is accepted by the Bench. The assessee has taken the following amended grounds: -

Grounds of Appeal in ITA No. 697/Asr/2019 for AY 2005-06

“1. That the revenue do not have on record notice u/s 148 and reasons recorded u/s 148 and approval u/s 151 from Additional Commissioner of Income Tax, as mentioned in Para-1.2 of the A.O's order being revenue could not provide copies thereof to the appellant under RTI even after filing of RTI second appeal dtd. 25-08-22 and assessment order is bad-in-law and does not lead to valid jurisdiction.

2. That the assessment / addition is based on the report of CBI dtd. 01-09-06 and on the basis of certain loose papers as provided by CBI to Revenue (as per Para-6.3.1 of CIT(A)'s order for A.Y 2005-06) and further ignoring the request of the appellant that books of accounts are impounded by CBI, hence assessment /addition made without taking cognizance of Books of Accounts of appellant and on the basis of loose papers (Refer Para-1 at page-17, Para-2 at page-25, Para-6.3.4 at page-27of CIT(A)'s order) is bad-in-law.

3. That Ld. A.O. wrongly considered ICICI bank account in the hands of Richa Kawatra w/o director and made addition of deposit of sale proceeds of Rs.441103/- in her hands being this account was opened on the directions of the company to facilitate smooth functioning of the family business / company i.e; appellant and said bank account belongs to appellant and be assessed in the hands of appellant only being otherwise tantamount to double addition.

4. That the matter be set-a-side / denovo to the file of the A.O to make assessment after taking cognizance of books of accounts after receiving from CBI, as well as, addition should be made after calculating peak, considering ICICI Bank account, above documents, record and grounds of appeal being appellant is Centre point of the case.”

Grounds of Appeal in ITA No. 698/Asr/2019 for AY 2006-07

“1. That the revenue do not have on record notice u/s 148 and reasons recorded u/s 148 and approval u/s 151 from Additional Commissioner of Income Tax, as mentioned in (Para-2.6 of the

A.O's order being revenue could not provide copies thereof to the appellant under RTI even after filing of RTI second appeal dtd. 28-10-22 and is bad-in-law and does not lead to valid jurisdiction.

2. That the assessment / addition is based on report of CBI dtd. 01-09-06 and certain loose papers as provided by CBI to Revenue (as per Para-6.3 of CIT(A)'s order for A.Y. 2005-06) and further ignoring the request of the appellant that books of accounts are impounded by CBI and the assessment / addition made without taking cognizance of Books of Accounts and on the basis of Loose papers (Refer pages 12 to 15 of CIT(A)'s order for A.Y. 2007-08 dtd. 01-08-19) is bad-in-law.

3. That Ld. A.O. wrongly considered ICICI bank account in the hands of Richa Kawatra w/o director and made addition of Rs. 168480/- of deposit in her hands being this account was opened on the directions of the company to facilitate smooth functioning of the family business / company i.e. appellant and said bank account belongs to appellant and be assessed in the hands of appellant only being otherwise tantamount to double addition.

4. That Ld. A.O. wrongly considered Centurion bank account at Moga in the hands of Roshan Lai, Narinder Kumar and Kashmir Chand, all real brothers and made 1/3rd addition of Rs. 1224460/- each ($4147084 \times 1/3rd = Rs. 1224460/-$) of deposit of sale proceeds in their hands being this account was opened on the directions of the company to facilitate smooth functioning of the family business / company i.e. M/s Gold Star

Pharmaceuticals Pvt. Ltd. and said bank account belongs to appellant and Rs. 4147084/- be assessed in the hands of appellant only being tantamount to double addition.

That the Ld. A.O wrongly made the following additions in the hands of the hands of Kashmir Chand instead of in the hands of appellant

a) Purchase of injections from undisclosed sources = Rs. 3360823/- (Para 6 of A.O's order of Kashmir Chand)

b) Sale of injections as concealed income = Rs. 468945/-(Para 7 of AO's order of Kashmir Chand) Ignoring sale and purchase of injections business belong to appellant, the family concern and Ld. A.O. without bringing any evidence on record to the contrary whether the Kashmir Chand was authorized to do sale purchase of injections or having any license thereof and how the sale or purchase proceeds does not belong to the appellant as per the CBI report dtd. 26-05-09 which is actually doing manufacturing and trading of injections and the above figures be assessed in the hands of appellant only being otherwise tantamount to double addition.

That the matter be set-a-side / denovo to the file of the A.O to make assessment after taking cognizance of books of accounts after receiving from CBI, as well as addition should be made after calculating peak, considering ICICI bank, Centurion Bank at Moga, above documents, record and grounds of appeal being appellant is Centre point of the case. “

Grounds of Appeal in ITA No. 699/Asr/2019 for AY 2007-08

“1. That the revenue do not have on record notice u/s 148 and reasons recorded u/s 148 and approval u/s 151 from Additional Commissioner of Income Tax, as mentioned in Para-1.2 of the A.O's order being revenue could not provide copies thereof to the appellant under RTI even after filing of RTI second appeal dtd. 25-08-22 and assessment order is bad-in-law and does not lead to valid jurisdiction.

2. That the assessment / addition is based on report of CBI dtd. 01-09-06 and on the basis of certain loose papers as provided by CBI to Revenue (as per Para-6.3 of CIT(A)'s order for A.Y. 2005-06) and further ignoring the request of the appellant that books of Accounts are impounded by CBI hence assessment / addition made without taking cognizance of Books of Accounts of appellant and on the basis of Loose papers(Refer page 12 to 15 of CIT(A)'s order for A.Y. 2007-08 dtd. 01-08-19) is bad-in-law.

3. That Ld. A.O. wrongly considered ICICI bank account in the hands of Richa Kawatra w/o director and made addition of deposits of sale proceeds of Rs.689246/- in her hand being this account was opened on the directions of the company to facilitate smooth functioning of the family business / company i.e. appellant and said bank account belongs to appellant and be assessed in the hands of appellant only being otherwise tantamount to double addition.

4. That Ld. A.O. wrongly considered Centurion bank account in the hands of Roshan Lal Kawatra director of appellant company and made addition of 1/3rd = Rs. 146072/- in his hands out of Rs.438216/- deposited during the year out of sale proceeds being this account was opened jointly with real brothers Kashmir Chand and Narinder Kumar on the directions of the company to facilitate smooth functioning of the family business / company i.e. appellant and said bank account belongs to appellant and be assessed in the hands of appellant only being otherwise tantamount to double addition.

5. That the Id. A.O wrongly considered cash of Rs.13.70 lacs as recovered from the premises of Sh. Ashok Kumar as undisclosed income of Sh. Ashok Kumar without bringing any evidence on record, whereas the said cash was sale proceeds of appellant company and be assessed in the hands of appellant only being otherwise tantamount to double addition.

6. That the Id. A.O wrongly considered cash of Rs.20 Lacs as recovered from the premises of Sh. Roshan Lai Kawatra as undisclosed income of Sh. Roshan Lal Kawatra without bringing any evidence on record, whereas the said cash was sale proceeds of appellant company and be assessed in the hands of appellant only being otherwise tantamount to double addition.

7. That the matter be set-a-side / denovo to the file of the A.O to make assessment after taking cognizance of books of accounts after receiving from CBI, as well as, addition should be made after calculating peak, considering ICICI Bank, Centurion

Bank, cash recovered from the premises of Sh. Ashok Kumar and Sh. Roshan Lal Kawatra, above documents, record and grounds of appeal being appellant is Centre point of the case.”

4. Brief facts of the case are that the appellant filed its return of Income on 27.10.2005 declaring total income of Rs. NIL. The appellant was indulged in the manufacturing of pharmaceuticals. The search was conducted on 01.09.2006 by the CBI at the factory premises of M/s Gold Star Pharmaceuticals Ltd, Ferozepur Road, Dagru, Moga, M/s Suraj Medical Store, M/s Suraj Medical Agencies and the residential premises of Sh. Ashok Kumar Kwatra, Roshan Lal Kwatra and Narinder Kumar Kwatra. On the basis of information received from CBI, proceeding u/s 147 of the Act, were initiated in the hands of the assessee and it was alleged that the appellant sold its product in the market on higher rate than the invoice price. Further it was also alleged that the assessee has sold repeat batch of various types of injections in the market. The assessment was completed for all the captioned appellants. The addition was made amount to Rs. 99,59,270/- for AY 2005-06 against M/s Gold Star Pharmaceuticals Pvt Ltd. Aggrieved assessee filed an appeal before the Id. CIT(A) but remained unsuccessful. Being dissatisfied the assessee filed appeal before us.

5. During the hearing, the Id. AR for the assessee withdraw ground no. 1, challenging the notice u/s 148 r.w.s. 151 of the Act. Accordingly, the rest of the

Ground nos. 2, 3 and 4 of ITA No 697/Asr/2019 with Ground nos. 4 & 5 of ITA No 698/Asr/2019 and Ground nos. 5 & 6 of ITA No 699/Asr/2019 are duly adjudicated after hearing both the parties. Rest of the grounds are common and factually similar.

6. The ld. AR filed a written submission with application U/R 29 of Income Tax (Appellate Tribunal) Rule, 1963 (in short Rule) which are kept in the record. The ld. AR first informed that the assessment was completed on the basis of the loose sheet and the report received from the Central Bureau of Investigation. The copy of the report is annexed in **pg. No. 12 to 20 of APB**. The ld. AR further invited our attention in order of the ld. CIT(A) page 24 para 6.3.1:

“6.3.1. After careful consideration of the facts of the case, I am not inclined to agree with the contention of appellant. It is also a fact that the Ld. Assessing Officer has also explained in his written report, duly supported by assessment record, that the assessee was made available, of all the Photocopies of the material received from the office of assessing officer received from CBI authorities firstly for inspection. As reported by assessing officer in his remand report the assessee dragged the formalities of taking Photocopies of the relevant material, till the late stages of these proceedings. The assessing officer has also mentioned that the assessee was given 1837 copies of sale and purchase papers, relating to the statements of various persons available in his office to the appellant on 6th February 2013.

As per Assessing Officers report dated 9th December 2014, the appellant was made available following statements also.

- 1. Statement of Shri Narendra Kumar Accountant of income appellant company*
- 2. Statement of Shri Vikas Mittal who were placed assistant analytical chemist*
- 3. Statement of Shri Mahesh kumar salesman with Luxmi. Medicals store Moga*
- 4. Statement of ProfT.G.S. Ray analytical chemist with assessee company*
- 5. Statement of Shri V. V. Lahiri who worked as manufacturing chemist with the assessee company.*

It is observed that on the request of assessee although documents were made available to the appellant by the assessing officer. It is also observed that the assessee company was made clear by the assessing officer vide his office letter number 6222 dated 6th February 2013, that all the documents which were in possession of the department received from CBI authorities were supplied to the assessee.. The assessing officer has mentioned that thereafter the assessee company did not furnish any documentary evidence during the course of assessment proceedings in support of its contention that the books of accounts of the assessee company/ledger, purchase bills and sale invoices) were impounded by the CBI authorities. The assessee could not furnish any documentary evidence in support of its

claim by way of furnishing a copy of panchnama or other relevant documents.”

6.1 The Id. AR further argued that the entire assessment was completed on basis of the report of the CBI, so, no proper application of mind and no verification was done from the end of the assessing authority. The Id. AR further argued that the entire books of accounts are impounded by the CBI. The assessment was completed without taking cognizance with books of accounts, the appeal only on basis of loose papers. The assessment was completed just bad in law. Accordingly, the entire verification of the revenue is malicious.

6.2. The Id. AR argued and placed that related ground nos. 4 & 5 of ITA No 698/Asr/2019 and Ground nos. 5 & 6 of ITA No 699/Asr/2019 the addition was itself arbitrary and not related to the individual assessee. In this respect the Id. AR filed Affidavit of assessee before the bench by execution the direction of Rule 29 of the Rule. The submission is first time placed before the bench and was not filed before the lower authorities. The Affidavits are duly annexed in the APB which are as follows: -

SL NO	NAME OF APPELLANT	APB PAGE NO
1	M/s Gold Star Pharmaceuticals Pvt Ltd	39-55
2	Mrs. Richa Kawatra	56-57
3	Mr Roshan Lal Kawatra	58-60

4	Mr. Narinder Kumar	61-62
5	Mr. Kashmir Chand	63-64
6	Mr. Ashok Kumar	65-66

7. The Id. DR fully relied on the order of the revenue authorities and had not placed any contradictory fact before the bench.

8. We heard the rival submission and perused the relevant material available in the record. The Id. AR during hearing also submitted the order of the Hon'ble Allahabad High Court about the order of the CBI and as per this order the matter stayed before the Hon'ble Allahabad High Court. Copy of the order is placed before the bench. Further the books of accounts which is impounded by the CBI was not verified by any of the revenue authorities during passing the order. It is a fit case that the assessee has not got a reasonable opportunity to substantiate its fact before the revenue authorities. Only on basis of the loose papers and report of CBI, the assessment order was passed by the revenue without considering the Books of accounts of the assessee which is violation of natural justice. The assessee placed the Affidavits U/R 29 of the Rule before the bench which were never be filed before any of the lower authorities. So, we remit back the cases to the Id. AO for further adjudication. Needless to say, that the AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The

evidence/explanations submitted by assessee in its defence shall be admitted by the Id. AO, and adjudicated by the Id. AO on merits in accordance with law. We order accordingly.

9. The bench has noticed that the issues raised by the assessee in the above appeals are equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by the assessee. Hence, the bench feels that the decision taken by us in ITA No. **697/Asr/2019** for the Assessment Year 2005-06 shall apply *mutatis mutandis* in the above listed appeals.

10. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 12.05.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order