

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ ITA. No. 412 & 413/JPR/2023
निर्धारण वर्ष / Assessment Years : 2012-13 & 2017-18

Monika Chakarvarty Prop. M/s Vipin Medicals, Nayapura, Kota.	बनाम Vs.	DCIT Circle, Kota
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AELPC 3801 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sidharth Ranka (Adv.) &
Shri Sorabh Harsh (Adv.)
राजस्व की ओर से / Revenue by : Shri Anup Singh (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 08/12/2023
उदघोषणा की तारीख / Date of Pronouncement : 10/01/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These two appeals are filed by the assessee and are arising out of the order of the National Faceless appeal Centre, Delhi both dated 04.05.2023 [Here in after referred as (NFAC)] for the assessment year 2012-13 & 2017-18 respectively.

2.1 In ITA No. 412/JPR/2023 the assessee has raised following grounds:-

"1. That on the facts and circumstances of the case and in law, the Id. CIT (Appeals) has grossly erred in not dealing with the additional ground raised by assessee appellant wherein legality of the reassessment proceedings was challenged by the assessee appellant.

1.1 That on the facts and circumstances of the case and in law, the Id. Assessing Officer has grossly erred in not providing the reasons recorded to reopen the assessment proceedings hence the entire proceedings u/s. 148 of the Act is illegal and bad in law.

2. That on the facts and circumstances of the case and in law, the Id. CIT(Appeals) has grossly erred in confirming the addition towards unexplained cash credit under section 69A of the Act to the extent of Rs. 31,94,312/- without considering the submissions and documents produced by the assessee appellant which is bad in law and illegal.

2.1 That on the facts and circumstances of the case and in law, the Id. CIT(Appeals) has grossly erred in not considering the fact that the amount of Rs. 86,87,000/- was deposited by assessee appellant out of the cash sale proceeds of her medical store.

2.2 That on the facts and circumstances of the case and in law, the Id. CIT(Appeals) has grossly erred in not considering the additional evidences submitted during the course of appellate proceedings, i.e., Trading Account, Profit & Loss A/c., Purchase and Sale account, etc.

3. The appellant craves leave to add, alter, modify or amend any ground on or before the date of hearing."

2.2 In ITA No. 413/JPR/2023 the assessee has raised following grounds:-

"1. That on the facts and circumstances of the case and in law, the Id. CIT(Appeals) has grossly erred in confirming the addition towards unexplained cash credit under section 69A of the Act to the extent of Rs. 36,98,100/- without considering the submissions and documents produced by the assessee appellant which is bad in law and illegal.

1.1 That on the facts and circumstances of the case and in law, the Id. CIT(Appeals) has grossly erred in not considering the fact that the

amount of Rs. 1,27,55,100/- was deposited by assessee appellant out of the cash sale proceeds of her medical store.

1.2 That on the facts and circumstances of the case and in law, the Id. CIT(Appeals) has grossly erred in not considering the additional evidences submitted during the course of appellate proceedings, i.e., Trading Account, Profit & Loss A/c., Purchase and Sale account, etc.

2. The appellant craves leave to add, alter, modify or amend any ground on or before the date of hearing.”

First, we will take up the appeal of the assessee in ITA No. 412/JP/2023.

3. The brief fact of the case is that the assessee has filed his original return of income for A.Y. 2012-13 on 19-09-2012 declaring total income at Rs. 2,36,430/- which was processed u/s 143(1) of the Act by CPC on 26-02-2013. Subsequent thereto, it was noticed that income chargeable to tax had escaped in the case of the assessee as per ITS details available with the Id. AO for the year under consideration. In view reasons were recorded for reassessment of income and after obtaining the necessary approval from the Pr. CIT, Kota vide his letter 4588 dated 28.03.2019 proceedings u/s 147 of the Act, were initiated by issuing notice /s 148 of the Act. The notice u/s 148 of the Act dated 30/03/2019 was issued under signature by the ITO, Ward-2(1),

Kota, which was transmitted to the assessee by Speed Post/electronic mail/e-mail address of the assessee.

3.1 In response to notice u/s 148 of the Act, the assessee has filed his return of income for the AY 2012-13 on 26-04-2019 declaring total income at Rs. 2,36,430/-. Notice u/s 142(1) dated 14-06-2019 was issued to assessee requesting to file the required details/documents. In response to the notice u/s 142(1) of the Act issued, the assessee has filed the requisite details and ITR for A.Y. 2012-13 was filed on 08-11-2019, declaring total income at Rs. 2,36,430/-. As the assessee has not verified her return of income it was treated as "invalid". So, notice under section 143(2) cannot be issued by the system.

3.2 During the course of assessment proceedings, on perusal of bank account statement it is noted by the Id. AO that the assessee has deposited cash of Rs 86,87,000/- in her Uco bank account number 19340200000245 during the financial year 2011-12. The assessee has shown the turnover of ₹ 28,84,988 and the return of income was filed under section 44AD @ 8.2 % on total turnover of ₹28,84,988/- and thus, total income declared in the return of income comes to ₹ 2,36,430. The assessee was issued the show

cause notice on 18/12/2019 and the assessee filled the reply dated 20/12/2019 contending that the reason is that the assessee is running a medical shop in name of M/s. Vipin Medicals, at Nayapura, Kota and cash deposit include the cash sales received from the retail customer. It was further contended that the assessee took a loan from 15 person totalling to Rs. 26,08,000/-. This explanation of the assessee is considered but not found convincing to the Id. AO as the assessee has not submitted cash book or cash ledger, Purchase bills and sales were not submitted for verification. However, copy of VAT form no. 11 was uploaded. Similarly trading and profit and loss account was also uploaded in which total turnover of Rs. 28,84,988/- was reported. The assessee sought time which was not possible to provided as the assessment was getting time barred. As the assessee has not submitted sufficient details the Id. AO inclined to accept the cash deposits of Rs. 25,00,000/- from medical business and cash deposit of Rs. 61,87,000/- [86,87,000 less 25,00,000] treated as unexplained money and added to the income of the assessee u/s. 69A of the Act.

4. Aggrieved from the said order of the Id. Assessing Officer the assessee preferred an appeal before the Id. CIT(A) and the Id. CIT(A) has dismissed the appeal of the assessee. The additional evidence submitted by the assessee was also not considered by the Id. CIT(A) and treated the same as afterthought as the contention raised before the Id AO and that of with the Id. CIT(A) were different. The relevant para wherein the finding is recorded by the Id. CIT(A) is reiterated here in below :-

“6. The appellant in its ground of appeal has assailed the addition of Rs.61,87,000/- u/s 69A of the Act. The AO in the assessment order framed u/s 147 r.w.s 144 of the Act noted that the appellant had filed the ROI on 19.09.2012 declaring income of Rs. 236430/-. Subsequently it was noticed from ITS data that there is huge cash deposit in the bank account and that income has escaped the assessment accordingly the AO after obtaining the requisite statutory approval issued notice u/s 147 of the Act. Subsequently notice u/s 142(1) of the Act was issued, the assessee filed the return however the return was not signed therefore the return was declared invalid and hence notice u/s 143(2) of the Act could not be issued. The AO in the assessment order observed that there was a cash deposit of Rs. 8687000/- in assessee's bank accounts maintained in UCO Bank account (Acc No. 1934020000245). It is noted by the AO that during the A.Y the assessee had shown a turnover of Rs. 2884988/- and ROI was filed u/s 44AD @8.2% on the said turnover. And the return was filed by the assessee on 26.04.2019 and declared the income at Rs. 236430/-. The appellant in its submission before the AO stated that the cash deposit of Rs. 8687000/- was from the cash sales of the medicines, further the appellant has taken loan from various parties amounting to Rs. 2608000/-. The AO not satisfied with the explanation accepted the cash deposit of Rs. 2500000/- as cash sales and added balance Rs.61,87,000/- as unexplained cash deposit u/s 69A of the Act.

6.1 During the appeal proceedings the appellant filed the written submission which is placed on record. The appellant in its submission has stated that she is suffering from neuro disease and the accountant is maintaining the accounts and records of sale and purchases and at

the appellate stage filed a revised working of the sales to accommodate its explanation of the cash deposit of Rs. 8687000/-. To support it the appellant also filed a copy of bank account, revised trading account etc. Further the appellant requested for admitting the additional evidence to support its grounds of appeal. The appellant in its revised working of trading account declared the sales of Rs.1,12,82,838/-, purchase of Rs.85,11,670/- and a gross profit of Rs. 2131746/- and a net profit of Rs. 929298/-.

6.2 The submission of the appellant is considered specifically with reference to admission of the additional evidences. The appellant's contention that the original return was filed by the accountant on the basis of the incomplete documents and the sales was shown at Rs. Rs. 2884988/- and income was computed u/s 44AD @8.2% on the said turnover and accordingly the ROI was filed at Rs. 236430. It is to be noted that the original return was filed on 19.09.2012. Further in its submission in reassessment proceeding the assessee has submitted that the cash deposit of Rs. 8687000/-.

It is important to see the facts of the case as existing in the original assessment, at the time of the reassessment proceedings and at the appeal proceedings. The fact is that during the A.Y the assessee had shown a turnover of Rs. 2884988/- and ROI was filed u/s 44AD. The appellant in the reassessment proceedings stated that the reason for the cash deposit of Rs. 86887000/- is that the cash sale of medicines of Rs. 2884988/- and cash loan taken from relatives and friends amounting to Rs. 2608000/-. The submission of the appellant dated 20.12.2019 is made part of the assessment order. The relevant portion of submission is reproduced below:

"The reason for the same is that the assessee is running a retail medical shop in the name of M/s Vipin Medicals at Nayanpur, Kota and during the period under consideration he has sold medicines of Rs. 2884988/- which could be verified from the trading account enclosed herewith. The cash deposit in this account includes these sales as the sales are in cash only to all the retail customer.

This is also submitted that assessee has took loan for his business purposes from various relatives and friends in cash and details for the same is enclosed herewith along with copies of ID and confirmation of the persons from whom loan is taken"

6.3 The submission of the appellant is considered. The appellant at the appellate stage has come up with an explanation that because of dependence on the accountant the complete sales could not be declared at the original assessment stage and at the reassessment stage. The appellant filed a revised trading account along with the purchase and sales account. As is even the appellants gross sales have increased to Rs. 11287838/- and the net profit Rs. 929298. It can

be seen that the appellant's profit ratio remains the same at around 8% declared in the original ROI and at the reassessment stage to the appellate stage when it has filed the corrected trading account. It is to be noted here that another appeal of the appellant related to AY 2017-18 is also under progress wherein the appellant had submitted the same explanation. Therefore, the re-casted account submitted by the appellant are not reliable and are an afterthought hence rejected and are not admitted.

6.4 The submission is examined and the assessment order is perused. The AO noted that there is a cash deposit of Rs. Rs.8687000/-. The AO after examining the submission has added Rs. Rs. 6187000/-, u/s 69A of the Act. The appellant further state that she has received Rs. 2608000/- as cash loan from friends. The following facts emerges that the Total cash deposit is of Rs. 8687000/-, cash sales are of Rs. 2884988/- and cash loan of Rs. 2608000. A total of Rs. [8687000-(2884988+2608000)] =Rs. 3194012/- stands unexplained and is treated as unexplained cash credit u/s 69A of the Act. Further the appellant has accepted the cash loan of Rs. 260800/- from relatives and friends and as stated by the AO that the assessee was not able to prove the genuinity of the credit accordingly the cash loan of Rs. 2608000/- is treated as unexplained cash credit and addition is sustained, further the AO is correct in initiating penalty u/s 271D of the Act for violating the provisions of section 269SS of the Act. The ground of appeal is dismissed.

7. The appeal is dismissed.”

5. As the appeal of the assessee was dismissed, the assessee prefers the present appeal before this tribunal on the various grounds as reiterated here in above. The Id. AR of the assessee relying on the submission made before the Id. CIT(A) submitted that in the present appeal the assessee in ground no. 1 and 1.1. challenged the legality of the assessment order. In support of these grounds, he submitted that the assessee has raised the additional ground before the Id. CIT(A). Though the fact that the

additional ground was raised discussed by way of additional ground taken and the relevant submission made by the assessee on this additional ground. But he draws our attention to the order of the Id. CIT(A) wherein there is no finding of the Id. CIT(A) on the said additional ground. So, the Id. AR of the assessee in addition to the merits of the case vehemently prayed to decide the legal ground first. In support of the said legal ground the Id. AR of the assessee submitted at bar that though the assessee has requested for the reasons recorded for re-opening which was alleged to be issued vide AO's letter dated 06.12.2019 wherein it was alleged that the reasons were recorded and supplied to the assessee. As these contentions were raised at bar challenging the record the Id. AR of the assessee requested to submit the said facts duly sworn by the assessee the same was submitted in an affidavit dated 21.11.2023 which was filed in the dak on 28.11.2023 and the copy of the same was given the Id. DR. The content of the affidavit reads as under :

"I, Monika Charavarty W/o of late Shri Vipin Kumar aged about 69 years R/o 113, new Gopal Vihar, Police Line, Kota Rajasthan-324001 do hereby state on oath and state as under:

1. That I am assessee registered with the PAN No. AELPC 3801J and am regularly filing my income-tax return.
2. That my return for the assessment year was selected for scrutiny u/s 148 of the Income-tax Act vide notice dated 30.03.2019.

3. That subsequent to the notice received, my chartered Accountant/consultant sought reasons for re-opening the assessment proceeding u/s 148 of the Act.
4. That Ld. Assessing Officer vide letter dated 06.12.2019 mentioned regarding the enclosure of copy of reason recorded by stating as under:-

Kindly refer to above cited submit. You have requested to provide reasons recorded for reopening the assessment. Your request is considered and reasons recorded for reopening assessment proceedings for A.Y. 2012-13 are hereby provided to you. Further, you are requested to file replies/submission online on e-proceedings portal in future on or before 10.12.2019 regarding reopening the assessment proceedings.

Encl:- copy of reasons of reopening assessment u/s 147/148 for A.Y. 2012-13.

5. ***That the enclosure of reason recorded as mention in the notice dated 06.12.2019 was never received by the assessee nor it was uploaded on the Income-tax India portal.***
6. That I am stating the afore-said statement on oath that no reason recorder were received during the assessment proceeding and we could not file the objection for reopening the assessment proceedings.
7. That I had also highlighted this issue before the Id. CIT(A), however, he has totally ignored the same.”

Thus, when there is a no communication for the reasons so recorded to the assessee the subsequent assessment is required to be quashed. To drive home this contention the Id. AR of the assessee relied upon the decision of the Rajasthan High Court in the case of M/s. K. C. Mercantile Vs. DCIT circle Jaipur wherein the court has heavily supplied emphasis on the decision of the apex court in the case of GKN Driveshaft (I) Ltd., which was

followed by the Jaipur bench in the case of Banwari Lal Pareek Vs. ITO in ITA no. 135/JP/2020 wherein the similar issue decided. Based on these the Id. AR of the assessee submitted that the assessment order is required to be quashed on legal grounds. As regards the merits of the case the Id. AR of the assessee submitted that the Id. AO vide show cause notice No. ITBA/AST/F/147/(SCN)2019-20 dated 18/12/2019, required the assessee to explain the source of said cash deposit on or before 19/12/2019 at 5.30 PM. It is seen from this show cause notice that only 1(one) daytime was allowed and it was the first show cause notice by which the assessee was asked to explain the source of cash deposit of Rs.86,87,000/-. Prior to that, the Id. AO had never asked to explain the source of said cash deposit of Rs.86,87,000/- except for Rs.30,50,000/- vide notice u/s 142(1) dated 14/06/2019, with the UCO Bank. Thus, It is clear from the above facts that no sufficient opportunity was allowed to the assessee, which is against the principals of natural justice. In the absence of sufficient opportunity, the assessee submitted the explanation with regard to the said cash deposit with UCO Bank, in haphazard manner, without going through/verifying all the details of purchase /sales and the bank statement of account of UCO Bank, in which entire

cash was deposited out of the cash sales for the year under consideration. The assessee in the assessment proceeding the assessee submitted as under :

(i) "During the year under consideration the assessee was running a retail medical Shop-M/s Vipin Medicals, at Nayapura, Kota. Cash was deposited in the bank account out of cash sales of medicines totaling to Rs.28,84,988/-.

(ii) Loan taken in cash aggregating to Rs 26,08,000/- from relatives and friends for business purpose.

(iii) The AO was also requested to allow more time to file explanation in respect of cash deposit made with the UCO Bank.

However, the Id. AO, did not allow any further time to the assessee. The Id. AO, considering the cash deposit of Rs. 25 Lakhs made in the bank account out of total sales of Rs.28,84,988/- as disclosed by the assessee for the year under consideration and made addition of Rs.61,87,000/- (86,87,000-25,00,000) u/s 69A of the Act holding/ observing "During the course of assessment proceedings the assessee were given many opportunity to explain the source of these deposits but the assessee has failed to do". Also, the Id. AO made reference to the Joint Commissioner of Income-tax Range -2 kota for taking loan in cash by the assessee, aggregating to Rs.26,08,000/- under section 26955 and 271D of the I.T. Act. The Id. AR of the assessee further

submitted that the cash deposit totaling to Rs.86,87,000/- made with the UCO Bank during the F.Y 2011-12 relevant to the A.Y 2012-13, it is submitted that since the assessee was suffering from neuro disease she could not explain the source of said cash deposit properly and correctly during the course of reassessment proceedings as no sufficient opportunity was allowed by the Id.AO. Only, one day time was allowed. Hence, after filing appeal, in order to ascertain the factual position, deep verification of ledger account of Sales/purchases, bank, was made. Bank account was also reconciled and noted with surprise that entire sales and Purchases not found to be recorded in the ledger accounts of Sales and Purchases, by the then accountant of the shop. Original return of income was also found to be filed on the basis of these incomplete ledger accounts, by the then Tax Consultant, wherein total sales of Rs.28,84,988/-was shown, on the basis of figure of purchases/sales given by the then accountant. Now, after verification of said ledger accounts, and reconciliation of bank account, factual position of these accounts for the F.Y. 2011-12 relevant to the A.Y. 2012- 13 emerges as under: -

(a) Total amount of purchases-	Rs. 85,11,670/-
(b) Total amount of Cash Sales	Rs. 1,12,82,838/-

(c) Cash Deposit-in UCO Bank account out

of cash sales

Rs. 86,87,000/-

mentioned –above-(b)

In support of above claim/ details-- Copy of ledger A/c of - (1) Purchase. (2) Sale.(3) Bank account-UCO Bank and (4) Affidavit of the assessee. (5) 7 (Seven) Prescriptionslips of Doctor. (6) Revised Trading & Profit and Loss A/C, (7) Revised Computation of Total Income are submitted as additional evidences and for which separate application filed, as per the provisions of Rule 46 A of the Income Tax Rules, 1962. During reassessment proceedings, the assessee's submission that she had taken loan in cash aggregating to Rs.26,08,000/--from relatives and friends for business purposes, while, in fact, no such loan was taken. In support of this affidavit of the assessee is filed. In view of these facts and facts mentioned it is submitted that entire cash totalling to Rs.86,87,000/- was deposited in the UCO Bank account out of cash sale proceeds of the medicines, which is at Rs.1,12,82,838/-as mentioned above. Thus, based on these arguments the Id. AR of the assessee supported ground no. 2 and 2.1 raised by the assessee.

6. Per contra, the Id. DR appearing on behalf of the Revenue relied upon the order of the Id. CIT(A) and vehemently argued that the contention raised by the assessee before the Id. AO and that of with the Id. CIT(A) are self-contradictory and therefore, the Id. CIT(A) rightly not dealt with as there is no merits. The Id. AR also filed the following written submission in support of the various contentions so raised:

“In this case, the assessee has e-filed his return of income for A.Y. 2012-13 on 19.09.2012 declaring total income of Rs. 2,36,430/-. Return was processed u/s 143(1) of the I.T. Act by CPC on 26.02.2013. Thereafter proceedings u/s 147 of I.T. Act was initiated by issuing notice u/s 148 of I.T. Act on 30.03.2019. Subsequently notice u/s 142(1) was issued to assessee along with specific questioner vide which the source of cash deposit of Rs. 86,87,000/- in UCO Bank was asked for in response the assessee submitted that he was running a retail medical shop at Nayapura, Kota The assessee has shown total turnover of Rs. 28,84,988/- and declaring net profit of Rs. 2,36,430/- u/s 44AD of the I.T. Act. Further since the assessee has deposited of Rs. 86,87,000/- in the bank account maintained with UCO bank, she was asked about the source of the aforesaid cash deposit in his bank accounts.

The assessee in his submission before the AO submitted the followings:

1. She has taken cash loan of Rs. 26,08,000/ during the year consideration in from 15 peoples whose details viz. name, PAN No. and the amount was furnished in tabular form before the AO.
2. The assessee declared the profit of Rs. 2,36,430/- from turnover of Rs. 28,84,988/- but sales ledger A/c and cash ledger A/c were not produced/submitted/uploaded for verification. Further the assessee submitted that the cash was deposited out of the cash sales. Therefore in absence of proper explanation, the AO accepted that the cash deposits of Rs. 25 lakhs from medical business cash sales and balance cash deposit of Rs. 61,87,000/- was treated unexplained money u/s

69A of the I.T. Act and the order u/s 147 read with section 144 of the Act was passed on 23.12.2019 making addition of Rs. 61,87,000/- u/s 69A of the I.T. Act.

Aggrieved with the order of AO dated 23. 12. 2019, the assessee filed appeal before the Id. CIT(A) Before the Id. CIT(A) the assessee submitted that since she was suffering from Neuro disease, she could not explain the source of said cash deposit properly and correctly during the course of assessment proceedings. Hence after filing appeal, in order to ascertain the factual position, deep verification of ledger a/c of sales, purchases and bank was made. Bank account was also reconciled and noted with surprise that the entire sales and purchases not found to be recorded in the ledger a/c of sales and purchase by the then accountant of the shop, Return of income for the year consideration was also found to be filed on the basis of these incomplete ledger a/c by the then tax consultant, wherein the total sales of Rs. 28,84,988/- was shown on the basis of figure of purchases/sales given by then accountant. Further the assessee stated that the turnover declared by her during the course of assessment proceedings was incorrect. She submitted that the correct purchases and sales for the year under consideration were Rs. 85,11,670/- & Rs. 1,12,82,838/- respectively and the cash deposit in the UCO Bank account was made out of cash sales only. In support of her claim, the assessee submitted the additional evidence before the Id. CIT(A) as per provision of rule 46A of the I.T. Rules 1962.

The Id CIT(A) categorically stated that recasted account by the appellant are not reliable and are an afterthought hence rejected. Hence the assessee's appeal was dismissed by the Ld. CIT(A).

From the above it is clear the assessee's additional evidences submitted before the Id.CIT(A) were not taken on record by the Id. CIT(A) as per provision of rule 46A of the I.T. Rules 1962. There is no infirmity in the order of the Id. CIT(A). The assessee has taken the same plea before the Hon'ble Bench which was rejected by the CIT(A) after due consideration. The assessee has not submitted any evidences under Rule 29 before the Hon'ble Bench and the submission/ evidences filed before the Ld. CIT (A) have already been considered by the CIT(A) under Rule 46A and rejected. Hence it is requested to the Hon'ble Bench that the order of Assessing Officer or Id. CIT(A) be upheld since the same was passed considering the submission of the assessee before the Assessing Officer.”

7. We have heard the rival contentions, perused the material placed on record. The bench noted that during reassessment proceedings, the Id. AO was requested to provide reasons recorded for issuance of notice under section 148 of the act. Despite this specific request made by the assessee to the learned assessing officer, the Id. AO did not provide any reasons recorded for issue of notice under section 148 of the Act. Although, after the expiry of reasonable time of providing reasons to the assessee, the Id. AO vide letter dated 06/12/2019, uploaded on e-filing portal communication reference ID100021349803 where in the Id. AO mentioned that “You have requested to provide reasons recorded for reopening the assessment and reasons recorded for reopening assessment proceedings for assessment year 2012–13 are here by provided to you”. The learned Senior Counsel of the assessee during the course of hearing stated at bar stated that no such reasons mentioned by the Id. AO were provided and were also not attached until date. There is no enclosure in the letter uploaded on the portal of the revenue till the date of hearing. This fact were clearly brought to the notice of the Id. CIT(A) at the time of hearing of the first appeal, the CIT(A), although discussed the additional ground and the submission of the assessee on the issue, but there

is no finding on the part of the Ld. CIT(A) on that ground for the reason best known. Therefore, he has specifically requested the bench that this ground be decided based on the material already on the Court file. As there is no clear finding from the revenue upon the argument of the assessee before the Id. CIT(A), the bench directed the Id. AR to file an affidavit on this aspect from the assessee and the same is filed on 28.11.2023 and copy of the same was also given to the Id. DR. Till 31st December, 2023 there is no rebuttal on the facts sworn on oath the bench feels that there are merits on arguments advanced by the Id. AR of the assessee. As the action of the revenue not granting the reasons recorded for reopening the case even though the specific request was made, the arguments which has been canvassed by the assessee is required to be considered very seriously more particularly in view of the observation of the Hon'ble apex court in the case of GKN Driveshafts (I) Ltd Vs. ITO 259 ITR 19 (SC). This decision is followed, and discussed on similar facts resembling with that of the present case wherein the bench has held as under :

“2.3 We have heard both the parties and perused the material available on record. It is an admitted fact that from the very beginning the assessee had been demanding the reasons recorded and in this regard the reply dated 27-11-2017 (PBP 53-54) of the assessee written to the ITO, wherein the assessee had specifically asked and demanded the

AO to provide the reasons for issuance of Notice u/s 148 of the Act to the assessee. However, the AO did not provide the same. In appeal before the Id. CIT(A), the assessee had categorically raised the specific ground that the reasons recorded for reopening of the assessment was never supplied / provided to the assessee. However, the Id. CIT(A) had ignored the said ground of the assessee and also did not deal with the specific ground raised by the assessee. In our view, the AO was bound to furnish reasons recorded by him within a reasonable time as has been held by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. vs ITO (supra) wherein the Hon'ble Court held as under:-

"5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice u/s 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. .In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years."

As per record, since the reasons recorded for reopening of the assessment were not furnished to the assessee till the completion of the assessment, therefore, in our considered view, the reassessment order in these circumstances of the case, cannot be upheld. For reaching this conclusion, we draw strength from the decision of Hon'ble Bombay High Court in the case of CIT vs Videsh Sanchar Nigam Ltd (2012) 340 ITR 66 wherein Hon'ble Bombay High Court had categorically held that since the reasons recorded for reopening of the assessment were not furnished to the assessee till the completion of the assessment then reassessment order cannot be upheld and thus dismissed the appeal filed by the Revenue. Even in the case of CIT vs Trend Electronics reported in (2015) 379 ITR 456, Hon'ble Bombay High Court has categorically held as under:-

"Income Tax Act 1961 Section 147 and 148 Reopening of assessment – validity of – Notice – Objections – Recording of reasons and furnishing of reasons to be strictly complied with – Failure on part of assessee to furnish reasons recorded to assessee when sought for – Reassessment not valid – Quashed – Appeal dismissed.

"Hon'ble Karnataka High Court in the case of Pr.CIT and Another vs V. Ramaiah (ITA No. 451 of 2017 dated 02-07-2018) has held as under:-

"8. The decision relied upon by the learned counsel for the Revenue is distinguishable on facts. The order which was to be passed by the assessing authority as preliminary objection of the assessee, once the

assessee has raised the objection to such reassessment proceedings, the meeting of such objections in the main reassessment order, could be procedural aspect of the matter but the recording of the reasons before the initiation of the reassessment proceedings and communication thereof to the assessee is sine qua non as held by the Hon'ble Supreme Court and that goes to the root of the matter and confers or deprives the assessing authority of the jurisdiction to undertake such reassessment proceedings, as the case may be.

9. In the present case, admittedly, such reasons were not supplied to the assessee during the contemporary period before going ahead with the reassessment proceedings. Therefore, the Tribunal in our opinion was perfectly justified in quashing such reassessment order.

10. We do not find any substantial question of law arising in the matter. Therefore, the appeal of the Revenue stands dismissed. No costs."

The SLP of the Revenue against the above order of Karnataka High Court (supra) has also been dismissed by the Hon'ble Supreme Court reported in (2019) 262 Taxman 16. Therefore considering the totality of the facts and circumstances of the case and keeping in view the legal proposition as discussed above, we hold that recording of reasons before initiation of reassessment proceedings and communication thereof to the assessee is sine qua non as held by the Hon'ble Supreme Court (supra) that goes to the root of the matter and confers or deprives the assessing authority of the jurisdiction to undertake such reassessment proceedings, as the case may be. In the present case, admittedly such reasons were not supplied to the assessee during the contemporary period before going ahead with the reassessment proceedings. Therefore, in our view, the reassessment proceedings initiated and consequential order passed by the AO and appeal order passed by the Id. CIT(A) are not justified and, therefore, we quash such reassessment order. Therefore, the ground raised by the assessee is allowed and consequential appeal of the assessee is also allowed with no order as to cost.

3.0 In the result, the appeal of the assessee is allowed."

On being consistent to the view taken by the bench based on the decision of the apex court wherein the court held that the reasons recorded should be supplied to the assessee and since it is undisputed fact that the same were not supplied we quash the

order passed by the Id. AO. Based on these observations of the assessee ground no. 1 & 1.1 raised by the assessee is allowed.

8. In Ground no. 2, 2.1 and 2.2 the assessee challenged that the addition made in the order of the AO and sustained by the Id. CIT(A) on merits. On this issue the rival contentions were heard but since at the instance of the Id. AR of the assessee we have decided the appeal of the assessee on technical ground and therefore, we feel the grounds raised on merits becomes infructuous and therefore, the same is not adjudicated.

9. In terms of this observation the appeal of the assessee in ITA no. 412/JP/2023.

Now we take up the appeal of the assessee in ITA No. 413/JP/2023

10. The brief fact of the case is that the assessee has e-filed his return of income for A.Y 2017-18 on 09.03.2018 declaring total income of Rs. 8,02,300/-. Return was processed u/s 143(1) of the Act by CPC on 16.05.2018. The case was selected for limited Scrutiny through CASS. Notice u/s 143(2) of the Act was issued under digital signature on 09.08.2018 which was transmitted to the assessee by electronic mail to the e-mail address designated by

her as per return of income filed. Subsequent thereto, notice u/s 142(1) of the Act along with the specific questionnaire, by which necessary details were called for, were issued on 22.02.2019, 23.05.2019 & 21.06.2019 under digital signature and transmitted to the assessee by electronic mail to the e-mail address designated by her as per return of income filed.

11. During the year under consideration the assessee derived income from retail store of medicines, managed/controlled by the assessee herself, after the death of her husband on 06/09/2006 with the assistance of employees of the shop even though she was suffering from Neuro disease. The assessee was almost dependent on the Munim / accountant of the shop for accounting work, as she was not well versed with computer work. So, she has no access to the computer.

12. In the return of income filed by the assessee, she has declared the turnover of Rs. 70,18,942/- and declared net profit of Rs. 5,79,763/- under section 44AD of the IT Act. It was also filed that cash was deposited out of sale proceeds from day to day business activity. It has been noticed that the assessee has deposited the cash amount in the UCO bank account for an

amount of Rs. 1,27,55,100/-. The assessee was asked to provide the details of cash deposited in bank account during the period 01.04.2016 to 31.03.2017 and demonetization period from 09.11.2016 to 30.12.2016. The assessee or her authorized representative has submitted the details of cash deposited in banks accounts during the demonetization period, source of income & funds, bank statements which is placed on records. The assessee has deposited cash of Rs. 17,02,500/- in her bank account during the demonetization period.

13. During the assessment proceeding a show cause notice dated 19.06.2019 was issued to her asking the details such as copy of VAT return and Item wise and date wise cash sales details. If the same is not submitted then cash deposited during demonetization will be treated as unexplained. Again, notice u/s. 142(1) was issued on 07/12/2019 asking the assessee to supply various details listed at sr. no 1 to 7 in the said notice. On 19/12/2019 a show cause notice was issued to the assessee asking to explain the source of cash deposited into the bank account for an amount of Rs. 1,27,55,100/-. On 20/12/2019 the assessee submitted the details showing summary of month wise sales for 2015-16 and 2016-17. As regards the cash deposited

during the demonetization the assessee submitted that out of total deposit of Rs. 17,02,500/-, Rs. 7,28,000/- was only the demonetized currency and the rest of the cash was valid circulation money and therefore, that details were also placed on record. The assessee submitted the details of cash on hand in the desired format on the various specific dates. As regards the deposit of money in excess the assessee submitted that the same was due to ignorance of accountant and staff as they had deposited the cash of their sister concern named as Vipin Medicoose Prop Sh. Akash Chakravarty in the OD account of Vipin Medicals as the said firm was not having any current account and the parties from whom purchased were made was demanding payments on regular basis. As regards the copy of VAT return, as the assessee was dealing the products taxable on MRP basis and he was not required to pay any tax and due to his negligence she has failed to furnish the vat return for the period under consideration however copy of vat return for the immediate proceeding previous year were placed on record. The submission of the assessee is considered but not found convincing the Id. AO. In the assessment proceeding assessee has also submitted that she has taken cash loan of Rs. 30,57,000/- during the year under consideration and some

confirmation letters were also uploaded but credit worthiness of the loan givers were not proved by the assessee. Assessee has uploaded a sheet in which details of cash loans of Rs. 30,57,000/- has been mentioned. The explanation regarding cash deposits of the assessee is not plausible but she herself affirmed that cash loan of Rs. 30,57,000/- was taken during the year.

14. The assessee has declared profit of Rs. 5,79,763/- from turnover of Rs. 70,18,942/- but sales ledger account & cash ledger account were not submitted/uploaded for examination. Copy of VAT return is also not submitted for examination. There may be some expenses which have been paid in cash during the year. Therefore, in absence of accurate details of the cash sales and cash deposits in bank account from cash receipts of the business. The Id. AO accepted cash deposits of Rs. 60,00,000/- from cash sales and balance cash deposits of Rs. 67,55,100/- (1,27,55,100-60,00,000) was treated as unexplained money under section 69A of the Act. Considering overall facts of the case, addition of Rs. 67,55,100/- (Including cash of Rs. 17,02,500/- deposited during demonetization period) made in assessed income of the assessee under section 69A of the IT Act, 1961.

15. Aggrieved from the above addition made in the returned income of the assessee the assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised, the relevant findings of the Id. CIT(A) is as under:-

6. Decision

The appellant in its ground of appeal has assailed the AO the addition made of Rs. 67,55,100/- u/s 69A of the Act. The AO in the assessment order framed u/s 143(3) of the Act noted that the appellant had filed its ROI on 09.08.2018 declaring a total income of Rs. 802300/- . The AO in the assessment order noted that the assessee had shown a turnover of Rs. 7018942/- and net profit of Rs. 579763/- u/s 44AD of the Act. The AO further noted that there is a deposit of cash of Rs.1,27,55,100/- in assessee's bank account during the demonetization period. The AO further in the assessment order noted that the assessee had taken a cash loan of Rs. 3057000 / accordingly the AO initiated penalty u/s 271D for violation of section 269SS of the Act. The AO not satisfied with the explanation accepted deposit of Rs. 6000000/- as cash sales and added Rs. Rs. 6755100/- and added balance Rs.6755100/- as unexplained cash deposit u/s 69A of the Act.

6.1 During the appeal proceedings the appellant filed the written submission which is placed on record. The appellant in its submission has stated that she is suffering from neuro disease and the accountant is maintaining the accounts and records of sale and purchases and at the appellate stage filed a revised working of the sales to accommodate its explanation of the cash deposit of Rs. 12755100/-. To support it the appellant also filed a copy of bank account, revised trading account etc. Further the appellant requested for admitting the additional evidence to support its grounds of appeal. The appellant in its revised working of trading account declared the sales of Rs. 1,7289892/-, purchase of Rs.13943702/--and a gross profit of Rs. 3127758/- and a net profit of Rs. 1390915/-.

6.2 The submission of the appellant is considered specifically with reference to admission of the additional evidences. The appellant's contention that the original return was filed by the accountant on the basis of the incomplete documents and the sales was shown at Rs. 7018942/- and income was computed u/s 44AD on the said turnover and accordingly the ROI was filed at Rs. 579763/-. It is important to see the facts of the case as existing in the assessment and at the appeal proceedings. The fact is that during the A.Y the assessee had shown a turnover of Rs. 7018942/- and ROI was filed u/s 44AD. The appellant in

the reassessment proceedings stated that the reason for the cash deposit of Rs. 12755100/- it has taken cash loan of Rs. 3057000/- from relative and friends.

6.3 The submission of the appellant is considered. The appellant at the appellate stage has come up with an explanation that because of dependence on the accountant the complete sales could not be declared at the original assessment stage and at the reassessment stage. The appellant filed a revised trading account along with the purchase and sales account. As is seen the appellants gross sales have increased to Rs. 17289892/- and the net profit Rs. 1390915. It can be seen that the appellant's profit ratio remains the same at around 8% declared in the original ROI and at the appellate stage when it has filed the supposedly corrected trading account. The appellant has not submitted any substantive reason other than to state that the accountant committed the mistake. This is a substantive error, therefore the submission of the appellant in its revised computation and trading account is not acceptable. If the appellant thought of the error, it could have revised the return or have submitted the same before the AO during the assessment proceedings. The assessee took chance and when the explanation of the assessee was not found acceptable by the AO the assessee came up with this explanation at the appellate stage. It is to be noted here that another appeal of the appellant related to AY 2012-13 is also under progress wherein the appellant had submitted the same explanation. Therefore, the re-casted account submitted by the appellant are not reliable and are an afterthought hence rejected and are not admitted.

6.4 The submission is examined and the assessment order is perused. The AO noted that there is a cash deposit of Rs. Rs. 12755100/-. The AO after examining the submission has added Rs. Rs. 6755100/- u/s 69A of the Act. The appellant at the assessment stage stated that she has received Rs. 3057000/- as cash loan from friends. The following facts emerges that the Total cash deposit is of Rs. 12755100/-, cash sales accepted by AO Rs. 6000000/- and cash loan of Rs. 3057000/-. A total of Rs. [Rs. 12755100- (6000000+3057000)] =Rs. 3698100/- stands unexplained and is added towards unexplained cash credits u/s 69A of the Act. Further the appellant has accepted cash loan of Rs. 3057000/- as cash loan from friends and as stated by the AO that the assessee was not able to prove the creditworthiness of the loans the addition of Rs. 3057000 is treated as unexplained cash credit u/s 69A of the Act and The AO is correct in initiating penalty u/s 271D of the Act for violating the provisions of section 269SS of the Act. The ground of appeal is dismissed.”

16. Feeling dissatisfied with the above finding of the Id. CIT(A) the assessee prefers the present appeal on the grounds as reiterated here in above. Apropos to the grounds so raised the Id. AR of the assessee relied upon the written submission filed before the Id. CIT(A) and vehemently argued that Since the assessee was suffering from Neuro disease she could not explain the source of said cash deposited properly and correctly during the course of assessment proceedings, which resulted in addition of Rs. 67,55,100/- u/s 69A of the Act. Hence, after filing appeal, in order to ascertain the factual position, deep verification of ledger account of sales, purchases, bank was made. Bank account was also reconciled and noted that entire sales and purchases not found to be recorded in the ledger account of sales and purchases by the then munim / accountant of the shop. Return of income for the year under consideration was also found to be filed on the basis of these incomplete ledger accounts, by the then tax consultant, wherein total sales of Rs. 70,18,942/- was shown on the basis of figure of purchases/sales given by then accountant. Now, after verification of said ledger accounts and reconciliation of bank account, factual position of these accounts for the F.Y 2016-17 relevant to the A.Y 2017-18, emerges as under:-

(i) Total amount of purchase	Rs. 1,39,43,702
(ii) Total amount of sales	Rs. 1,72,89,892
(iii) Cash deposit-in UCO Bank account of cash sales mentioned-above-(ii)	Rs. 1,28,69,720

In support of above claim/details, following documents are submitted as additional evidences and for which separate application is filed as per the provisions of Rule 46A of Income Tax Rules, 1962 before the Id. CIT(A)

- (i) Revised Trading & Profit and Loss A/c.
- (ii) Revised Computation of Total Income.
- (iii) *Revised monthly summary of cash available for the F.Y. 2016-17*
- (iv) *Affidavit of the assessee.*
- (v) *Copy of Ledger Account- Purchases-F.Y. 2016-17.*
- (vi) *Prescription slips of Doctor.*
- (vii) *Copy of Ledger Account- Sales-F.Y. 2016-17.*
- (viii) *Bank Account Statement-Account no. 19340100005009-UCO Bank- F. Y. 2016-17*
- (ix) *Bank Account Statement -Account no. 66231010007367 - Bank of India-F.Y. 2016-17*
- (x) *Copy of Ledger Account-Bank Account No. 19340200000245-UCO Bank F.Y 2016-17*
- (xi) *Copy of Ledger Account-Bank Account No.662320110000067-Bank of India-F.Y. 2016-17.*
- (xii) *Copy of Ledger A/C-Bank Account no. 66231010007367 - Bank of India-F.Y. 2016-17 .*

- (xiii) Copy of Ledger A/C-Bank Account *no* 19340100005009-UCO Bank-F.Y. 2016-17.

Apart from above evidences, it is submitted that during the course of assessment proceedings, it was the assessee's submission that she had taken loan in cash aggregating to Rs. 30,57,000/- from various persons, during the year under consideration. While, in fact, no such loan was taken. In support of this contention the assessee filed an affidavit. As regards, cash deposited in demonetization period it is submitted that cash amounting to Rs. 17,02,500/- was deposited during demonetization period, out of which old currency was Rs. 7,28,000/- only. Details of old currency is attached was placed on record. Further, it is submitted that entire cash totaling to Rs. 1,28,69,720/- was deposited (as mentioned on Page-2) in the UCO bank accounts and account of Bank of India, out of cash sale proceeds of the medicines, which is Rs. 1,72,89,892/- as mentioned above.

17. In support of the contentions so raised the Id. AR of the assessee filed a detailed paper book containing the following document / submission / evidence:

SNo.	Particulars	Page No.	
		From	To
1.	Copy of written submission filed before the CIT(A)	A	E
2.	Copy of Bank Statement of Current Accounts	01	49
3.	Copy of details of old currency of cash deposited during demonetization.	50	50
4.	Copy of profit and loss account and computation.	51	52
5.	Copy of cash ledger for A.Y. 2017-18.	53	53
7.	Copy of affidavit.	54	55
8.	Copy of purchase ledger for A.Y. 2017-18.	56	353
9.	Copy of medical reports of Smt. Monika Chakraborty	354	360
10.	Copy of sales ledger for A.Y. 2017-18.	361	377
11.	Copy of Bank statement of Smt. Monika Chakraborty	378	380
12.	Copy of Banks Ledger for A.Y. 2017-18.	381	405

18. The Id DR is heard who has relied on the findings of the lower authorities and submitted written submission in support of the contention of the revenue. The written submission is reiterated here in below:

Subject: Appellate proceedings in the case of Monika Chakarvarty, ITA 413/JPR/2023, AY-2017-18- reg.-

In this case, the assessee has e-filed his return of income for A.Y. 2017-18 on 09.03.2018 declaring total income of Rs. 8,02,300/-, Return was processed u/s 143(1) of the I.T. Act by CPC on 16.05.2018 then the case was selected for limited scrutiny through CASS. Thereafter notice u/s 143(2) and 142(1) were issued to assessee alongwith specific questionure vide which necessary details were called for. In response the assee submitted that he was running a retail medical shop at Nayapura, Kota and this is her only source of income. The assessee has shown total turnover of Rs. 70,18,942/- and declaring net profit of Rs. 5, 79, 763 / (- u) / s 44AD of the I.T. Act. Further during the course of assesment proceeding it was noticed that the assessee had deposited Rs. 1,27,55,100/-in two bank

accounts maintained with UCO bank. Further the assessee was asked about the source of the aforesaid cash deposit in his bank accounts.

The assessee in his submission before the AO submitted the followings.

1. She has taken cash loan of Rs. 30,57,000/- during the year consideration from 18 peoples, whose details viz. name, PAN no. and the amount was furnished in tabular form before the AO. Some confirmation letters were also uploaded but the creditworthiness of loan givers were not prove by the assessee.

2. The assessee further submitted that the cash amount of Vipin Medicose (Prop. Akash Chakravarty) was deposited in the bank account of the assessee. The assessee stated that the Vipin Medicose is sister concern of the assessee and the firm was not having any current account. The parties from whom the purchase were made were demanding for the payment on regular basis. This explanation not supported by conclusive evidence. The assessee has to produce details of the purchases and sales of the Vipin Medicose to substainance her claim. Cash ledger A / c of Vipin Medicose is not submitted/uploaded for verification. Therefore the AO did not found any force in the arguments of the assessee.

3. The assessee declared the profit of Rs. 5,79,763/- from turnover of Rs. 70,18,942/-but sales ledger A/c and cash ledger A/c were not submitted/uploaded for examination. Copy of VAT return is also not submitted for examination. Therefore in absence of the accurate details of cash sales and cash deposit in the bank accounts from the cash receipts of the business, the AO accepted that the cash deposits of Rs.60,00,000/- from cash sales and balance cash deposit of Rs. 67,55,100/- was treated unexplained money u/s 69A of the I.T. Act and the order u/s 143(3) was passed on 27.12.2019 making addition of Rs. 67,55,100/- u/s 69A of the act.

Aggrieved with the order of AO dated 27.12.2019, the assessee filed appeal before the Id. CIT(A). Before the Id, CIT(A), the assessee submitted that since she was suffering from Neuro disease, she could not explain the source of said cash deposit properly and correctly during the course of assesement proceedings, which resulted in addition of Rs. 67 ,55,100/. u/s 69A of the I.T. Act, hence filing appeal. In order to aseratin the factual postion, the deep verification of ledger a / c of sales, purchases and bank was made. Bank account was also reconciled and noted that the entire sales and purchases not found to be recorded in the ledger a / c of sales and purchases by the then accountant of the shop. Return of income for the year consideration was also found to be filed on the basis of these incomeplete ledger a / c by the then tax consultant, wherein the total sales of Rs. 70,18,942/ was shown on the basis of figure of purchases/sales given by then

accountant. Further the assessee stated that the turnover declared by her during the course of assessment proceedings was incorrect. She submitted that the correct purchases and sales for the year under consideration were Rs. 1, 39, 43, 702/- 8 * Rs * 0.1, 72 ,89,892/- respectively and the cash deposit in the UCO Bank account was made out of cash sales only. In support of her claim, the assessee submitted the additional evidence before the Id CIT(A) as per provision of rule 46A of the I.T. Rules 1962.

The Id CIT(A) categorically stated that the assessee took chance before the AD and when the explanation of the assessee was not accepted by the A O, then the assessee came up with this explanation at this stage. Further the Id. CIT(A) also stated that recasted accounts by the appellant are not reliable and are an afterthought hence rejected. Hence the assessee's appeal was dismissed by the Ld. CIT(A).

From the above it is clear the assessee's additional evidences submitted before the Id.CIT(A) were not taken on record by the Id. CIT(A) as per provision of rule 46A of the I.T. Rules 1962. There is no infirmity in the order of the Id. CIT(A). The assessee has taken the same plea before the Hon'ble Bench which was rejected by the CIT(A) after due consideration. The assessee has not submitted any evidences under Rule 29 before the Hon'ble Bench and the submission/ evidences filed before the Ld. CIT (A) have already been considered by the CIT(A) under Rule 46A and rejected. Hence it is requested to the Hon'ble Bench that the order of Assessing Officer or Id. CIT(A) be upheld since the same was passed considering the submission of the assessee before the Assessing Officer.”

The Id. DR in addition to the written submission vehemently argued that assessee when caught depositing cash more than turnover coming with the different fact then what is submitted in the assessment proceeding and therefore, he supported the finding of the Id. CIT(A) in rejecting the additional evidence submitted by the assessee.

19. We have heard the rival contentions and perused the material placed on record. The apple of discord in this case is that based on the facts and circumstances of the case whether the deposit of cash of Rs. 1,27,55,100/- sourced from the sales proceeds or not is in combination of loan and turnover made by the assessee from his medical retail store.

On this issue the bench noted that it is not disputed that after the death of the husband of the assessee, she is running a retail medical shop at Nayapura, Kota. Even the assessee is suffering from Neuro disease. The return of income has been filed generally by the consultant who, based on the information given by the Munim / accountant files the income tax return. Since the assessee is exempt from payment of VAT, the turnover was not cross verified and the details submitted in the assessment proceedings were incorrectly given, far from the truth. In fact, the assessee filed an affidavit that the explanation and the return furnished was without her knowledge and she totally relied on the experts. During the first appellate proceedings the assessee on being aware brought on record the correct state of affairs wherein she contended that the total purchases made by her for an amount of Rs. 1,39,43,702/-

and the sales for an amount of Rs. 1,72,89,892/-. The assessee has submitted various details before the first appellate authority as an additional evidence and the additional evidence consist of following documents.

Revised Trading & Profit and Loss A/c.

Revised Computation of Total Income.

Revised monthly summary of cash available for the F.Y. 2016-17.

Affidavit of the assessee.

Copy of Ledger Account- Purchases-F.Y. 2016-17.

Prescription slips of Doctor.

Copy of Ledger Account- Sales-F.Y. 2016-17.

Bank Account Statement-Account no. 19340100005009-UCO Bank- F. Y. 2016-17

Bank Account Statement -Account no. 66231010007367 -Bank of India-F.Y. 2016-17

Copy of Ledger Account-Bank Account No. 19340200000245-UCO Bank F.Y 2016-17

Copy of Ledger Account-Bank Account No662320110000067-Bank of India-F.Y. 2016-17.

Copy of Ledger A/C-Bank Account no. 66231010007367 -Bank of India-F.Y. 2016-17 .

Copy of Ledger A/C-Bank Account no 19340100005009- UCO Bank-F.Y. 2016-17.

The Id. CIT(A) has not admitted this additional evidence only on the reason that in the original return assessee declared sales at Rs. 70,18,942/- and accordingly income was computed u/s 44AD of the Act on the said turnover. In the assessment proceedings when

the assessee was confronted about the deposit of cash of Rs. 1,27,55,100/-. The assessee also said that they have accepted a cash loan of Rs. 30,57,000/- from relatives and friends. That submission of the assessee in the assessment record contradicts with the facts presented in the form of additional evidence stating that the turnover of the assessee is Rs. 1,72,89,892/- and accordingly profit @ 8% where prayed to be considered but the Id. CIT(A) hold that the assessee has not submitted any substantive reason other than to state that their accountant committed the mistake as this was considered as substantive error the submission of the assessee filing revised computation and trading account was not accepted by the Id. CIT(A).

The bench noted that the assessee regularly files the return of income. It is also not disputed that the nature of business carried out by her from 2006 i.e. year when her husband left heavenly abode. The Id. AR of the assessee heavily drawn our attention to the fact that the assessee is in fact suffering Neuro disease and she remain present in the open court and her medical condition was explained to defend the substantive error made on her part. She explained in person that she was misguided by the accountant and looking to her medical condition she has not understand the

seriousness of the work of the accountant in tax compliance. These facts were declared by her in an affidavit filed before the Id. CIT(A) but not considered. During the course of hearing when the question was raised as to why this substantive error and at that time she has said that there is a substantive error on the part of the accountant and she has declared all the material facts related to the explanation of the cash deposited into bank account by way of filing the revised document as stated herein above which is supported by an affidavit.

We find force in the arguments because the assessee is earning income from this only source of income and fighting for survival even though she has medical challenges for her health. We are aware that the assessee has not sincerely filed the return of income and has solely relied upon the accountant who has declared the turnover incorrectly. Though it was not correct state of affairs of the assessee and was wrongly declared by her accountant as confirmed by the assessee in her affidavit and supporting evidence. Even the assessee is dependent on the employee due to her neuron disease. Based on those facts we are of the considered view that the turnover of the assessee reflected in the bank account cannot be considered partly loan amount and

partly turnover. Therefore, considering that fact placed before us by the assessee in person as well as duly supported by an affidavit filed by her along with related corroborative evidence like ledger for purchase sales and CA certificate, we admit those additional evidences based on the contention raised by the assessee, though the contention of the assessee contradict with that of placed before the Id. AO but considering the peculiar aspect of the matter we admit those additional evidence. Thus, the Id. AO shall compute the total credit of cash deposited into the bank account of the assessee viz a viz with the turnover with the evidence. The turnover declared by the assessee at Rs. 1,72,89,892/- needs to be examined based on the corroborative evidence we direct the assessing officer to tax profit / income @ 8% of the total turnover under the provision of section 44AD of the act in the absence of any comparative chart, presently available by both the parties and law provide 8 % for retail trade. Therefore, considering the aspect of the matter, we direct the assessing officer to verify the correct turnover based on the bank statement and other supporting evidence and at the same time assessee is directed to supply the related ledger for purchase, sale and CA certificate to assist the

assessing officer. Accordingly, the appeal of the assessee is allowed.

In terms of these observations, Ground No. 1, 1.1 and 1.2 is allowed.

20. Ground no. 2 is general in nature and no specific arguments/contentions have been raised by the Id AR. Hence, the same is not adjudicated upon.

In the result, both appeals of the assessee are allowed.

Order pronounced in the open Court on 10/01/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10/01/2024

*Ganesh Kumar, PS

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

1. अपीलार्थी / The Appellant- Monika Chakarvarty, Kota.
2. प्रत्यर्थी / The Respondent-DCIT, Circle-2, Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA Nos. 412 & 413/JPR/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar