आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

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

आयकर अपील सं./ITA No. 656/JP/2023
निर्धारण वर्ष/Assessment Years : 2018-19

Income Tax Officer, Ward-1(2), Jaipur	बनाम Vs.	Mukesh Kumar Soni, 1524, Sintali Valo Ki Gali Chaura Rasta, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHUPS 6698 H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

CO No. 06/JP/2023
(Arising out of ITA No. 656/JP/2023)
निर्धारण वर्ष/Assessment Years : 2018-19

Mukesh Kumar Soni, 1524, Sintali Valo Ki Gali Chaura Rasta, Jaipur	बनाम Vs.	Income Tax Officer, Ward-1(2), Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AHUPS 6698 H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. S. B. Natani (FCA)
राजस्व की ओर से/ Revenue by : Sh. Arvind Kumar (CIT)

सुनवाई की तारीख/ Date of Hearing : 18/01/2024
उदघोषणा की तारीख/Date of Pronouncement: 04/03/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by revenue and cross objection filed by the assessee are arising out of the order of the National Faceless Appeal

Centre, Delhi dated 14/09/2023 [here in after (NFAC)/ ld. CIT(A)] for assessment year 2018-19 which in turn arise from the order dated 27.03.2023 passed under section 147 of the Income Tax Act, by DCIT/ACIT.

2. Before moving towards the facts of the case we would like to mention that the revenue has assailed the appeal in ITA No. 656/JP/2023 on the following grounds and whereas the assessee preferred cross objection and the grounds of cross objection are also reiterated here in below ;

Grounds of revenue's appeal:

"1. Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) (NFAC) has erred in deleting the addition of Rs. 65,37,47,750/- ignoring the fact that the assessee failed to substantiate the cash sales with corroborative evidence."

3. Succinctly, the fact as culled out from the records is that the assessee has filed his return of income for A.Y 2018-19 on 31.10.2018 declaring income of Rs. 10,37,770/-. The return was processed u/s 143(1) of the IT. Act, 1961 on 09.01.2019. The return was selected for scrutiny through CASS and order u/s 143(3) read with section 144B was passed on 23/09/2021 by accepting returned income. The assessee is an individual

having proprietorship firm in the name of M/s Narnoli Corporation, Madanlal & Sons Jewellers and Mukesh Kumar Soni with PAN AHUPS6698H.

3.1 Subsequently, specific information was flagged as per Risk Management Strategy formulated by the CBDT through insight portal under the head 'High Risk CRI/VRU cases. As per the information, the assessee was maintaining current account no. 001205034408 with Jaipur C-Scheme Branch, Rajasthan, Madanlal & Sons Jewellers / 153705000032, Mukesh Kumar Soni/153705000032 and Narnoli Bullion/001205003678. During the under consideration, total cash of Rs. 36,47,00,000/- (between April, 2017 to July 2017) was deposited in above mentioned bank account. On perusal of the cash book, it was noticed that amount in the bank deposited before the sales could happen. Transaction pattern shows that account credits mainly through cash deposit, transfer, RTGS and debited through transfer. Total credits between 01.04.2017 to 31.07.2017 amounted to Rs. 50.57 crores out of which Rs. 36.47 crores through cash deposit, Rs. 6.93 crores through transfer, Rs. 4.29 crores through RTGS transfer Rs. 1.09 crores through internet fund transfer, Rs. 4.29 crores through RTGS transfer Rs. 1.09 crores through internet fund transfer, Rs. 88 lacs through NEFT transfer and Rs. 86.73 lacs through clearing. Total debits during the same

period amounted to Rs. 50.51 crores out of which Rs. 50.51 crores through internet fund transfer, Rs. 35 lacs through RTGS transfer, Rs. 2.31 lacs through transfer and Rs. 4.25 lacs through cheque rejection. On going through return of income filed by the assessee for AY 2018-19, it is noticed that income from above transaction has not been included in ITR. The ld. AO noted that in the assessment proceeding u/s. 143(3) of the Act assessee failed to provide true and correct information / material and therefore, it is established that the same has not been offered for taxation and due tax has not been paid. Hence notice u/s. 148A(b) of the Act was issued on 13.03.2022 to the assessee after taking prior approval from the competent authority. The assessee was required to furnish reply on or before 20.03.2022. In response to notice, the assessee request to provide 3 more days. The request of the assessee was considered and provided proper time to furnish the explanation of cash deposit amounting to Rs. 36,47,00,000/- in the bank account having no. 001205034408 maintained with the ICICI Bank but even after 7 days the assessee could not furnish the written submission. Therefore, it was concluded that the assessee had nothing to explain. Accordingly, the case was re-opened for scrutiny assessment u/s. 147 of the Act with a reasonable belief that the income of Rs. 36,47,00,000/- escaped assessment in the hands of the assessee after

recording the reasons for reopening and after obtaining prior approval from the competent authority. Accordingly, notice u/s. 148 of the Act was issued on 29.03.2022 requesting the assessee to file return of income and furnish the same.

3.2 During the course of assessment proceedings, in response to notice u/s. 148 of the Act the assessee filed his ROI on 27.04.2022, declaring the total income at Rs. 10,37,770/-. Further the ld.AO noted that the assessee has deposited total cash of Rs. 65,37,47,750/- in the bank account mainted by the assessee. Vide notice dated 19.10.2022 the assessee was requested to explain the source of cash deposited into the bank account maintained with ICICI Bank. In response the assessee submitted that the cash deposited into the ICICI bank account amounting to Rs. 36,47,00,000/- is out of cash sales of Rs. 65,82,27,276/-. The ld. AO noted that the assessee failed furnish the documentary evidence in support of cash sales. Therefore, the assessee was requested the details of the cash / credit sales along with the name, PAN and email id of the third parties to whom the sales was made in cash. Since the assessee has not furnished that information a show cause notice was issued to the assessee on 16.03.2023 to furnish the reply dated 19.03.2023. In response the

assessee submitted a detailed reply stating that the show cause notice is merely suspicion, sales in cash are in accordance with the law and does not violates the provisions of the Income Tax law, copy of GST returns were placed on record, details of stock and purchase filed, details of last 5 years trading result showing the turnover. The assessee submitted that the cash deposit is duly supported with the purchase made and the source of cash deposit is thus not unaccounted money. The assessee also submitted that the peak of the cash deposit be calculated instead of proposing the whole cash deposit of Rs. 65,37,47,750/- made in the bank account of the assessee. All these contentions raised by the assessee were considered by the ld. AO but did not found acceptable. The ld. AO contended that inspite of various opportunity given to the assessee the assessee has sought the adjournments, during the period 01.04.2017 to 30.06.2017 GST was not applicable and in that period cash of Rs. 34,11,55,800/- was deposited. The ld. AO on perusal of the sales ledger of the assessee, observed that the sales in the cash book has been shown at Rs. 67,000, 85,000/-, 62,800/- and so on out of these some instance were given in the assessment order. Based on the various instance the ld. AO noted that all these sales made by the assessee are in the round figure of thousand mostly. The ld. AO noted that the Gold and silver rate changed on daily

basis or couple of day basis then how it is possible that the retail customers who made the payment is in cash got the gold or silver at round figure of thousand rupees. Therefore, the ld. AO taken a view that the assessee has claimed same out of sales, in order to accommodate the cash deposited into the bank account. So, the ld.AO noted that the assessee failed to substantiate the cash sales with corroborative evidences (name, pan, address and email id of persons to whom sales was made in the cash, original cop of sale bills etc.) the cash deposits of Rs. 34,11,55,800/- deposited for the period from 01.04.2017 to 30.06.2017 considered as unexplained. Similarly cash deposited between 01.07.2017 to 31.03.2018 for an amount of Rs. 31,25,91,950/- was also considered as unexplained.

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the ld. CIT(A). Apropos to the grounds so raised the relevant finding of the ld. CIT(A) is reiterated here in below:

> "4. Decision:-
>
> Grounds No.1,2,3,6 & 7: These ground are inter-related and pertain to arguments against proceedings initiated u/s 148 of the Act. The proceedings have ben initiated as per provisions of the Income Tax Act. The contention of the assessee that the order passed is bad in law and ab initio void is rejected.
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> The appellant has further contented that approval u/s 151 by the higher authority were given in mechanical manner. However, no documentary evidence to this effect has been brought on the records during the proceedings. Hence, this contention of the appellant is rejected.

The appellant has further challenged the information on the basis of which the re-opening has been initiated and the information recorded thereof during re-opening of the assessment.

The Hon'ble Supreme Court in Raymond Woollen Mills Ltd. Vs. Income Tax Officer [1999] 236 ITR 34 (SC) while deciding deciding the the i iss issue of reopening in favour of the revenue has held as under:-

"The Supreme Court had only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material was not a thing to be considered at this stage. The Supreme Court could not strike down the reopening of the case in the facts of the instant case. It would be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee might also prove that no new facts came to the knowledge of the ITO after completion of the assessment proceeding....."

Further, in Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers (P) Ltd. [2007] 161 Taxman 316 (SC), Hon'ble Supreme Court has averred that :

**16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal conclusion. evidence or conclusion ……..*

"18. So long as the ingredients of section 147 are fulfilled, the Assessing Officer is free to initiate proceeding under section 147 and failure to take steps under section 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings even when intimation under section 143(1) had been issued....."

Hence, the there was relevant and cogent material before the Ld. A.O before re-opening the assessement. The contention of the appellant in this regard is rejected.

In view of the facts and the circumstances as narrated above No. 1,2,3,6 & 7 are hereby dismissed.

Ground No.4:- The appellant has contented he has not been granted proper opportunity of being heard during the assessment proceedings. The claimed made by the appellant is not borne out from the assessment order wherein in the Ld. AO has clearly stated that adequate opportunities including video conference

were granted to the appellant. Further, the appellant has been granted and given opportunity to present all the facts during these proceedings. Hence, the contention of the appellant is rejected.

In view of the facts and circumstances the ground of appeal no.4 is dismissed.

Ground No.5,8,9 & 10: During the course of the re-assessment proceedings u/s 148 the Ld. AO has made an addition of Rs.65,37,47,750/- on account of cash deposits in various bank accounts of the appellant since, the appellant could not provide plausible explanation for depositing such huge sums in his bank accounts. The Ld. AO has stated that the assessee could not provide the names, PAN and e-mail ID of the third parties to whom cash sales were made. Further, all the payments received by the assessee as evidenced from cash book, vouchers etc. were in round figures just to adjust the cash hence generated.

During the course of appellate proceedings, the appellant has submitted his financial statements, purchase bills, sales vouchers, VAT/GST returns, cash book and bank statements. Cross verification on test check basis was also conducted to check the veracity and accuracy of the submitted financial documents.

The appellant has explained the source of cash as sales deposited into bank accounts as cash or through RTGS, produced sales bills/ledgers and admitted the same as revenue receipt. The audited books of accounts have been submitted alongwith complete quantitative details of sales and purchases alongwith the Income Tax Return. The appellant has also maintained a detailed stock register. The cash sales and receipts are supported by relevant bills produced before the Ld. AO and also provided during the appellate proceedings. Hence, it cannot be said that the figures of the sales and purchases are not supported by any quantitate details.

The Ld. AO as pointed discrepancies in some sales vouchers. However, from the ledgers of the sales submitted by the appellant it is seen that all the sales have duly recorded in the books of accounts. Further, all the sales whose quantum is above Rs.2 lacs, PAN has been quoted in the invoices as well as in ledger. It was the case of the Ld. AO to have made detailed probe into the sales if the same were in the realm of doubt. Thus, it can be stated that the appellant has substantiated from the documentary evidence that cash sales are duly recorded in the books of accounts. Further, the reduction/increase in the stock has not been doubted by the Ld. AO.

It is also observed from the assessment order that the Ld. AO has not rejected the books of accounts of the assessee as no contrary material was available with him to reject the books of the account of the assessee. The regular books of account were maintained in the normal course of business in which no flaw or deficiency was pointed out by the Ld. AO. It is important to mention that once the assessing officer accepts the books of accounts and the entries in the books of accounts are matched, there is not case for making the addition as unexplained.

Further, the book results shown by the assessee such as GP/NP ratio were in the same line as in the previous years and there was no such discrepancy thereof. It is also not a case where there has been a sudden spurt in the cash sales or cash deposits in the bank account of the appellant. From the balance sheet as well as P&L account of the appellant, it is evident that there was sufficient stock available with the appellant to make cash sales.

It is evident that provisions of section 68 are not applicable on the sales transactions recorded in books of accounts as sales are already part of the income which is already credited in the P&L account. Hence, there was no occassion for the AO to invoke the provision of section 68 of the Act.

The facts of the case as stated above are similar to the decision of Hon'ble High Court of Delhi in CIT vs. Kailash Jewellery House (ITA No.613/2010). In the facts of above case, a cash of Rs. 24,58,400/- was deposited in bank account by the assessee. The Assessing Officer made the addition on the ground that nexus of such deposit was not establish with any source of income. The assessee claimed that it was duly recorded in the books of account of cash sales and was considered in the Profit and Loss Account. The Assessing Officer had verified the stock and cash position as per books and had accepted the same. Complete books of account and cash book was submitted to the Assessing Officer and no discrepancy was pointed out. On this basis, CIT(A) deleted the addition. Hon'ble Tribunal also observed that it is not in dispute that sum of Rs. 24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return. Hon'ble High Court held that cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same.

In view of the above, the addition made by the Ld. AO to the tune of Rs.65,37,47,750/- is hereby deleted.

The grounds no.5,8,9 & 10 are hereby allowed."

5. Feeling dissatisfied from the findings so recorded by the ld. CIT(A) the revenue has preferred the present appeal on the grounds as set out in the para 2 above and the even the assessee has filed a cross objection on the grounds as reiterated in para 2 above. The ld. DR representing the revenue has relied upon the various in detailed finding recorded in the order of the assessment and submitted that the assessee grossly failed to justify the

source of the cash deposited into the bank account and therefore, the provision of section 148 of the Act has rightly been invoked looking to the facts discussed the ld. AO in his assessment order. The assessee was given various opportunity of being heard but the has not submitted the correct details as requested by the ld. AO. The bills submitted by the assessee are not having the complete name to whom the gold were sold and the bills were issued having round figure and the rate of the gold cannot be in the round figure. As regards the contention of the assessee to compute the peak of the cash deposited the said contention was rejected by the ld. AO at para 3.3.1. Considering the finding of the ld. CIT(A) the cross objection filed by the assessee is not maintainable. The ld. AO has given sufficient evidence from the books of account of the assessee and has on various reasons disputed the cash sales of the assessee and has rightly been taxed the cash deposit as unexplained.

6. Per contra, the ld. AR of the assessee submitted that the assessee has maintained regular books of account wherein the cash book, bank books, ledger, stock register etc. were placed on record and the same are also audited. No defects has been observed by the ld. AO in the books of account which are audited presented at the time of the assessment. The ld. AO has simply objected that the figure of the sales are in round figure and

therefore, has raised suspicion about the correctness of the sales made by the assessee. The ld. CIT(A) has considered the fact that the assessee has purchased the goods and the based that purchase of goods has considered that the sales is duly supported by the purchases made by the assessee. Even the ld. AO has not disputed the purchase made by the assessee. The assessee has filed GST return and the same were also placed on record. The assessee has very well declared the sales in the GST return filed and the same has not been disputed. The ld. AR of the assessee also submitted that the assessment is already completed u/s. 143(3) of the Act and the assessment is re-opened on the same information and no new material placed on record in support of the issue notice u/s. 148 of the Act. The assessee has supported the sales with all the details including the PAN number but where the sales is below Rs. 2 lac the same is not obtained as the same is not legally required to do, and to support his contention he has relied upon the decision of the Rajasthan High Court as mentioned in his written submissions. All the purchase made by the assessee are from the registered dealer and the same is not disputed. Even before us the ld. AR of the assessee has filed all the details containing full details related to the source of cash containing as much 1920 pages, wherein the assessee has submitted cash book, 21 to 777 pages, copy of bank statement page 778 to

1152, copy of purchase register pages 1153 to 1166, copy of sales register pages 1167 to 1468, copy of VAT returns for the period 01.04.2017 to 30.06.17 page 1469 to 1482, copy of GST returns for the period 01.07.2017 to 31.03.18 pages 1483 to 1646, copy of stock register pages 1647 to 1694, copy of some of the purchase bills pages 1695 to 1740 & copy of some of the hand written invoices pages 1740 to 1835.

To support the various contention so argued the ld. AR of the assessee also filed a detailed written submission in support of the order of the ld. CIT(A) and in support of the cross objection filed by the assessee. The content of the written submission is reiterated herein below :

> "Facts of the case
>
> (A) Returned income accepted in original assessment
> The assessee in an individual and a small time trader in bullion. It is submitted that in this case original return of income was filed on 31.10.2018 declaring income of Rs 10,37,770/-. A copy of return of income is available on paper book page No…1. The return was selected for complete scrutiny on the ground of verification of transactions as is mentioned in the assessment order. The original assessment was completed under section 143(3) of the income tax Act 1961 on 23.09.2021 accepting the returned income. A copy of the assessment order passed on 23.09.2021 is available on paper book page No…2 to 4. It is submitted that during the course of original assessment proceedings the learned AO examined the Books of account including cash book, bank account, stock register and transaction of purchase and sales, and it is after examining the case thoroughly that assessment was completed on returned income.
>
> (B) Proceeding under section 148A/148
> In this case the learned AO issued notice under section 148 after issuing notice under section 148A(b) and passing order under section 148 A(d). Notice under section 148 has been issued on 29.03.2022. Copies of notice under section 148A(b), and order under section 148A(d) are available on paper book page No.

5 to 9 and copy of notice issued under section 148 is available on paper book page No. 10 . The only ground on which notice under section 148A(d) was issued was that in the view of the leaned AO there were deposits in the bank account of the assessee in cash of Rs, 36,47,00,000/- later on adopted Rs. 65,37,47,750/- and such deposits were before the sales could happen. In other words the cash deposits in the bank were prior to the sales made in cash. However the learned AO completed the assessment not on this ground on the basis of which notice under section 148A(b) was issued and order under section 148A(d) was passed but on the ground that the cash sales were not genuine. The additions of Rs, 65,37,47,750/- was made on this ground alone that cash sales were not genuine and were in round figure and that too without providing any opportunity to the assessee. During the course of appellant proceedings the assessee assailed the order of the learned AO on the following three main grounds namely

(a) There were no cash deposits in the bank account prior to cash sales. The learned AO did not make any additions on this ground on which proceedings under section 148A(b) were initiated as such the proceedings under section 148 deserve to be dropped.
(b) The learned AO made additions of Rs. 65,,37,47,750/- on the ground that the cash sales were not genuine and were in round figure without providing any opportunity to the assessee. Therefore the assessment proceeding deserves to be quashed having being completed in violation of principles of natural justice.
(c) The cash sales made by the assessee were genuine
It is submitted that whereas the learned CIT (A) has not given any decision on (a) that there were no cash deposits in the bank account prior to cash sales. The learned AO did not make -any additions on the ground on which proceedings under section 148A(b) were initiated as such the proceedings under section 148 deserve to be dropped. The learned CIT (A) has also not given any decision on (b) above that the assessment deserved to be quashed having being completed in violation of Principles of Natural Justice. The assessee was not provided any opportunity before treating the cash sales as not genuine.

However the learned CIT Appeal has deleted the entire additions accepting the plea of the asseseee that the sales effected by the assessee were genuine. In the cross objections the plea of the assessee is that the learned CIT (A) should have quashed the proceedings initiated under section 148 as the grounds on which same were initiated did not survive. Secondly the assessee vehemently pleaded that the assessment proceeding also required to be quashed as the addition was made treating the cash sales as bogus without providing any opportunity to the assessee. The order of the learned CIT(A) is silent on these grounds. The Hon'ble ITAT is requested to deicide the issues by quashing the proceeding initiated under section 148 as well as the assessment proceeding. The facts in details are discussed hereunder by taking the Grounds of cross objections.

Cross objection Ground No. 1

In the facts and circumstances of the case the learned CIT Appeals (NFAC) erred in not quashing the proceedings under section 147/148 as the grounds on which notice under section 148(A)(b) was issued and order under section 148A(d) was passed and notice under section 148 was issued did not survive at the time of completion of assessment.

It is submitted that in this case additions of Rs, 65,37,47,750/- have not been made on the same ground for which notice under section 148A(b) dated 13.03.2022 was given and for which order under section 148A(b) was passed on 28.03.2022. The additions have been made on a totally different ground, for which no notice under section 148A(b) was ever issued/given. In other words the ground for which notice under section 148A(b) was given did not survive at the time of finalization of the assessment proceedings. Hence proceedings required to be dropped and no additions could have been made. The ground taken in the notice under section 148A(b) dated 13.03.2022 is as under

"In your case information regarding unexplained cash credit in bank account of Rs. 36,47,000/- is available with the department for FY 2017-18 relevant to A Y 2018-2019. Information received from the DDIT/ADIT(inv,)-1, Jaipur and details available on insight portal, as per the available information, it found that you have maintained a bank account in ICICI Bank having account Number 00120034408, During the year under consideration, total unexplained cash of Rs, 36,47,00,000/- was found to have been credited in above mentioned bank account. The cash deposits were matched with cash/sales books. on perusal of the cash book it was noticed that amount in the bank had been deposited before the sales could happen. Therefore the amount deposited in bank account seems bogus sales and unaccounted income of the assessee."

Whereas assessment has been completed and additions have been made on the following ground

"It is clearly evident from the above that the sale claimed are in the round figure of thousand mostly. It is clarified that the rate of the Gold and silver changed on daily basis or couple of day basis, then how it is possible that the retails customers who made the payment in cash got the gold or silver of round figure of thousand rupees. In this regard it is crystal clear that the assessee has claimed the same out of sale, in order to accommodate the cash deposit in bank account." (last para at Page No. 25 of the impugned order dated 27.03.2023)

"3.3.8. As the assessee failed to substantiate the cash sales with corroborative evidences (i.e. name, pan, address and email of persons to whom sale was made in cash, original copy of Sale Bill etc.) the cash deposits of Rs.34,11,55,800/- made in the bank accounts during the period from 01/04/2017 to 30/06/2017 has remained unexplained. Therefore, it is concluded that the

assessee has deposited his unaccounted money Rs.34,11,55,800/-into his bank account(s) in the guise of cash sales."

The variation between the ground taken for reopening the assessment and issuing notice under section 148A(b) and in the completion of the assessment invalidates the entire assessment order. A copy of the notice issued under section 148A(b) dated 13.03.2022 and the order passed under section 148A(d) dated 28.03.2022 are available on paper book page No. cited supra. In the notice the learned AO had stated that department was in possession of information in respect of the assessee that "amount of Rs.36,47,00,000/- (later on adopted at Rs. 64,37,47,750/-. in the bank had been deposited before the sales could happen." Further while passing the order under section 148A(d) the same thing has been reiterated. It was the case of the learned AO that the deposits in bank were made by the assessee before the sales could happen. It is the sole ground on which the learned AO has issued notice under section 148A(b) and also passed the order u/s 148A(d). The assessee submitted reply under letter dated 22.03.2022 which has not been taken on record by the learned AO. Copy of this letter is also available on pager book page No. 17 to 21. During the course of assessment proceedings when asked by the assessee to furnish the details of such cash deposit in bank which had been made prior to the cash sales, the learned AO miserably failed and could not furnish even a single instance of a cash deposit in bank without there been supporting cash sales. It is submitted that in such circumstances when the objection raised by the learned AO is fully met by the assessee with documentary evidence(s) then the assessment proceeding should have been dropped in the normal course but perhaps the learned AO made it a matter of prestige to make additions and therefore took shifting grounds and made the addition, and such grounds were not mentioned in the show cause notice under section 148A(b) nor discussed in the order passed under section 148A(d). Thus the additions have been made on a ground for which notice under section 148 was not issued. This invalidates the assessment order. It is settled position of law that assessment under section 148 cannot be completed making addition on a ground other than the ground on which notice under section 148 was issued if additions are not made on the ground on which notice under section 148 was issued. IT is submitted that the submissions made by the assessee on this ground during the course of appellate proceedings have been totally overlooked by the learned CIT (A). Although in the appellate order the learned CIT (A) has quoted the entire submission of the assessee but no decision have been given on this issue. The learned CIT (A) has quoted this submission of the assessee on page 5 to 11 and again in Ground No. 3 on page No. 48 to 55 of Appellate Order. The following case laws were quoted in support of the submission made above.

a) PCIT v. Lark Chemicals (P) Ltd (2018) 99 taxmann.com 311/259 Taxman 366 (Bom) (HC), 331 ITR 236: SLP of revenue is dismissed, PCIT v. Lark Chemicals (P) Ltd (2018) 259 Taxman 265 (SC)

The court has held that in the reassessment under section 147 the learned AO has to necessarily assess or reassess the income which escape assessment and on the basis of which reasonable belief was formed to reopen the assessment. It is only assessing such income that it would be open to the assessing officer to assess any other income which comes to his notice during the reassessment proceedings. In the absence of reassessing the income which was the basis for issuing the notice under section 148 not other income could be assess.

b) Ranbaxy lab Ltd Vs. CIT (2011), 57 DTR (Del) 281, 336 ITR 136

Although the assessing officer may assess or reassess income escaped from assessment and also any other income chargeable to tax which has escaped assessment and which comes to his notice in the course of proceedings but if the income the escapement of which was basis of the formation of the ground for issuing notice under section 148 is not assessed or reassessed, it would not be open to the assessing officer to independently assess only that income which comes to his notice subsequently in the course of the assessment proceedings. If he intends to do so a fresh notice under section 148 would be necessary.

c) Martech peripherals p Limited Vs DCIT (2017) 394 ITR 733 (Mad)

If notice for reopening of assessment was issued on one aspect and in course of reassessment proceedings another aspect was discovered, reassessment order would be valid only if aspect which led to reopening of assessment continues to form part of reassessed income.

d) DCIT Vs Takshila education society (Patna) 431 DTR 332

Where there is not addition on the issues mentioned in reasons to believe AO is not permitted to bring to tax other issues which did not form part of reasons recorded but came to his notice subsequently in the course of reassessment proceedings.

e) ACIT Vs Major Deepak Mehta 65 DTR 237 Chattisgarh H C, (2012) 344 ITR 641

While making reassessment under section 147 the assessing officer though empowered to assess or reassess any other income which has escaped assessment and which comes to his notice during the course of proceedings. However, if after issuing a notice u/s 148 he accepts the contention of the assessee and holds that the income for which he had initially formed a reason to believe that income has escaped assessment has as a matter of fact not escaped assessment, it is not open to him to independently assess some other income. And if he intends to do so a fresh notice under section 148 would be necessary.

f) DIT Vs Black & Veatch Prichard (2019), 107 taxmann.com 289 (Bom)

Where no addition was made on the basis of reasons recorded for reopening of assessment, it was not open for the assessing officer to bring to tax some other income in course of reassessment proceedings.

g) CIT Vs Mohmed Junded Dadari (2013) 214 Taxman 38 (Guj)

Assessing officer cannot assess other escaped income if original reason for which assessment is reopened fails. For assuming jurisdiction to frame an assessment under section 147 what is essential is valid reopening. If the very foundation of the reopening is knocked out, any further proceeding in respect to such assessment naturally would not survive.

h) CIT Vs. living Media India Ltd. (2013) 359 ITR 106 (Del)

In the absence of any addition is made based on reasons recorded prior to the notice under section 148, no addition could have been made by the Assessing Officer on the basis of reasons recorded after the issue of notice under section 148.

i) CIT Vs. Atlas Cycle Industries reported in 180 ITR-319 (P&H)

Various aspects of language of Section 147 were examined in detail, and it was held as under:-

"If considered on that principle, leaving apart for the moment, the aspect of interpretation of the word "and" as "or", the existence of the word "also" is of a great significance, being of conjunctive nature, and leaves no manner of doubt in our opinion, that it is only when, in proceedings under Section 147 the Assessing Officer, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under Section 147.

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under Section 147, the Assessing Officer were to come to conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under Section 147."

j) CIT Vs Ram singh (2008) 217 CTR 345 (Raj High court)

In our view, this question cannot be said to be any more res-integra, in view of the judgment of this Court dt. 20.5.2008, rendered in Income Tax Appeal No. 65/2006, C.I.T., Bikaner Vs. Shri Ram Singh, wherein the judgment of Punjab and Haryana High Court, in Atlas Cycle's case (CIT Vs. Atlas Cycle Industries reported in 180 ITR-319) was considered, and followed

In that view of the matter, following the aforesaid judgment in Ram Singh's case, the questions are answered against the Revenue, and in favour of the assessee

Also followed by the Hon'ble Rajasthan High court in the case of

k) CIT Vs Devendra Gupta (2008) 220 CTR 629 (Raj High court)

l) Manoj Surgical Ind Vs. ACIT (2010) 42 DTR(Ind) (trib) 81

m) ITO Vs B Investment and Trading (2011) 59 DTR (mum Trib) 345.

n) CIT v Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom) (HC).(AY.1999-2000)

The effect of s. 147 as it now stands after the amendment of 2009 can be summarised as follows. (i) The AO must have reasons to believe that any income chargeable to tax has escaped assessment for any assessment year; (ii) upon the formation of that belief and before he proceeds to make an assessment, reassessment or re-computation, the AO has to serve on the assessee a notice under sub-s (1) of s 148; (iii) The AO may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section, and (iv) Though the notice under section 148(2) does not include a particular issue with respect to which income has escaped assessment, he may nonetheless, assess or reassess the income in respect of any issue which has escaped assessment and which come to his notice subsequently in the course of the proceedings under the section

o) Oriental Bank of Commerce v Ad.CIT [2014] 90 CCH 27 Del HC

p) Mumtaz Haji Mohmad Memom v ITO Special Civil Application No.21030 of 2017 – Guj HC

The Assessing Officer may be correct in pointing out that when the sale conside ration as per the sale deed is Rs. 50 lakhs but the registering authority has valued the property on the date of sale at Rs. 1,18,95,000/- for stamp duty calculation, section 50C of the Act would Apply, of Cource, subject to the riders contained therein. However, this is not the cited reason for reopening the assessment. The reason cited are that the assessee filed no return and that 1/3rd share of the assessee from the actual sale consideration of Rs.1,18,95,000/ therefore, was not brought to tax. These reasons are interconnected and interwoven. In fact, even if these reasons are seen as separate and severable grounds, both being factually incorrect, Revenue simply cannot hope to salvage the

impugned notice. Through the affidavit in reply a faint attempt has been made to entirely shift the center of the reasons to a completely new theory Viz. the possible applicability of section 50C of the Act. The reasons recorded nowhere mentioned this possibility. Reasons recorded, in fact, ignored the fact that the sale consideration as per the sale deed was Rs. 50 lakhs and that the assessee had by filing the return offered his share of such proceeds by way of capital gain.

In the result, impugned notice is quashed. Petition is disposed of.

In view of the aforesaid submissions the Hon'ble ITAT is requested to quashed the proceedings initiated under section 148/148A.

Cross objection Ground No. 2

In the facts and circumstances of the case the learned CIT Appeals erred in not quashing the assessment order which has been passed in gross violation of the principles of natural justice/equity and justice in as much as addition of Rs,65,37,47,750/- were made on the issue for which no opportunity was provided to the assessee.

The learned AO had violated the principles of natural justice and therefore the assessment requires to be quashed. The principles of equity and justice have been violated as the assesseee was not granted any opportunity to furnish his defence of the sales being in round figure and the cash sales not having details of purchasers on the basis of which additions have been made. The learned AO has made additions of substantial amount of Rs. 65,37,47,750/- on the ground that cash sales being in round figure and without having particulars of purchasers were doubtful. Before making such substantial additions the learned AO was under an obligation to seek reply of the assessee on these grounds that he was making additions. This was not done. This has violated the principles of natural justice. In the interest of equity and justice no additions could have been made on a ground which was not disclosed to the asseseee. The entire basis of making the additions goes contrary to the position of law. It is established position of law that the basis of addition on which additions are sought to be made requires to disclosed to the assessee for his/here comments. It is submitted that the submissions made by the assessee on this ground during the course of Appellate proceedings have been totally overlooked by the learned CIT (A). Although in the appellate order the learned CIT (A) has quoted the entire submission of the assessee made in this regard but no decision have been given on this issue. The learned CIT (A) has quoted this submission of the assessee in Ground No. 5, 6 and 7 on page No. 62 to 66 of Appellate Order. The following case laws were quoted in support. The ratio of the decisions is fully applicable to the facts of the case.

1. Shreeram Durga Prasad (RB) V Settlement commission (1989) 176 ITR 169 (SC)

The order made in violation of principles of ntural justice is void and a nullity. Principles of natural justice has found its application mainly on the requirement of opportunity of hearing, sudi alteram parterm. The Principle is so fundamental that it is not to be construed as a mere formality. Where the materials relied upon are not enclosed in a show cause notice, there is no sufficient opportunity The right is so fundamental that the failure to observe the principles of natural justice cannot be made good in appeal. Lac of opportunity before the assessing officer cannot be rectified by the appellate authority by giving such opportunity.

2. Tinbox Company Vs CIT (2001) 249 ITR 216 (SC)
The principle of natural justice is so fundamental that failure to observe the principle of natural justice cannot be made good in appeal. Lack of opportunity before the A O cannot be rectified by the appellate authority by giving such opportunity.

3. CCE Vs ITC Ltd (1995) 2 SCC 38 (SC)
Before an assessee is made liable for higher or enhanced tax he must to told on what ground he is sought to be made liable for additional tax and must be given an opportunity of meeting those grounds. This is the minimum requirement of the principles of natural justice.

4. C.B. Gautam v. Union of India and others (1993) 1 SCC78 (SC)
Hon'ble Supreme Court in this case also invoked the same principle and held that even though it was not statutorily required, yet the authority was liable to give notice to the affected parties while purchasing their properties under Section 269-UD of the Income Tax Act, namely, the compulsory purchase of the property. It was observed that though the time frame within which an order for compulsory purchase has to be made is fairly tight one but urgency is not such that it would preclude a reasonable opportunity of being heard. A presumption of an attempt to evade tax may be raised in case of significant under- valuation of the property but it would be rebuttable presumption, which necessarily implies that a party must have an opportunity to show cause and rebut the presumption.

5. Smt. Ritu Devi v. CIT [2004] 141 Taxman 559 (Mad.),

time of just one day was given to the assessee to furnish reply. This was held as denial of opportunity. Denial of opportunity may make an order void. Limitation of time cannot stand in the way of not giving adequate opportunity. The principle is inviolable

6. S L Kapoor Vs Jagmohan AIR 1981 SC 136, 145
The requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demand of natural justice are not met even if the very proceeded against as furnished the information on which the action is based, if it is furnished in a casual way. The person proceeded against must know that he being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met

It is open to an income tax authority to collect material to facilitate assessments even by private enquiry, But if he desired to use the materials so collected, the assessee must be informed of the materials collected and must be given an adequate opportunity of explaining it.

7. Maneka Gandhi Vs Union of India AIR 1978 SC 597
A quasi Judicial order made in violation of principles of natural justice is null and void

8. A K Kraipak Vs. Union of India AIR 1970 SC 150
The aim of natural justice is to secure justice and to prevent miscarriage of justice.

9. C Vasanntlal & Co. Vs CIT (1962) 45 ITR 206
10. Dhakeshwari Cotton Mills Ltd Vs CIT (1954) 26 ITR 775 (SC)
The powers given to the Income-tax Officer under s. 23(3) of the Indian Income-tax Act, 1922, however wide, do not
entitle him to base the assessment on pure guess without reference to any evidence or material.An assessment under :
9.23(3)of the Act cannot be made only on bare suspicion. An
ssessment so made without disclosing to the assessee the information supplied by the departmental representative and
without giving any opportunity to the assessee to rebut the
the information so supplied and declining to take
into consideration all materials which the assesses wanted to produce
in support of his case constitutes a violation of the fundamental rules of justice and calls for the powers under Art. 136 of the Constitution.

11. Swedeshi cotton Mills Limited Vs. Union of India 51 Comp Das 210 (SC)
12. Sutherland Global Services (P) Ltd Vs union of India (Mad) (2016) 143 DTR 0179
Whenever the provisions of an opportunity is actually turned into an empty formality by the officer withholding necessary information or by the officer refusing to consider certain things on the specious plea that there was lack of time or resources, the opportunity provided by the show cause notice become meaningless opportunities

13. Vodafone India Limited Vs Union of India & Other (Bom) (2014) 97 DTR 0441
No order can be sustained passed in breach of principle of natural justice

14. An opportunity of being heard is the most important component of the principle of Natural Justice. It implies a proper opportunity of hearing. The Courts have consistently held that where a Show Cause Notice has been issued requiring the assessee to reply within a short period (say 1-3 days), such a notice is against the principles of natural justice, equity & good conscience. Undue haste is against the principle of fairness and such a conduct of the assessing officer deserves to be deprecated. Adequate & proper opportunity of

hearing should be provided to ensure fair hearing and fair deal to the assessee. Ramrshwaram Paper Mills (P) Ltd. v. State of U.P. & others, (2009) 11VLJ 33 (All); Padam Traders & others v. State of U.P. & others, (2009) 47 STJ 392 (All).

15. Kellog India P Limited Vs Union of India (2006) 193 ELT 385

The right to fair hearing required that an Individual shall not be penalized by a decision effecting his rights or legitimate expections; unless he has been given prior notice of the case against him and a fair opportunity to answer the same and to present his own view point.

16. Nedunchezhian (Dr K) Vs DCIT (2005) 274 ITR 37 (Mad)

Opportunity should be a reasonable one , reasonable time should be given to the assessee to furnish his reply.

17. Bhagat Dharam chand Prem Sagar Cheritable Trust (2005) 274 ITR 443 (P&H)

An Opportunity which is earlier granted cannot justify lack of reasonable opportunity during last occasion.

18. Dwijendra Kumar Bhattacharjee Vs Superintendent of Taxes (1990) 78 STC 593 (Gau)

Opportunity must be real and effective : The opportunity given to the assessee to be heard must be real and reasonable. If an assessee, who is asked to furnish certain particular or submit explanations within a specified time, prays for further time stating his difficulties and/or reasons, his prayer should be considered judiciously. Sometime, proceedings for assessment for a number of years are taken up together and the asessee asked to appear and produce evidence in support of his returns,. It might not be possible for the assessee ot submit such evidence instantaneously or at short notice, and may pray for further time to do so. Such prayers cannot be summarily rejected without considering the ground given by the assessee merely because the assessing officer is hear –pressed for time and has to complete the assessment by a specified date or for administrative expediency. Such a rejection would amount to denial of reasonable opportunity of hearing to the assessee and vitiate the assessment.

19. Jawala Prasad vs. State AIR 1977 (Raj) 187 etc.

all the Courts have held that a decision arrived at without following natural justice is void (Suresh vs. State AIR 1970 MP 154);

20. CIT v. Panna Devi Saraogi [1970] 78 ITR 728 (Cal.).

The opportunity of being heard should be real, reasonable and effective. The same should not be for name sake. It should not be a paper opportunity. This was so held in

21. TCN Menon Vs ITO (1974) 96 ITR 148 (ker.)

Opportunity must be given to assessee: These assessee will have to be given an opportunity of being heard and a right to question the correctness or the

relevancy of materials on the basis of which the ITO proposes to make the judgment assessment.

22. Gargi Din jwala Prasad Vs CIT (1974) 96 ITR 97 (All.)
Principles of natural justice are applicable – The principles of natural justice are applicable to assessment proceedings. The elementary principle of natural justice is that the assessee should have knowledge of material which is going to be used against him so that he may be able to meet it -

23. M/s Munnalal murlidhar Vs CIT 79 ITR 540 (All)

Assessment – Production of Books etc. – Under section 23(2) of 1922 Act assessing officer is bound to give reasonable time and opportunity to produce evidence- Failure on the part of the officer to do so would vitiate entire proceedings of assessment

In view of the aforesaid submissions the Hon'ble ITAT is requested to quashed the assessment proceedings under section 148.

Cross objection Ground No. 3

In the facts and circumstances of the case the learned CIT Appeals erred in not quashing the assessment order on the ground that the Notice issued under section 148 on 29.03.2022 is not in accordance with law (section 144B (5) and section 151 A of the income Tax Act 1961) {Notice under section 148 issued by Jurisdictional AO)}

It is submitted that this legal ground has been taken for first time before the Hon'ble ITAT. The ground arises from the order of the learned AO. No additional evidence is required for raising the ground. It is settled position of law that legal issues can be taken in appeal at any stage. The following case laws are quoted in support

(i) M/s Manju Shree Plantation Ltd. Vs. CIT, 144 ITR (St.) 50 (SC)

(ii) CIT Vs. Nelliapan (1967) 66 ITR 722 (Supreme Court)

(iii) National Thermal Power Co. Ltd. Vs. CIT 229 ITR 383 (Supreme Court)

(iv) CIT Vs. Delhi Sanitary Stores 177 ITR 282 (Raj)

(v) Jora Singh Vs. ITO (2010) 42 DTR 409 (Lucknow Bench)

In view of the above facts and position of law the Hon'ble ITAT is requestesd to admit the Additional Ground of Appeal and decision may be sympathetically be taken in favour of the assessee.

It is submitted that in this case notice under section 148 has been issued on 29.03.2022 by the jurisdictional Assessing Officer ITO ward 1(2) Jaipur. It is

submitted that the notice issued under section 148 on 29.03.2022 by the jurisdictional Assessing Officer is in contravention of provisions of section 144B(5) and section 151A of the Income Tax Act 1961, and also subsequent Notification issued by the Central Board of Direct Taxes No. S.O 1466 (E) dated 29.03.2022. For ready reference provisions of section 144B(5), section 151A and CBDT Notification dated 29.03.222 are Quoted/scanned below-

(i) Section 144B(5)

"144B. [6][(1) Notwithstanding anything to the contrary contained in any other provision of this Act, the assessment, reassessment or recomputation under sub-section (3) of section 143 or under section 144 or under section 147, as the case may be, with respect to the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:—

(i) the National Faceless Assessment Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit through an automated allocation system;

(ii) the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section;

(iii) a notice shall be served on the assessee, through the National Faceless Assessment Centre, under sub-section (2) of section 143 or under sub-section (1) of section 142 and the assessee may file his response to such notice within the date specified therein, to the National Faceless Assessment Centre which shall forward the same to the assessment unit;

(iv) where a case is assigned to the assessment unit, under clause (i), it may make a request through the National Faceless Assessment Centre for—

(a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;

(b) conducting of enquiry or verification by verification unit;

(c) seeking technical assistance in respect of determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter by referring to the technical unit;

(v) where a request under sub-clause (a) of clause (iv) has been initiated by the assessment unit, the National Faceless Assessment Centre shall serve appropriate notice or requisition on the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit and the assessee or any other person, as the case may be, shall file his response to such notice within the time specified therein or such time as may be extended on the basis of an application in this regard, to the National Faceless Assessment Centre which shall forward the reply to the assessment unit;

(vi) where a request,—

(a) for conducting of enquiry or verification by the verification unit has been made by the assessment unit under sub-clause (b) of clause (iv), the request shall be assigned by the National Faceless Assessment Centre to a verification unit through an automated allocation system; or

(b) for reference to the technical unit has been made by the assessment unit under sub-clause (c) of clause (iv), the request shall be assigned by the National Faceless Assessment Centre to a technical unit through an automated allocation system;

(vii) the National Faceless Assessment Centre shall send the report received from the verification unit or the technical unit, as the case may be, based on the request referred to in clause (vi) to the concerned assessment unit;

(viii) where the assessee fails to comply with the notice served under clause (v) or notice issued under sub-section (1) of section 142 or the terms of notice issued under sub-section (2) of section 143, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;

(ix) the assessment unit shall serve upon such assessee, as referred to in clause (viii), a notice, through the National Faceless Assessment Centre, under section 144, giving him an opportunity to show-cause on a date and time as specified in such notice as to why the assessment in his case should not be completed to the best of its judgment;

(x) the assessee shall, within the time specified in the notice referred to in clause (ix) or such time as may be extended on the basis of an application in this regard, file his response to the National Faceless Assessment Centre which shall forward the same to the assessment unit;

(xi) where the assessee fails to file response to the notice served under clause (ix) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;

(xii) the assessment unit shall, after taking into account all the relevant material available on the record, prepare, in writing,—

(a) an income or loss determination proposal, where no variation prejudicial to assessee is proposed and send a copy of such income or loss determination proposal to the National Faceless Assessment Centre; or

(b) in any other case, a show cause notice stating the variations prejudicial to the interest of assessee proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made and serve such show cause notice, on the assessee, through the National Faceless Assessment Centre;

(xiii) the assessee shall file his reply to the show cause notice served under sub-clause (b) of clause (xii) on a date and time as specified therein or such time as may be extended on the basis of an application made in this regard, to the National Faceless Assessment Centre, which shall forward the reply to the assessment unit;

(xiv) where the assessee fails to file response to the notice served under sub-clause (b) of clause (xii) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;

(xv) the assessment unit shall, after considering the response received under clause (xiii) or after receipt of intimation under clause (xiv), as the case may be, and taking into account all relevant material available on record, prepare an income or loss determination proposal and send the same to the National Faceless Assessment Centre;

(xvi) upon receipt of the income or loss determination proposal, as referred to in sub-clause (a) of clause (xii) or clause (xv), as the case may be, the National Faceless Assessment Centre may, on the basis of guidelines issued by the Board,—

(a) convey to the assessment unit to prepare draft order in accordance with the income or loss determination proposal, which shall thereafter prepare a draft order; or

(b) assign the income or loss determination proposal to a review unit through an automated allocation system, for conducting review of such proposal;

(xvii) the review unit shall conduct review of the income or loss determination proposal assigned to it by the National Faceless Assessment Centre, under sub-clause (b) of clause (xvi), whereupon it shall prepare a review report and send the same to the National Faceless Assessment Centre;

(xviii) the National Faceless Assessment Centre shall, upon receiving the review report under clause (xvii), forward the same to the assessment unit which had proposed the income or loss determination proposal;

(xix) the assessment unit shall, after considering such review report, accept or reject some or all of the modifications proposed therein and after recording reasons in case of rejection of such modifications, prepare a draft order;

(xx) the assessment unit shall send such draft order prepared under sub-clause (a) of clause (xvi) or under clause (xix) to the National Faceless Assessment Centre;

(xxi) in case of an eligible assessee, where there is a proposal to make any variation which is prejudicial to the interest of such assessee, as mentioned in sub-section (1) under section 144C, the National Faceless Assessment Centre shall serve the draft order referred to in clause (xx) on the assessee;

(xxii) in any case other than that referred to in clause (xxi), the National Faceless Assessment Centre shall convey to the assessment unit to pass the final assessment order in accordance with such draft order, which shall thereafter pass the final assessment order and initiate penalty proceedings, if any, and send it to the National Faceless Assessment Centre;

(xxiii) upon receiving the final assessment order as per clause (xxii), the National Faceless Assessment Centre shall serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the

demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxiv) where a draft order is served on the assessee as referred to in clause (xxi), such assessee shall,—

(a) file his acceptance of the variations proposed in such draft order to the National Faceless Assessment Centre; or

(b) file his objections, if any, to such variations, with—

(I) the Dispute Resolution Panel, and

(II) the National Faceless Assessment Centre,

within the period specified in sub-section (2) of section 144C;

(xxv) the National Faceless Assessment Centre shall,—

(a) upon receipt of acceptance from the eligible assessee; or

(b) if no objections are received from the eligible assessee, within the period specified in sub-section (2) of section 144C,

intimate the assessment unit to complete the assessment on the basis of the draft order;

(xxvi) the assessment unit shall, upon receipt of intimation under clause (xxv), pass the assessment order, in accordance with the relevant draft order, within the time allowed under sub-section (4) of section 144C and initiate penalty proceedings, if any, and send the order to the National Faceless Assessment Centre;

(xxvii) where the eligible assessee files objections with the Dispute Resolution Panel, under sub-clause (b) of clause (xxiv), the National Faceless Assessment Centre shall send such intimation along with a copy of objections filed to the assessment unit;

(xxviii) the National Faceless Assessment Centre shall, in a case referred to in clause (xxvii), upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, forward such directions to the assessment unit;

(xxix) the assessment unit shall, in conformity with the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, complete the assessment within the time allowed in sub-section (13) of section 144C and initiate penalty proceedings, if any, and send a copy of the assessment order to the National Faceless Assessment Centre;

(xxx) the National Faceless Assessment Centre shall, upon receipt of the assessment order referred to in clause (xxvi) or clause (xxix), as the case may be, serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice, specifying the sum payable by, or the amount of refund due to, the assessee on the basis of such assessment;

(xxxi) the National Faceless Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the provisions of this Act;

(xxxii) if at any stage of the proceedings before it, the assessment unit having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary to do so, it may, upon recording its reasons in writing, refer the case to the National Faceless Assessment Centre stating that the provisions of sub-section (2A) of section 142 may be invoked and such case shall be dealt with in accordance with the provisions of sub-section (7).

(2) The faceless assessment under sub-section (1) shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board.

(3) The Board may, for the purposes of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely:—

(i) a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner;

(ii) such assessment units, as it may deem necessary to conduct the faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under this Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment, and the term "assessment unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

(iii) such verification units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification and the term "verification unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board:

Provided that the function of verification unit under this section may also be performed by a verification unit located in any other faceless centre set up under the provisions of this Act or under any scheme notified under the provisions of this Act; and the request for verification may also be assigned through the National Faceless Assessment Centre to such verification unit;

(iv) such technical units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic,

information technology, valuation, transfer pricing, data analytics, management or any other technical matter under this Act or an agreement entered into under section 90 or 90A, which may be required in a particular case or a class of cases, under this section and the term "technical unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

(v) such review units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the income determination proposal assigned under sub-clause (b) of clause (xvi) of sub-section (1), which includes checking whether the relevant and material evidence has been brought on record, relevant points of fact and law have been duly incorporated, the issues requiring addition or disallowance have been incorporated and such other functions as may be required for the purposes of review and the term "review unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board.

(4) The assessment unit, verification unit, technical unit and the review unit shall have the following authorities, namely:—

(i) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;

(ii) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;

(iii) such other income-tax authority, ministerial staff, executive or consultant, as may be considered necessary by the Board.

(5) All communications,—

(i) among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre;

(ii) between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other person shall be exchanged exclusively by electronic mode; and

(iii) between the National Faceless Assessment Centre and various units shall be exchanged exclusively by electronic mode:

Provided that the provisions of this sub-section shall not apply to the enquiry or verification conducted by the verification unit in the circumstances as may be specified by the Board in this behalf."

It is submitted that with the introduction of the scheme of the faceless assessment with effect from 01.04.2021 the issuance of notice under section 148 etc. are governed by the provisions of section 144B(5) which specifically mentions that this has to be through the National Faceless Assessment Centre. The provisions of section 144B(5) very specifically mention that all communication with the assessee shall be through the National Faceless Assessment Centre. In view of this the issuance of notice under section 148 on 29.03.2022 by the jurisdictional Assessing Officer ward 1(2), Jaipur happens to be in contravention of section 144B(5). The same being invalid deserves to be dropped.

Section 151A

"[Faceless assessment of income escaping assessment.

151A. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of assessment, reassessment or re-computation under section 147 or issuance of notice under section 148 [10][or conducting of enquiries or issuance of show-cause notice or passing of order under section 148A] or sanction for issue of such notice under section 151, so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.

(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]"

It is further submitted that the above provisions of section 151A which have come in the statute w. e. f. 01.11.2020 also lay down that issuance of notice under section 148 shall be governed by the scheme so made by the CBDT and the CBDT has notified the scheme vide issuance of Notification No. S O 1466E dated 29.3.2022. In this notification scope of the scheme specifically mentions that for the purposes of assessment, reassessment under section 147 and issuance of notice under section 148 shall be in a faceless manner. The notification is scanned below.

(ii) Notification No S.O. 1466(E) dated 29.3.2022

"MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 29th March, 2022

S.O. 1466(E).—In exercise of the powers conferred by sub-sections (1) and (2) of section 151A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following Scheme, namely:-

1. Short title and commencement.—(1) This Scheme may be called the e-Assessment of Income Escaping Assessment Scheme, 2022.

(2) It shall come into force with effect from the date of its publication in the Official Gazette.

2. Definitions.—(1) In this Scheme, unless the context otherwise requires, —

(a) —Act// means the Income-tax Act, 1961 (43 of 1961);

(b) —automated allocation// means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources.

(2) Words and expressions used herein and not defined, but defined in the Act, shall have the meaning respectively assigned to them in the Act.

3. Scope of the Scheme.—For the purpose of this Scheme,—

(a) assessment, reassessment or recomputation under section 147 of the Act,

(b) issuance of notice under section 148 of the Act,

shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in section 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee.

[Notification No. 18/2022/F. No. 370142/16/2022-TPL(Part1]

SHEFALI SINGH, Under Secy."

Keeping in view the afore said provisions of section 144B(5) and section 151A and Notification S O 1466E dated 29.05.2022 the issuance of notice under section 148 in the case of assessee on 29.03.2022 by the jurisdictional Income Tax officer 1(2) Jaipur is ab- initio void. The Notification S O 1466E dated 29.03.2022 mentions that it shall come into force with the date of its publication i.e. 29.03.2022 whereas notice under section 148 has also been issued on

29.3.2022 subsequent to the notification. In view of this it is requested that the proceedings initiated under section 148 with the issue of notice on 29.03.2022 may kindly be dropped. It is further submitted that the Hon,ble Telengana High Court in Civil writ petition Nos.25903, 28214, 28271, 32075, 32090, 32688, 33050, 33402, 33478, 34100, 34101, 34340, 34598, 34604, 34661, 34698, 34746, 34836, 35774, 36598, 36828, 36945, 37414, 37491, 37536, 43427, 45047 of 2022, Writ Petition Nos.15383, 47, 3719, 3721, 3729, 3738, 9695, 11599, 14485, 14492, 15421, 15736, 15745, 15768, 15779, 16164, 16223, 16224, 16761, 16783, 19966, 20914, 20929, 20959 and 23556 of 2023 COMMON ORDER:(per Hon'ble Sri Justice P.SAM KOSHY has vide order dated 14.09.2023 has also held the same view that with the introduction of section 144B(5)/151A and Notification S O 1466E dated 29.3.2022 the jurisdiction Assessing Officer is no more competent for issuing notice under section 148. The relevant para of the high court is quoted below..

Decisions of Telengana High Court Dated 14.09.2023

It is further submitted that the Telangana High court in Civil writ petition Nos.25903, 28214, 28271, 32075, 32090, 32688, 33050, 33402, 33478, 34100, 34101, 34340, 34598, 34604, 34661, 34698, 34746, 34836, 35774, 36598, 36828, 36945, 37414, 37491, 37536, 43427, 45047 of 2022, Writ Petition Nos.15383, 47, 3719, 3721, 3729, 3738, 9695, 11599, 14485, 14492, 15421, 15736, 15745, 15768, 15779, 16164, 16223, 16224, 16761, 16783, 19966, 20914, 20929, 20959 and 23556 of 2023 COMMON ORDER:(per Hon'ble Sri Justice P.SAM KOSHY has vide order dated 14.9.2023 held that notice under section 148, with the introduction of section 144B(5) is required to be issued by the National Faceless Assessment Centre, new Delhi. The jurisdictional AO is no more competent for issuing notice under section 148. The relevant para of the High court decision is quoted below -

"25. A plain reading of the aforesaid two notifications issued by the Central Board of Direct Taxes dated 28.03.2022 and 29.03.2022, it would clearly indicate that the Central Board of Direct Taxes was very clear in its mind when it framed the aforesaid two schemes with respect to the proceedings to be drawn under Section 148A, that is to have it in a faceless manner. There were two mandatory conditions which were required to be adhered to by the Department, firstly, the allocation being made through the automated allocation system in accordance with the risk management strategy formulated by the Board under Section 148 of the Act. Secondly, the re-assessment has to be done in a faceless manner to the extent provided under Section 144B of the Act.

26. After the introduction of the above two schemes, it becomes mandatory for the Revenue to conduct/initiate proceedings pertaining to reassessment under Section 147, 148 & 148A of the Act in a faceless manner. Proceedings under Section 147 and Section 148 of the Act would now have to be taken as per the

procedure legislated by the Parliament in respect of reopening/ re-assessment i.e., proceedings under Section 148A of the Act."

A copy of the decision of the Hon'ble High Court is attached herewith for ready reference.

In view of the this the Hon'ble ITAT is requested to quashed the Issuance of notice under section 148 on 29.03.2022.

Cross objection Ground No. 4

That the appellant craves to add/alter/amend the Grounds of appeal before the final hearing is completed

Not pressed

Revenue's ground

Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)(NFAC) has erred in deleting the addition of Rs. 65,37,47,750/- ignoring the fact that the assessee failed to substantiate the cash sales with corroborative evidences.

It is submitted that the revenue has filed the appeal for the sake of filing of an Appeal otherwise there is no substance in the Grounds taken by the department. It is a case where the leaned AO had done great injustice to the assessee, had acted in gross violation of the Principles of Natural Justice, had abused the power by acting arbitrarily and passed a totally unlawful order. In such a case, instead of filing an Appeal against the order of the learned CIT (A), the department should pull up the learned AO and start disciplinary proceedings against him so that such bad orders are not passed

In this case the learned CIT A has accepted the submissions of the assessee that the sales effected by the assessee and sales proceeds deposited in the bank account to the tune of Rs. 65,37,47,750/- are genuine after considering the detailed submission made before him. A copy of the submission alongwith paper book furnished before learned CIT (A) is available on paper book page No. 11 TO 1920. The relevant paras are quoted here under which have been also quoted by the learned CIT(A) in his order on page No. 3 to 11 (Brief Facts of the case) and again on page No. 13 to 42 (Ground No. 1) and again on page No. 66 to 70 (Ground No. 8) and then again Page No. 69 to 73 (Ground No. 9) .

"submission before learned CIT (A)" dated 15.08.2023.

Ground No. 8

That in The facts and circumstances of the case the Learned Assessing officer has erred in making additions of Rs, 65,37,47,750/- under section 68 of the income tax Act 1961 on assumption and presumption whereas the entire amount deposited in bank is out of cash sales recorded in the Books of Accounts during the normal course of business.

It is submitted that the provisions of section 68 have wrongly been applied by the learned AO. The same are not applicable in the facts of the case. The learned AO has applied these provisions of section 68 only because he was bent upon in making the additions. The Leaned AO had issued notice under section 148A(b) on the ground that cash in the bank was deposited before the sales could happen. Order under section 148A(d) was also passed on this ground . Further show cause notice was also issued on 16.03.2023 on this very ground. But it was found and noticed by the learned AO that there were no cash deposits in bank before the cash sales could happen. The deposits in bank were relatable to cash sales. AS such what was required on the part of the learned AO was to have honorably dropped the proceeding initiated by issue of notice under section 148a(d). But instead of doing this It is only at this juncture that the learned AO shifted his ground and doubted the sales on flimsy grounds. In the opinion of the learned AO the sales in round figure were suspicious . This doubt has no basis, it is purely an assumption of the learned AO and on the basis of such assumption additions are not warranted. IT is further submitted that the learned AO has just doubted the genuineness of sales /cash deposits in bank simply on the ground that the case sales are in round figure and do not contain the details of purchasers such as their name address and PAN and email etc. It is submitted that, to doubt the sale and their genuineness simply on the ground of these being in round figures is only and assumption and presumption. The learned AO has not brought any material/ evidence on record to establish that the sales were not genuine. It is his presumption and assumption that sales being in round figures are not beyond doubt. Similarly to ask for the particulars of purchasers in the sales vouchers such as their name address PAN and email id is also not a requirement under any of the provisions of the income Tax Act 1961, on this account there is no breach of law(Income Tax Act). The assessee has complied with all the provisions of Income tax Act. Hence reopening of the assessment /taking recourse to action under section 148 is ab-initio void, as there was no fresh material to justify the same. The assessment has been completed by making additions on grounds of suspicion and conjectures. The same therefore deserves to be quashed. It is settled position of law that suspicion and doubt however strong cannot take the place of evidence. Following case laws are quoted in support –

a) Uma Charan Shaw & Bros 37 ITR 271

b) CIT Vs Anupam Kapoor 299 ITR 179 (P&H)

c) CIT Vs Dhiraj Lal Girdhari Lal 26 OTR 736

d) Lal chand Bhagat Ambika Ram (1959) 37 ITR 288

e) State Vs Guljari lal Tondan AIR 1979 (SC)

f) J A Naidoo Vs State of Maharastra AIR 1979 SC 1537

g) Krishnand Vs State of MP AIR 1977 SC 796

h) Dhakeshwari Cotton Mills 26 ITR 775 SC 40

I) Omar Saha 37 ITR 151 (SC)

Assessment has been completed and additions have been made on the following ground

"It is clearly evident from the above that the sale claimed are in the round figure of thousand mostly. It is clarified that the rate of the Gold and silver changed on daily basis or couple of day basis, then how it is possible that the retails customers who made the payment in cash got the gold or silver of round figure of thousand rupees. In this regard it is crystal clear that the assessee has claimed the same out of sale, in order to accommodate the cash deposit in bank account." (last para at Page No. 25 of the impugned order dated 27.03.2023)

"3.3.8. As the assessee failed to substantiate the cash sales with corroborative evidences (i.e. name, pan, address and email of persons to whom sale was made in cash, original copy of Sale Bill etc.) the cash deposits of Rs.34,11,55,800/- made in the bank accounts during the period from 01/04/2017 to 30/06/2027 has remained unexplained. Therefore, it is concluded that the assessee has deposited his unaccounted money Rs.34,11,55,800/-into his bank account(s) in the guise of cash sales."

The above discloses that the learned AO has just doubted the genuineness of sales /cash deposits in bank simply on the ground that the case sales are in round figure and do not contain the details of purchasers such as their name address and PAN and email etc. It is submitted that, to doubt the sale and their genuineness simply on the ground of these being in round figures is only an assumption and presumption. The learned AO has not brought any material/ evidence on record to establish that the sales were not genuine. It is his presumption and assumption that sales being in round figures are not beyond doubt. Similarly to ask for the particulars of purchasers in the sales vouchers such as their name address PAN and email id is also not a requirement under any of the provisions of the income Tax Act 1961, on this account there is no breach of law(Income Tax Act). The assessee has complied with all the provisions of Income tax Act, as every sales is below Rs. 2.00 Lacs. Hence

reopening of the assessment /taking recourse to action under section 148 is ab-initio void, as there was no fresh material to justify the same. The assessment has been completed by making additions on grounds of suspicion and conjectures. The same therefore deserves to be quashed. It is settled position of law that suspicion and doubt however strong cannot take the place of evidence. Following case laws are quoted in support –

a) Uma Charan Shaw & Bros 37 ITR 271

b) CIT Vs Anupam Kapoor 299 ITR 179 (P&H)

c) CIT Vs Dhiraj Lal Girdhari Lal 26 OTR 736

d) Lal chand Bhagat Ambika Ram (1959) 37 ITR 288

e) State Vs Guljari lal Tondan AIR 1979 (SC)

f) J A Naidoo Vs State of Maharastra AIR 1979 SC 1537

g) Krishnand Vs State of MP AIR 1977 SC 796

h) Dhakeshwari Cotton Mills 26 ITR 775 SC 40

I) Omar Saha 37 ITR 151 (SC)

J) Cit Vs Monika Oswal 382 ITR (P& H) (2016)

In this case IT HAS BEEN HELD that

Suspicion and doubt may be the starting point of an investigation but cannot at the final stage of assessment, take the place of relevant facts, particularly where a deeming provision is sought to be invoked. The principle that governs a deeming provision is that the initial onus lies upon the revenue to raise a prima facie doubt on basis of credible material. ..... The revenue cannot draw an inference based upon suspicion or doubt or perceptions of culpability or on the quantum of the amount invoked. Any ambiguity or any ifs and buts in the material collected by the AO must necessarily be read in favour of the assessee particularly in the question is one of taxation under a deeming provisions. Thus suspicious/doubt not the quantum shall determine the exercise of jurisdiction by the assessing officer. Additions made on suspicion are illegal and bad in law. These shall be knocked down in the 1st appeal itself.

The ration of the aforesaid decisions is fully applicable to the facts of the case. The additions have been made purely on presumption and assumption. The learned AO has observed in the last para on page No. 25 of the assessment order that it was not possible that the retail customers would make the payment in round figure of thousand rupees. The observation of the learned AO is based on presumption and not on reasons or evidence. He is presuming that the sale of gold and silver bullion could not be in the round figures of thousands of

Rupees because it was not possible for the retail customer to make payment like this. In this regard it is submitted that the action of the learned AO is devoid of any reason. The learned AO has not brought any material on record to establish that retail customer would not purchase gold and silver in round figures in thousand. This is a mere presumption, on the other side it is truth that gold and silver metal (specially bullion) are purchased by the upper class of the society and they normally indulge in purchases in round figures only. The observation(s) of the learned AO is miles apart from truth. In view of this, additions having been made on presumption and assumption deserve to be deleted.

Ground No. 9

1. That in the facts and circumstances of the case the Learned Assessing officer has erred in making the additions of Rs, 65,37,47,750/-, by rejecting the cash sales of Rs, 65,37,47,750/- without doubting the purchases against which the sales have been made.

It is submitted that although the learned AO has made additions doubting the sale to the extent of Rs. 65,37,47750/- whereas these very sales of Rs. 65,37,47,750/- are part of the trading account where total sales disclosed are Rs 191,82,82,845/-. It is submitted that once the sales disclosed of Rs. 191,82,82,845/- have been accepted, there was no reasons for the learned AO to subsequently doubt the part of this. It is further submitted that the trading account of the assessee disclosed the following

S no	Particulars	Amount in Rs.
1	Opening Stock	67,79,159.00
2	Purchases (net of returns, if any)	191,33,93,601.00
3	Sales (net of returns, if any)	191,82,82,843.00
4	Closing stock	53,77,223.00

The learned AO has accepted this version of the assessee by not disturbing the trading account. It is submitted that the learned AO has not rejected the books of account of the assessee. He has not disturbed the trading account of the assessee . The total sales have been accepted. Firstly the sales of Rs. 191,82,82,843/- have been accepted and profit on such sales have been taxed, then again the sale to the extent of Rs. 65,37,47,750/- has been treated as bogus. Both these things are contradictory. First accepting the sales in the trading account would not justify the later action of the learned AO in rejecting the sales to the extent of Rs. 65,37,47,750.

Sales are against regular stock

It is submitted that the assessee submitted copies of purchase register, stock register and sales register, cash book bank book etc in reply to notice under section 148A(b). There were again submitted at the time of assessment proceedings. These are again uploaded herewith and are available on paper book page No cited supra. Copy of cash book, bank book, purchase and sales register, stock register and GST return are available on paper book page No cited supra. The submission of the assessee is that all the payments against purchase have been made by making banking channels, such purchases stand accounted for in the Books of Account of the asessee regularly maintained in the normal course of business. Purchases are also entered in the stock register on day to day basis. Some of the purchase bills for each month are available on paper book page No…1695 to 1739.. All the cash sales doubted by the learned AO have been made out the these purchases and opening stock available with the assessee. The Books of accounts of the assesse stand audited under section 44AB of the iT ACT 1961. No discrepancy has been pointed out either in purchases or sales by the Auditor. In view of this it is submitted that the cash sales doubted by the learned AO are genuine sales. These are against available stock with the asseseee. There was no case with the learned AO to doubt the sales. The ground on which notice under section 148A(b) was given that there were cash deposits in bank before the sales could happen was wrong and did not survive. This shows that the sales of the assessee in cash were genuine. The learned AO has wrongly doubted that sales being in round figure. He is wrong in doubting that the sales for non containing the details of purchases as the same was not required under any provisions the act under which the learned AO is making assessment. Thus the addition has been made on flimsy ground. Having accepted the trading account it did not behoove the learned AO to doubt the sales subsequently. The sales being out of regular stock were beyond doubt. In these circumstances to treat the sales of Rs 65,37,47,750/- as bogus will not hold ground (PCIT Vs Akshat kumar ITA No. 348/2019 dated 17.11.2020 Del high court). Further the sales were also part of GST returns which stand accepted by the GST department. Once the commercial department has accepted these sales as genuine there was hardly any case with the revenue department to treat the sales as bogus. The VAT and GST return were also furnished before the learned AO.

<u>Sales accepted in the GST return by the GST Department</u>

It is further submitted that while giving reply to notice under section 148A(b) and also at the time of regular assessment proceeding the assessee submitted that he was registered under VAT and GST. Copies of sales return under VAT and GST were furnished. The same are again being furnished and are available on paper book page No cited supra. It is the submission of the assessee that once the sale of the asseseee stand accepted buy the GST department the same required to be accepted by the Income tax Department. The learned AO in-fact had no material or any evidence to doubt the cash sales. The learned AO has doubted the cash sales on flimsy grounds. It is the case of the assessee that the sales deserve to be accepted as genuine.

The case of the asseseee is supported by the decision of the Hon,ble Madras High Court in the case of CIT Vs Anand Metal Corporation 2005 273 ITR 262.

In view of these facts it is submitted that sales are part of the regular Books of Account of the asseessee regularly maintained in the normal course of business, cash sales are duly accounted for on day today basis in the cash book and these are against the regular stock available in the stock register . There was no evidence with the learned AO to controvert these facts and hence the learned AO was not justified to treat the cash sales as bogus on flimsy grounds. The additions being based on assumption and presumption should be knocked down. Following case laws are quoted in support

A DCIT Vs Roop Fashion (ITAT Chandigarh) ITA No. 136/Chd/2021

Date of order 14.06.2022

Held

Books of accounts maintained by the assessee were audited and accepted by the AO. Cash sales and cash realized from debtors were also known to AO. Addition u/s 69A of cash deposited deleted

B The ITAT Ahmedabad has harped upon the mechanical practices adopted by the Assessing Officers to make addition u/s 68. The moot point is that a sale which already forms part of books of account cannot be added again u/s 68 due to the reasons that

Sales are already recorded in the books of accounts and the addition of the same amounts to double taxation.

A prejudiced view on sale cannot be drawn when purchases are accepted without any reservation.

Section 68 connotate amount credits in books of account remained unexplained need to be added. Recorded sales are not unexplained cash credits

Additions made on suspicion are illegal and bad in law. These shall be knocked down in the 1st appeal itself

It is submitted that in view of the submission of the assessee, the learned CIT (A) at page No. 77 to 78 of Appellate order have correctly held as under -

"Ground No.5,8,9& 10:- During the course of the re-assessment proceedings u/s 148 the Ld. AO has made an addition of Rs.65,37,47,750/- on account of cash deposits in various bank accounts of the appellant since, the appellant could not provide plausible explanation for depositing such huge sums in his bank

accounts. The Ld. AO has stated that the assessee could not provide the names, PAN and e-mail ID of the third parties to whom cash sales were made. Further, all the payments received by the assessee as evidenced from cash book, vouchers etc. were in round figures just to adjust the cash hence generated.

During the course of appellate proceedings, the appellant has submitted his financial statements, purchase bills, sales vouchers, VAT/GST returns, cash book and bank statements. Cross verification on test check basis was also conducted to check the veracity and accuracy of the submitted financial documents.

The appellant has explained the source of cash as sales deposited into bank accounts as cash or through RTGS, produced sales bills/ledgers and admitted the same as revenue receipt. The audited books of accounts have been submitted alongwith complete quantitative details of sales and purchases alongwith the Income Tax Return. The appellant has also maintained a detailed stock register. The cash sales and receipts are supported by relevant bills produced before the Ld. AO and also provided during the appellate proceedings. Hence, it cannot be said that the figures of the sales and purchases are not supported by any quantitative details.

The Ld. AO as pointed discrepancies in some sales vouchers. However, from the ledgers of the sales submitted by the appellant it is seen that all the sales have duly recorded in the books of accounts. Further, all the sales whose quantum is above Rs.2 lacs, PAN has been quoted in the invoices as well as in ledger. It was the case of the Ld. AO to have made detailed probe into the sales if the same were in the realm of doubt. Thus, it can be stated that the appellant has substantiated from the documentary evidence that cash sales are duly recorded in the books of accounts Further, the reduction/increase in the stock has not been doubted by the Ld. AO.

It is also observed from the assessment order that the Ld. AO has not rejected the books of accounts of the assessee as no contrary material was available with him to reject the books of the account of the assessee. The regular books of account were maintained in the normal course of business in which no flaw or deficiency was pointed out by the Ld. AO. It is important to mention that once the assessing officer accepts the books of accounts and the entries in the books of accounts are matched, there is not case for making the addition as unexplained.

Further, the book results shown by the assessee such as GP/NP ratio were in the same line as in the previous years and there was no such discrepancy thereof. It is also not a case where there has been a sudden spurt in the cash sales or cash deposits in the bank account of the appellant. From the balance sheet as well as P&L account of the appellant,

it is evident that there was sufficient stock available with the appellant to make cash sales. It is evident that provisions of section 68 are not applicable on the sales transactions recorded in books of accounts as sales are already part of the

income which is already credited in the P&L account. Hence, there was no occassion for the AO to invoke the provision of section 68 of the Act."

Prayer

In view of the aforesaid detailed submission, facts of the case and position of law the proceedings under section 148 deserve to be quashed, the assessment proceedings also requires to be quashed and the order of the learned CIT (A) in deleting the additions of Rs 65,37,47,750/- deserves to be upheld. The appeal of the revenue deserves to be dismissed. The cross objections of the assessee require to be accepted."

7. We have heard the rival contentions and perused the material placed on record. The brief fact of the case is that the assessee is an Individual and a trader in bullion. In this case original return of income was filed on 31.10.2018 declaring income of Rs 10,37,770/-. The return was selected for complete scrutiny on the ground of verification of transactions as mentioned in the assessment order. The original assessment was completed under section 143(3) of the income tax Act 1961 on 23.09.2021 accepting the returned income. It is submitted that during the course of original assessment proceedings the learned AO examined the Books of account including cash book, bank account, stock register and transaction of purchase and sales, and it is after examining the case thoroughly that assessment was completed on returned income.

7.1 Subsequently the department initiated proceeding under section 148 by issuing a notice under section 148A(b) on 13.03.2022 seeking reply by

20.03.2022 on the ground that in the case of assessee information regarding unexplained cash credit in bank account of Rs. 36,47,000/- is available with the department for FY 2017-18 relevant to A Y 2018- 2019. Information received from the DDIT/ADIT(inv,)-1, Jaipur and details available on insight portal, as per the available information, it found that assessee has maintained a bank account in ICICI Bank having account Number 00120034408, During the year under consideration, total unexplained cash of Rs, 36,47,00,000/- was found to have been credited in above mentioned bank account. The cash deposits were matched with cash/sales books. On perusal of the cash book it was noticed by the ld. AO that amount in the bank had been deposited before the sales could happen. Therefore, the amount deposited in bank account seems bogus sales and unaccounted income of the assessee. The assessee submitted a detailed reply on 22.03.2022. In this reply the assessee submitted that he was maintaining regular Books of Accounts and the same was audited by Chartered Accountants. It was also submitted that the purchases are fully vouched, and all suppliers were old and reputed. Similarly, sales of the assessee were fully vouched and were made after vouched purchases. The assessee explained that first purchases were made for which payment was made through banking channels and it was after having the purchases that

sales were made. In substance it was submitted that there was no deposit in the bank without there being supporting sales. The assessee contested there was no deposit in bank before sales could happen. In his reply the assessee also contested that initiation of proceeding under section 148 on the basis of doubt was unjust and bad in law. Such proceedings could not be initiated simply on the basis that the amount deposited in the bank seems bogus sales. This reply of the assessee does not find favour to ld. AO and he passed order under section 148A(d) on 28.03.2022. Accordingly, ld. AO issued notice under section 148 on 29.03.022.

7.2 During the course of assessment proceedings the learned AO issued show cause notice dated 16.03.2023 fixing the date of hearing for 19.03.2023. In this show cause notice also, the same matter was repeated that deposits in bank have been made before the sales could happen. However, in the show cause notice the amount of deposit was raised from Rs, 36,47,00,000/- to Rs. 65,37,47,750/-. Thus, the main issue raised by the learned AO for taking action under section 148 is solely one and the same that there were deposits in bank without there been cash sales for such deposits. During the course of assessment proceedings the assessee requested to provide the details of such deposits in bank but the same were

not provided to the assessee, In the entire assessment order dated 27.03.2023 the learned AO could not give any instance of a cash deposit in bank without there been a cash sale. The learned AO shifted his stand and completed the assessment holding that the cash sales were in round figure hence the same were of suspicious nature. The learned AO accepted there were no cash deposits in bank before the cash sales could happen. The learned AO further observed that the cash sales did not contain details of purchaser's name PAN, address and email etc., though every sale was below Rs. 2.00 Lacs and the learned AO did not find any instance of cash sales exceeding Rs, 2.00 Lacs. The instances quoted by the learned AO in the assessment order are also below Rs. 2.00 Lacs. Such sales did not require any particulars like the name of the purchaser or his Pan, address, Email etc under any provisions of Income tax Act 1961. Further no opportunity was provided to the assessee while taking this ground and doubting the sales and making the additions of Rs. 65,37,47,750/- on a ground which was totally different (absent) from the ground mentioned in the show cause notice issued under section 148A(b) and in the order passed under section 148A(d) dated 28.03.2022. The learned AO has violated the principles of natural justice as no opportunity was given while rejecting the sales on the ground sales being in round figure. The learned

AO had provided opportunity to the assessee on the ground that "Amount in the bank had been deposited before the sales could happen." For which the assessee furnished a detailed reply to the satisfaction of the learned AO that there has been not a single instance of cash deposit in bank without there being cash sales. This reply of the assessee was not controverted, and he failed to provide a single instance of cash deposit in bank before the cash sales could happen. It appears that the learned AO was by any reason intend to make addition & deposit of cash though the same is fully justified with cash sales. The learned AO had not provided any opportunity to explain the ground on account of which he made additions. The ld. AO had no material on record to doubt the sales simply on presumption and assumption that sales made in round figures were not beyond suspicion. Even though assessment completed in violation of the ground on which proceedings under section 148 were initiated. During the course of assessment proceedings, vide notice dated 19.10.2022 the assessee was requested to explain the source of cash deposited into the bank account maintained with ICICI Bank. In response the assessee submitted that the cash deposited into the ICICI bank account amounting to Rs. 36,47,00,000/- is out of cash sales of Rs. 65,82,27,276/-. The ld. AO noted that the assessee failed furnish the documentary evidence in support of

cash sales. Therefore, the assessee was requested the details of the cash / credit sales along with the name, PAN and email id of the third parties to whom the sales was made in cash. Since the assessee has not furnished that information a show cause notice was issued and in response the assessee submitted a detailed reply stating that the show cause notice is merely suspicion, sales in cash are in accordance with the law and does not violates the provisions of the Income Tax law, copy of GST returns were placed on record, details of stock and purchase filed, details of last 5 years trading result showing the turnover. The assessee submitted that the cash deposit is duly supported with the purchase made and the source of cash deposit is thus not unaccounted money. The assessee also submitted that the peak of the cash deposit be calculated instead of proposing the whole cash deposit of Rs. 65,37,47,750/- made in the bank account of the assessee. All these contentions raised by the assessee were considered by the ld. AO but did not found acceptable because during the period 01.04.2017 to 30.06.2017 GST was not applicable and in that period cash of Rs. 34,11,55,800/- was deposited. The ld. AO on perusal of the sales ledger of the assessee, observed that the sales in the cash book has been shown at Rs. 67,000, 85,000/-, 62,800/- and so on out of these some instance were given in the assessment order. Based on the various

instance the ld. AO noted that all these sales made by the assessee are in the round figure of thousand mostly. The ld. AO noted that the Gold and silver rate changed on daily basis or couple of day basis then how it is possible that the retail customers who made the payment is in cash got the gold or silver at round figure of thousand rupees. Therefore, the ld. AO taken a view that the assessee has claimed same out of sales, in order to accommodate the cash deposited into the bank account. So, the ld.AO noted that the assessee failed to substantiate the cash sales with corroborative evidences (name, pan, address and email id of persons to whom sales was made in the cash, original cop of sale bills etc.) the cash deposits of Rs. 34,11,55,800/- deposited for the period from 01.04.2017 to 30.06.2017 considered as unexplained. Similarly cash deposited between 01.07.2017 to 31.03.2018 for an amount of Rs. 31,25,91,950/- was also considered as unexplained.

7.3 Aggrieved from the order of the assessment the assessee has filed an appeal before the ld. CIT(A) who has directed to delete the addition of Rs. 65,37,47,750/- because the assessee has submitted his financial statements, purchase bills, sales vouchers, VAT/GST returns, Cash book and bank book. The ld. CIT(A) considered the fact that the assessee has

explained the source of cash deposited into bank accounts as cash or through RTGS, produced sales bills / ledger and admitted the same as revenue receipt. The audited books of accounts have been submitted along with complete quantitative details of sales and purchases along with the Income Tax Return filed by the assessee. The assessee submitted the complete quantitative detailed stock register. The cash sales and receipts are supported by relevant bills produced before the ld. AO and that of the ld. CIT(A). Hence the deposit of cash cannot be supported by sale which very much recorded in the books along with the delivery of goods for which purchases, and stock details has not been doubted. The only contention of the ld. AO that the sales made by the assessee are in round figure. Thus, we do not found any infirmity in the findings of the ld. CIT(A) who has in detailed considered the contention of the assessee and contention of the ld. AO and held that the sales made by the assessee is in ordinary course of business of the assessee and the cash so deposited into the bank account is supported by the cash sales and delivery of the goods. The ld. CIT(A) has relied upon the judgment of the Delhi High Court in the case of Kailash Jewellery House (ITA 613/2010) and held that since it is not in dispute that cash of Rs. 65,37,47,750/- deposited was arising out of the cash sales and been duly recorded in the audited books of account and considering that

judgement of the high he held that cash sales could not be treated as undisclosed income and no addition can be made once again in respect of the same. Even the jurisdictional high is also in favour and support of the finding of the ld. CIT(A), wherein the jurisdictional high court in the case of Smt. Harshil Chordia Vs. ITO [298 ITR 349(Raj) has held as under :

> So far as question No. 2 is concerned, apparently when the Tribunal has found as a fact that the assessee was receiving money from the customers in hands against the payment on delivery of the vehicles on receipt from the dealer the question of such amount standing in the books of account of the assessee would not attract section 68 because the cash deposits becomes self-explanatory and such amounts were received by the assessee from the customers against which the delivery of the vehicle was made to the customers. The question of sustaining the addition of Rs. 6,98,000 would not arise.
>
> We, therefore, hold that no addition was required to be made in respect of Rs. 6,98,000, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.

Respectfully following that binding judgment and after considering the finding on fact by the ld. CIT(A) and even the AO that the cash deposited into the bank account by the assessee is arising out of the cash sales of gold made by the assessee and this sales duly reflected in the records produced by the assessee. Before, us the ld. AO through the ld. DR could not bring anything contrary to the finding of the ld. CIT(A) accepting the fact that the cash deposited into the bank account are arising out of the cash sales made by the assessee. Once this fact is not under dispute we do not find any infirmity in the order of the ld. CIT(A) and therefore, the appeal filed by the **revenue has no merits and the same is dismissed**.

8. Now take up the cross objection filed by the assessee. The grounds of the cross objection are as under :

Grounds of assessee's C.O.:

1. In the facts and circumstances of the case the learned CIT Appeals (NFAC) erred in not quashing the proceedings under section 147/148 as the grounds on which notice under section 148(A)(b) was issued and order under section 148A(d) was passed and notice.

2. In the facts and circumstances of the case the learned CIT Appeals erred in not quashing the assessment order which has been passed in gross violation of the principles of natural justice/equity and justice in as much as addition of Rs. 65,37,47,750/-.

3. In the facts and circumstances of the case the learned CIT Appeals erred in not quashing the assessment order on the ground that the Notice issued under section 148 on 29.03.2022 is not in accordance with law (section 144B (5) and section 151A of the Act.

4. That the appellant craves to add/alter/amend the Grounds of appeal before the final hearing is completed."

9. The bench noted that since we have upheld the decision of the ld. CIT(A) on merits and the grounds of the cross objection are mere technical grounds taken as regards the assessment proceeding and the legality thereof. Since, the appeal of the assessee is already allowed by the ld. CIT(A) and we have also confirmed the view of the ld. CIT(A) on merits the technical grounds raised by the assessee become educative in nature and the same is not required to be adjudicated.

10. In terms of these observations the cross objections filed by the assessee becomes infructuous.

In the result appeal of the revenue is dismissed and the cross objection filed by the assessee is allowed for statistical purposes in CO no. 06/JP/2023.

Order pronounced in the open court on 04/03/2024.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 04/03/2024
*Ganesh Kumar, PS
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- ITO, Ward 1(2), Jaipur
2. प्रत्यर्थी / The Respondent- Mukesh Kumar Soni, Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 656/JP/2023 & CO No. 06/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar