

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI**  
**BEFORE SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**  
**AND**  
**SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No.1988 & 1987/MUM/2023**  
**Assessment Year: 2002-03 & 2005-06**

Rajeshwar Prasad Dubey 2, Sethi Mansion, 12, Kumptha Street, Ballard Estate, Mumbai – 400 001 (PAN : ACZPD9533G)	Vs.	Assistant Commissioner of Income Tax – 12(1), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Subodh Ratnaparkhi, FCA  
Revenue : Smt. Mahita Nair, Sr.DR

Date of Hearing : 07.05.2024  
Date of Pronouncement : 21.05.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

Both these appeals filed by the assessee are directed against the separate orders of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 30.03.2023 (for AY 2002-03 and 2005-06), arising out of assessment orders passed u/s. 143(3) r.w.s. 147 and u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’) by Assistant Commissioner of Income Tax-12(1), Mumbai, dated 29.12.2009 and 27.12.2009, respectively.

2. We first take up appeal for AY 2002-03 in ITA No. 1988/Mum/2023. Assessee has raised the following grounds of appeal:

*“1. The Hon. CIT(A) erred in upholding the re-opening the assessment u / s 147 of the I. Tax Act 1961, by issue of the notice u/s 148 dt. 26.03.2009, not*

*appreciating that such re-opening was not as per law and therefore the notice u/s 148 dt. 26.03.2009 as well as the assessment order flowing therefrom was required to be struck down as bad-in-law.*

*2. The Hon. CIT(A) erred in upholding the addition of Rs.62,86,151/- made u/s 68 of the I.T. Act, 1961, on account of outstanding trade creditors, holding the same to be not genuine and hence income liable to tax u/s 68 of the I.T. Act as unexplained cash credit, which addition being not factually and legally justified may kindly be deleted.*

*3. The Hon. CIT(A) erred in also upholding the alternative addition of Rs.12,57,230/- (20% of Rs.62,86,151/-) made by the ld AO on protective basis, by relying upon the provisions of section 40A(3) of the IT Act 1961, which addition is uncalled for and not as per law and hence may kindly be deleted.”*

2.1. In ground no.1, assessee has challenged the reopening of assessment u/s. 147 and has claimed to strike down the re-assessment so completed being bad in law.

3. Brief facts as culled out from the records are that assessee is engaged in the business of transportation and custom house agent (CHA). Assessee filed its original return of income on 29.10.2002 reporting total income at Rs.34,06,867/-. Assessment was completed under section 143(3) vide order dated 27.12.2004 at an assessed total income of Rs.52,03,530/-. Subsequently, based on assessment proceedings for AY 2006-07, case of the assessee was reopened under section 147 by issuing a notice under section 148, dated 26.03.2009.

4. On the above stated facts, ld. Counsel for the assessee submitted that case of the assessee has been reopened beyond the four years from the end of the relevant assessment year. According to him, the relevant assessment year is 2002-03 and the notice issued under section 148 is dated 26.03.2009 which is beyond four years. He referred to the first proviso to Section 147 whereby AO is required to record reason for the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. For this, he submitted that there is no recording by the AO of any failure on the part of the assessee to disclose fully and truly, all material facts necessary for the assessment. He referred to

the reasons to believe recorded by the AO for the purpose of reopening and issuing notice u/s, 148 of the Act placed at page 3 of the paper book. The said reasons to believe are reproduced as under:

*“The scrutiny for the AY2006-07 in assessee's case was done by the Addl.CIT, Range 12(1), Mumbai. During the course of assessment proceedings, it was found out that the liability shown against various parties was not genuine*

*The liability as shown against the following parties relates to AY2002-03.*

<b>S.No.</b>	<b>Name of the party</b>	<b>Amount in Rs.</b>
1	Nishu Transport	7, 45,534
2	Suman Automobiles	1,03,707
3	S.R.Roadlines	1,65,386
4	Travancore Tyre	8,10,080
5	Royal Transport	15,89,583
6	Jayem Retreads Pvt. Ltd.	52,330
7	Pingle Transport	14,659
8	Bhagwati Naresh Sethia	24,010
9	International Express Co.	27,80,862
	<b>Total:</b>	<b>62,86,151</b>

*With reference to all the above parties, as part of verification during the course of assessment proceedings for AY2006-07 regarding the genuineness of the liability, the assessee failed to prove the same. The assessee could not produce the vouchers / Bills raised in AY2002-03 regarding the arising of the liability. The assessee also could not provide the evidence for payment for the so called clearing liability which he claimed happened in AY2008-09. Based on all these factors, the Addl.CIT, 12(1) came to the conclusion that the liability which arose in AY2002-03 itself was bogus. This information was passed on to the undersigned for necessary remedial action.*

*I have perused the concerned assessment records and found that the information passed on by the Addl.CIT, Range 12(1) is correct.*

*Hence I have reason to believe that the income to the extent of Rs.6286151/- has escaped assessment for AY2002-03.”*

4.1 From the above reasons to believe, it was submitted that nowhere in the reasons recorded, it is mentioned that there was any failure on the part of assessee to disclose fully and truly material facts necessary for the assessment. The primary requirement for lawful reopening of assessment beyond four years from the end of the relevant assessment year is absent in the reasons recorded. Therefore,

the reopening of a completed assessment made u/s. 143(3) cannot be sustained for the lapse on the part of the AO towards this vital statutory requirement.

4.2 To address his contentions, ld. Counsel placed reliance on certain judicial precedents including decisions by Hon'ble jurisdiction High Court of Bombay. The same are listed as under:

(1) *Hindustan Lever Ltd. -vs- R.B. Wadkar*, 268 ITR 332 (Bom) [2004]

(ii) *Titanor Components Ltd. -vs- ACIT*, 343 ITR 183 (Bom) [2012]

(iii) *Milton Plastics Ltd. -vs- Mudit Nagpal*, 151 taxmann.com 24 (Bombay) [2023]

(iv) *Vibrant Securities (P.) Ltd. -vs- ITO*, 455 ITR 58 (Bombay) [2023]

5. Legal issue raised by the assessee before the CIT(A) has been dismissed without any deliberation and explanation. Ld. CIT(A) in para 6.1 has summarily dismissed the legal issue by stating that ***“The ld. AO has provided appropriate explanation for carrying out of re-assessment proceedings. Further, the appellant has not submitted any explanation against his claim. Therefore the re-assessment proceedings are held to be valid.”***

6. We have perused the material on record on the legal issue raised by the assessee vide ground no.1. The facts on record in respect of this issue are un-disputed and un-controverted. The reasons to believe recorded by the AO as extracted above, it no where states that there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of the assessment year under consideration. The original assessment was completed u/s. 143(3) vide order dated 27.12.2004 and the notice u/s. 148 for re-opening the case was issued on 26.03.2009 which is beyond the period of four years from the end of the relevant assessment year.

6.1. On these set of facts, first proviso to Section 147 squarely applies in the case of the assessee. The said first proviso to Section 147 is extracted as under:

*“Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under subsection (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year”*

[Emphasis supplied by us by underline]

6.2. Having recorded our finding that the impugned notice u/s. 148 is beyond the period of four years from the end of AY 2002-03 and it does not comply with the requirements of first proviso to section 147 of the Act, we hold that AO had no jurisdiction to re-open the assessment which was concluded on the basis of assessment u/s. 143(3) of the Act. Accordingly, the impugned notice is liable to be quashed and the re-assessment completed thereafter is set aside.

6.3. For holding so, we find our force from, the decision of Hon'ble Jurisdiction High Court of Bombay in the case of Hindustan Lever Ltd. Vs. R.B. Wadkar [2004] 268 ITR 232 (Bom). The relevant finding arrived at by the Hon'ble Court on the issue under consideration is extracted from para 20 as under:

*“The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The*

*reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.”*

6.4. Accordingly, ground no.1 taken by the assessee is allowed. Since on legal issue, the impugned re-assessment order has been set aside in terms of our observations and findings above, ground no.2 and 3 raised by the assessee on the merits of the case are rendered academic in nature and therefore are not adjudicated upon. In the result, appeal for AY 2002-03 by the assessee is allowed.

7. We now, take up appeal before us in ITA No.1987/Mum/2023, wherein identical issues are involved.

8. Assessee has raised the following grounds of appeal:

*“1.The Hon. CIT(A) erred in upholding the re-opening the assessment u / s 147 of the I. Tax Act 1961, by issue of the notice u / s 148 dt. 26.03.2009, not appreciating that such re-opening was not as per law and therefore the notice u/s 148 dt. 26.03.2009 as well as the assessment order flowing therefrom was required to be struck down as bad-in-law.*

*2. The Hon. CIT(A) erred in upholding the addition of Rs.63,44,508/- made u / s 68 of the I.T. Act, 1961, on account of outstanding trade creditors, holding the same to be not genuine and hence income liable to tax u / s \* 68 of the I.T. Act as unexplained cash credit, which addition being not factually and legally justified may kindly be deleted.*

*3. The Hon. CIT(A) erred in also upholding the alternative addition of Rs.12,68,902/- (20% of Rs.63,44,508/-) made by the ld AO on protective basis, by relying upon the provisions of section 40A \* (3) of the IT Act 1961, which addition is uncalled for and not as per law and hence may kindly be deleted.”*

8.1. The only difference in this appeal vis-à-vis, the appeal for AY 2002-03 is that in this year the re-opening has been done u/s. 147 by issuing a notice u/s.148 which is within the period of four years from

the end of the relevant AY and therefore application of first proviso to Section 147 is ruled out. In this Assessment Year, assessee has challenged the re-opening on the premise of change of opinion by the ld. AO by submitting that re-opening is principally for re-verification of the same facts which were before the ld. AO at the time of original assessment proceedings.

9. Brief facts are that, assessee had filed original return on 30.10.2005 reporting total income at Rs.88,17,750/-. Original assessment was completed u/s. 143(3) vide order dated 15.08.2007 determining total assessed income at Rs.96,17,130/-. Based on assessment proceedings for AY 2006-07 in assessee's own case, it was noted that notices u/s.133(6) sent to various creditors standing in the book of accounts of the assessee as on 31.03.2006 were returned unserved. This raised a suspicion regarding the genuineness of these creditors. Accordingly, case of the assessee was reopened u/s.147 by issuing notice u/s. 148, dated 26.03.2009.

9.1. The reasons to believe recorded by AO u/s.148 is extracted as under:

*“Assessment u/s.143(3) for A.Y.2005-06 was completed on 15/3 / 2007 determining total income at Rs.96,17,133/- as against returned income of Rs.88,17,748/-.*

*2. The scrutiny for the AY2006-07 in assessee's case was done by the Addl.CIT, Range 12(1), Mumbai. During the course of assessment proceedings, it was found out that the liability shown against various parties was not genuine. The liability as shown against the following parties relates to AY2005-06.*

<b>S.No.</b>	<b>Name of the party</b>	<b>Amount in Rs.</b>
1	S.S. Transport	1418502
2	Nandi Transport	1518160
3	K.K. Transport	1354403
4	Joshi Transport	1322620
5	M.S. Transport [12,56,656 – 5,93,000 (AY 04-05)]	663656
6	Sanjay Metals Corporation	26815
7	Shakti Enterprises	19898
8	Swil Ltd.	13354
9	Vimal Transport Co.	7100
	<b>Total:</b>	<b>6344508</b>

*With reference to all the above parties, as part of verification during the course of assessment proceedings for AY2006-07 regarding the genuineness of the liability, the assessee failed to prove the same. The assessee could not produce the vouchers / Bills raised in AY2005-06 regarding the arising of the liability. The assessee also could not provide the evidence for payment for the so called clearing liability which he claimed happened in AY2008-09. Based on all these factors, the Addl. CIT, Range12(1) came to the conclusion that the liability which arose in AY2005-06 itself was bogus. This information was passed on to the undersigned for necessary remedial action.*

*I have perused the concerned assessment records and found that the information passed on by the Addl.CIT, Range 12(1) is correct.*

*Hence I have reason to believe that the income to the extent of Rs.63,44,508/- has escaped assessment for AY2005-06.*

*Notice u / s 148 is issued for reopening the assessment for A.Y.2005-06.*

9.2. From the perusal of the above reasons, ld. AO has alleged that liability in respect of the 9 parties are not genuine since assessee could not produce vouchers/bills nor it could provide any evidence for payment to these creditors which was claimed to have been finally done in AY 2008-09. Accordingly, liability towards these creditors was alleged to be bogus and therefore case of the assessee was re-opened. In this respect it is submitted that during the original assessment proceedings, records were examined and certain disallowances were made for identified defects. From the perusal of original assessment order u/s. 143(3) in para 3, ld. AO has noted that certain cash expenses were not supported by the third party evidence which included fork-lift and crane charges, labour charges, miscellaneous expenses for license and repacking strapping expenses. According to the ld. AO, these expenses were not verifiable and payments for which were made in cash. In absence of third party evidences, the genuineness of these expenditures could not be established and therefore ld. AO disallowed 10% of these expenses while completing the assessment. Ld. Counsel submitted that in the present case, addition of Rs.63,44,508/- was been made on account of alleged

balance of sundry creditors parties u/s.68 of the Act. The said sundry creditors represent amounts due to parties on account of transport charges, tyre purchases, etc.

10. To address the legal issue raised by the assessee, challenging the re-opening u/s.147 on the premise of change of opinion, we note that the original assessment was completed by making an addition of 10% of certain expenses which could not be verified and payments for which were made in cash, not supported by third party evidences. However, in the present case, the issue is on account of balances of sundry creditor parties on account of transport charges, tyre purchases, etc. On a specific query by the Bench to the Id. Counsel that whether these sundry creditor parties are the same for cash expenses in respect of which 10% dis-allowance was made in absence of third party evidence, it was submitted that only a part of these expenses may relate to the alleged balances of the sundry creditor parties for which addition have been made in the present appeal. We thus note that 10% disallowance made in the original assessment u/s. 143(3) did not include expenses for transport charges and tyre purchases. Considering these facts and the observations made above, we hold that re-opening of assessment u/s.147 is justified, there being no case of change of opinion. Accordingly, ground no.1 taken by the assessee is dismissed.

11. Ground no. 2 and 3 relates to the merits of the case. On the merits of the case, it was submitted that the addition made of Rs.63,44,508/- by the AO is factually incorrect. According to the assessee, correct figure of credit for transactions during the Assessment Year 2005-06 is Rs.42,49,569/- only. Assessee furnished a table in this respect which is as under:

<b>Sr.No.</b>	<b>Name of the sundry creditor party</b>	<b>Addition made u/s 68</b>	<b>Credit transaction for A.Y. 2005-06 Out of addition made</b>	<b>Ledger account &amp; TDS certificates enclosed in paperbook at pg nos.</b>
1	S.S. Transport	14,18,502	9,85,200/-	12 to 15
2	Nandi Transport	15,18,160	8,75,500/-	16 to 19
3	K.K. Transport	13,54,403	8,18,000/-	20 to 23
4	Joshi Transport	13,22,620	8,53,400/-	24 to 27
5	M.S. Transport [12,56,656 – 5,93,000 (AY 04- 05)]	6,63,656	6,63,656/-	28 to 31
6	Sanjay Metals Corporation	26,815	26,815/-	32
7	Shakti Enterprises	19,898	19,898/-	33
8	Swil Ltd.	13,354	NIL	34
9	Vimal Transport Co.	7,100	7,100/-	35
	<b>Total:</b>	<b>63,44,508</b>	<b>42,49,569/-</b>	

11.1. It was thus contended that, credits for earlier AYs cannot be brought to tax in the year under consideration u/s.68 of the Act. To substantiate this, copies of ledger accounts of respective parties setting up these facts are placed on record. Ld. CIT(A) while dealing with this issue, dealt it under a misconception that the issue is of borrowing of loans and instead of outstanding credits for goods and services purchased.

12. Be that as it may, observations of ld. AO on the ledger accounts produced by the assessee are that, they do not indicate any repayment which has taken place with these creditors. However, these entire outstanding credits were repaid through cash payment of amounts ranging between Rs.15,000/- to 19,500/- on a daily basis as noted in the ledger account of AY 2008-09. Ld. AO had also issued notices under section 133(6) to the 9 parties and no reply was received from any of them. AO further noted that no bank transactions were found between these creditors and the assessee ever since they are shown

outstanding from 31.03.2005. He thus held that no genuine repayment to the creditors has been made either in cash or through bank. Accordingly, he made an addition of Rs.63,44,508/- by applying section 68 of the Act.

13. From the perusal of order of ld. CIT(A), we note that assessee has made detailed submission alongwith documentary evidences for each of the creditor party and the same has been reproduced therein from page 10 to 13. From this submission, we note that there are instances of payment made by the assessee through cheque, assessee has done TDS on the payments as well as assessee has furnished Form No.16A which contains PAN and address of the creditor party. Also, assessee has pointed out the correct credit during the year for each of the party as against the total outstanding which has been added by the AO. Details of credit transaction with each of the credit parties during the year are already tabulated above. It is worthwhile to note from this submission itself that parties at Sr.No.6, 7 and 8 are the debtors to whom assessee has provided his services. These parties made payment for services by way of cheque. The payments made by them were in excess and therefore appeared as a credit balance. In respect of party at Sr.No.9, i.e., Vimal Transport Co., from its ledger account, it is noted that an advance payment of Rs.13,000/- was paid in cash for lorry hire. Against this advance payment, transportation charge of Rs.20,100/- has been accounted resulting into a closing credit of Rs.7,100/-.

13.1. Assessee had contended before the ld. CIT(A) that, parties in respect of whom the dues are there, are truck owners and do not reside at one place. Copies of ledger accounts furnished contains details as to date of payment, mode of payment including cash and cheque, name of the bank and the amount of payment. Further, assessee had given PAN and address and had requested that details

can be enquired from the bank where the cheque payments had been credited in the accounts of the respective creditor parties.

13.2. It is also worthwhile to note that, on perusing the paper book containing 85 pages placed on record by the assessee, we find that, the AO was directed by the Id. CIT(A) to conduct certain enquiries and submit a report for the alleged addition in respect of the creditor parties. Pursuant to this direction, the AO had issued a letter, dated 08.02.2018 on the assessee asking to furnish the details of payments made to these parties and their ledger accounts along with corresponding bank statements. The said letter is placed at page 38-39 of the paper book. Assessee replied vide his letter dated 18.09.2019. However, after the above two stated correspondence for remand proceedings as directed by the Id. CIT(A), there is nothing on record to conclusively establish that a remand report was furnished by the AO and considered by the Id. CIT(A) while dealing with the issue. The approach adopted by the Id. CIT(A) seems to be a half hearted approach, summarily dismissing the grounds raised by the assessee.

13.3. We also find that no effective cognizance of the submissions made by the assessee in the course of the assessment proceedings have been taken by the Ld. CIT(A) while disposing of the appeal. The Act provides for the powers of Commissioner (Appeal) u/s. 251 which adequately deals with the powers in disposing of the appeal by the Ld. CIT(A). The section is reproduced as under:

*“Powers of the Commissioner (Appeals)*

*251. (1) In disposing off an appeal, the Commissioner (Appeals), shall have the following powers:*

- (a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment; or*
- (aa) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other*

- material as may be brought on his record, confirm, reduce, enhance or annul the assessment;*
- (b) in an appeal against an order imposing a penalty — he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;*
- (c) in any other case — he may pass such orders in the appeal as he thinks fit.*

*The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.*

*Explanation – In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant."*

13.4. Section 250 of the Act provides for procedure to be adopted while disposing of the appeal by the Ld. CIT(A). Sub-section (4) of section 250 of the Act provides that the Ld. CIT(A) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing officer to make further inquiry and report the result of the same to the Commissioner (Appeals). Further, sub-section (6) provides that the CIT(A) shall pass an order in writing and shall set the points for determination, the decision thereon and the reasons for the decision. The section is reproduced as under:

*"250. Procedure in appeal*

*(1) The <sup>7</sup> Deputy Commissioner (Appeals)]<sup>8</sup> or, as the case may be, the Commissioner (Appeals)] shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the <sup>9</sup> Assessing] Officer against whose order the appeal is preferred.*

*(2) The following shall have the right to be heard at the hearing of the appeal-*

*(a) the appellant, either in person or by an authorised representative;*

*(b) the <sup>10</sup> Assessing] Officer, either- in person or by a representative.*

*(3) The <sup>1</sup> Deputy Commissioner (Appeals)]<sup>2</sup> or, as the case may be, the Commissioner (Appeals)] shall have the power to adjourn the hearing of the appeal from time to time.*

*(4) The <sup>3</sup> Deputy Commissioner (Appeals)]<sup>4</sup> or, as the case may be, the Commissioner (Appeals)] may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the <sup>5</sup> Assessing] Officer to make further inquiry and report the result of the same to the <sup>6</sup> Deputy Commissioner (Appeals)]<sup>7</sup> or, as the case may be, the Commissioner (Appeals)].*

*(5) The <sup>8</sup> Deputy Commissioner (Appeals)]<sup>9</sup> or, as the case may be, the Commissioner (Appeals)] may, at the hearing of an appeal, allow the appellant to go into any ground of*

*appeal not specified in the grounds of appeal, if the<sup>10</sup> Deputy Commissioner (Appeals)]<sup>11</sup> or, as the case may be, the Commissioner (Appeals)] is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.*

*(6) The order of the<sup>12</sup> Deputy Commissioner (Appeals)]<sup>13</sup> or, as the case may be, the Commissioner (Appeals)] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*

*(7) On the disposal of the appeal, the<sup>14</sup> Deputy Commissioner (Appeals)]<sup>15</sup> or, as the case may be, the Commissioner (Appeals)] shall communicate the order passed by him to the assessee and to the<sup>16</sup> Chief Commissioner or Commissioner].*

13.5. Principles governing the exercise of powers by the First Appellate Authority are contemplated under sections 250 and 251 of the Act, breach of which has far reaching consequences on the administration of justice culminating in the litigant approaching the higher appellate authority. It is required that the first appellate authority viz. CIT(A) will appreciate the evidence, consider the arguments and apply the law on the given set of facts and circumstances and arrive at findings.

13.6. In the light of the above stated submissions made by the assessee before the Id. CIT(A), while going through the findings and decisions arrived by him in para 5.3, we note that Id. CIT(A) has dealt with the same on the premise of these cash credit being un-secured loans. He has reiterated the stance taken by the AO that assessee did not provide supporting documents for proving the genuineness of loans and credit worthiness of lenders. He also noted that, AO had sent notices under section 133(6) to the lenders and none of the lender responded. According to him assessee did not furnish loan confirmations of the lenders and any documentary evidences to sustain his claim. He thus upheld the finding of the AO. The above stated observations and findings of Id. CIT(A) demonstrates non-application of mind on his part while disposing the ground raised by the assessee. There is utter failure on the part of the Id. CIT(A) of not considering the submissions made by the assessee alongwith documentary evidences despite he reproducing the written submission made by the assessee in his order. He has dealt with the grounds by

taking the addition as addition made for credit entries of loans. Though, they infact relate to creditors for transportation charges and tyre purchases expenses incurred by the assessee.

14. Keeping in mind the provision of sections 250 and 251 of the Act and factual matrix discussed above, it is incumbent upon the Ld. CIT(A) to pass a speaking order on the merits of the case by examining, verifying and analyzing the material on record. Since there are no meritorious finding given by the Ld. CIT(A) on the submissions made by the assessee, we find it fit to remit the matter back to the file of the Ld. CIT(A) for his objective and meritorious observations and findings on the submissions made by the assessee. Needless to say the assessee be given reasonable opportunity of being heard and the assessee shall also be cooperating for the effective disposal of the appeal and will be at liberty to make further submissions as deem fit.

14.1. While disposing ground no.2 of the appeal, we have remitted the matter back to the file of ld. CIT(A), in terms of our aforesaid observations. Accordingly, we find that ground no.3 contended by the assessee in respect of alternative addition made by the ld. Assessing Officer on protective basis by relying on the provisions of Section 40A(3) is rendered academic, hence, not adjudicated upon.

14.2. Further, since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defence/explanation of the assessee. Accordingly, we set aside the impugned order of the Ld. CIT(A) and restore the matter back to the file of the Ld. CIT(A) to

decide afresh after affording reasonable opportunity of being heard to the assessee and the assessee is directed to be diligent in the appellate proceedings.

15. In the result, appeal of the assessee for AY 2002-03 is allowed and appeal for AY 2005-06 is allowed for statistical purposes.

Order is pronounced in the open court on 21 May, 2024.

Sd/-  
(Sunil Kumar Singh)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 21 May, 2024***

*MP, Sr.P.S.*

**Copy to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai