

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 408/Chd/2023
निर्धारण वर्ष / Assessment Year : 2013-14

Kissan Fats Limited Hazi Rattan Link Road, Bathinda	बनाम	The DCIT Central Circle-1
स्थायी लेखा सं. / PAN NO: AABCK4335Q		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR
सुनवाई की तारीख/ Date of Hearing : 08/08/2024
उदघोषणा की तारीख/ Date of Pronouncement : 26/08/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Assessee Kissan Fats Limited for the Assessment Year 2013-14. The corresponding previous year is from 01/04/2012 to 31/03/2013. The appeal is filed under section 253 of the Income Tax Act, 1961 as and by way of second appeal under the Act. The assessee is aggrieved by order dt. 01/05/2023 passed in first appeal bearing No. 10408/2012-13/IT/CIT(A)-5/Ldh/2021-22 of Ld. CIT(A) under section 250(6) of the Act, which is hereinafter referred to as the "**impugned order**".

FACTUAL MATRIX

- The assessee is a company under the Companies Act, 1956/2013. The assessee is into the business of **manufacturing vanaspati ghee** and **refined oil** and had filed return of income at rs. 2,07,78,950/- on 30/09/2013.
- The assessee maintains **audited books of accounts** and that copy of **complete audit report** for the year under consideration is placed on record in paper book filed.

4. The case of the assessee was selected under **scrutiny** and that after the due application of mind, the complete books of accounts were produced for verification and post satisfaction of books of account, the Ld. AO completed the assessment proceedings under **section 143(3)** of the Act vide order dated **22/05/2015**. The copy of the assessment order is enclosed in the paper book at page 35-38.

5. Later on, the case of the assessee was **reopened** under **section 148** of the Income tax Act, 1961. **Copy of reasons** are enclosed in the paper book at page 90-93. Reasons are dt. 15/02/2021. Page 21 to 24 of written submissions of Ld. DR / Department.

6. **A notice** under **section 148 of the Act** was issued to the assessee which is dt. 01/03/2021 wherein the Department of Income Tax has stated that they have '**reasons to believe**' that **assessee's income chargeable to tax** for A.Y. 2013-14 has **escaped assessment** within the meaning of Section 147 of the Act, and therefore they propose to **reassess the income** for the said A.Y. 2013-14 and called upon the assessee to file / deliver a return of income in prescribed form for the said assessment year i.e; 2013-14. It was also stated therein that present notice is being issued after obtaining the necessary satisfaction of Ld. PCIT(Central) Ludhiana. Copy of the aforesaid notice dt. 01/03/2021 (supra) is at page 87 of the written submissions placed on record by the Ld. DR.

7. By letter no. CIT/Ldh/JB-11/2020-21/4945 dt. 18/19-02-2021 approval of Ld. PCIT(Central) Ludhiana has accorded the approval under section 151(1) for initiating proceedings under section 147/148 of the Income Tax Act, 1961. Page 25 of written submissions of Ld. DR. On page 89 of written submission of Ld. DR the 'concurrency to reasons recorded' is also approved by Add. CIT(Column 12) besides Ld. PCIT(Column 13).

8. Be that as it may, by way of 'a speaking order' dt. 24/01/2022 the Ld. AO disposed off the objections of the assessee. Page 95 of Paper Book.

9. That thereafter the reassessment proceedings commenced with replies filed by the assessee during the course of reassessment proceedings, however the replies and documents filed by the assessee were not considered by the AO and addition to the tune of Rs. 63,39,524/- was made to the total income of the assessee on account of **bogus purchases** and further the AO held that the assessee must have incurred some expenditure in the **form of commission** in order to arrange such alleged bogus purchases and thus further addition of Rs. 1,22,790/- was made on account of alleged commission paid.

10. During the course of the reassessment proceedings, the assessee had sought statement of Hitesh Jain **basis** which the completed assessment was reopened by the Department but the said statement was not provided nor any opportunity was given to the assessee to cross examine the person Shri Hitesh Jain.

11. In brief facts of the case can be summarized as follows:

That the assessee filed his return of income on 28/09/2013 for the A.Y 2013-14. The case was decided in **scrutiny order section 143(3)** vide order dt. **22/05/2015**. Notice under **section 133(6)** of the Act has been issued to verify the transaction with Shubham Agro India, Delhi and Shri Hari Trading Co. Delhi. The information has been duly filed with cop of account of Shubham Agro India Delhi and Shri Hari Trading Co. Delhi. However the case was reopened under section 148 of the Act vide notice dt. 01/03/2021. Return has been filed in response to notice under section 148 on 18/03/2021. Copy of the reason was supplied to assessee. Objection to the same was filed alongwith other evidence regarding genuineness of the transaction. However the Ld. AO vide order No. ITBA/AST/S/147/2021-22/1041388247(1) dt. 23/03/2022 for A.Y. 2013-14

corresponding to previous year period commencing from 01/04/2012 to 31/03/2013 made addition of Rs. 61,39,524/- by holding that the submission of the assessee has been carefully perused. It is clear that though the assessee has furnished documentary evidences for the impugned purchases, but has failed to establish the genuineness of the parties from whom the impugned purchases have claimed to have been made and further made an addition of Rs. 1,22,790/- by holding that for taking the above accommodation entries, the assessee might have incurred some expenses. Thus the total addition made amounts to Rs. 62,62,314/- in the assessed income.

12. The assessee being aggrieved by the aforesaid order of Ld. AO dated 23/03/2022 prefers first appeal before the Ld. CIT(A).

13. The Ld. CIT(A) in the impugned order has stated that the assessment in the case was completed under section 147 of the Act wherein an addition of Rs. 62,62,314/- was made by the AO. The assessment in this case was reopened on the basis of information gathered by the AO and formation of reasons to believe regarding the unaccounted transactions made by the assessee company with M/s Shri Hari Trading Co. and M/s Shubham Agro India. As per the assessment order the assessee company made alleged purchases of Rs. 29,90,477/- (from M/s Shri Hari Trading) and Rs. 31,49,047/-(M/s Shubham Agro India). As per the Ld. AO the above mentioned concerns were paper concerns which had received the accommodation entries from the assessee company. The Ld. AO further held that M/s Shri Hari Trading Co. and M/s Shubham Agro India were paper concerns and Shri Pradeep and Shri Sushil Sharma are their proprietors. As per the report of the investigation wing, the said paper entities were controlled by Shri Hitesh Jain proprietor "M/s Mitter Sain Rajesh Kumar" who acknowledged the fact that the above mentioned concerns are bogus entities involved in providing accommodation entries. The AO further held that the said entities used to provide the bogus bills of purchase to the beneficiary assessee

company. On basis of cogent evidence placed before AO the proceedings were reopened under section 148. The Ld. AO in the aforesaid assessment order dt. 23/03/2022 has made following conclusions:

(a) Notices sent under section 133(6) to the said concerns remained unserved with the comments "**the person left for a New address**".

(b) Investigation carried out by the investigation wing revealed that the said entities were controlled by Shri Hitesh Jain and signed cheques of more than 20 entities were found from his premises.

(c) Shri Hitesh Jain in his statement during search proceedings confirmed the fact that these companies are engaged in issuing and receiving bills only.

(d) The said persons were not produced before the AO during the assessment proceedings.

(e) No confirmations were filed.

14. The Ld. CIT(A) with regard to issues / grounds that the

(1) Ld. AO notice under section 148 is without jurisdiction and beyond four years and consequently assessment order is bad in law as notice is void initio.

(2) Further there is no proper satisfaction as required under law has held that a perusal of the assessment order reveals that the notice under section 148 has been issued with the approval of PCIT(Central) Ludhiana and due process for reopening of the case has been followed and hence contention is rejected. With regard to (2) above he has held that a perusal of the reasons recorded shows that the Ld. AO reopened the case on the basis of cogent material which were on record before him and the information received from the Investigation Wing. Therefore contention of AR that the case has been reopened **just** on basis of information received from the Investigation Wing is not tenable as the AO has also formed belief for reopening under section 148 on the basis of record /

documents available before him. In addition the Ld. CIT(A) held that and that too without prejudice that there are plethora of judgements which supports that the information received from Investigation Wing alone is a sufficient ground for reopening of cases under section 148 and has placed reliance on the judgement of Hon'ble Delhi High Court in case of Pr. CIT Vs. Paramount Communication (P) Ltd. (2017) 79 Taxmann.com 409 (Delhi) that information forwarded by DRI is tangible material to initiate valid reassessment proceedings. SLP in Hon'ble Supreme Court of India on said matter was dismissed as reported at (2017) 84 Taxmann.com 300. The Ld. CIT(A) then has relied upon the following judgments of High Courts (i) Pushpa Uttam Chand Mehta Vs. ITO (2022) 139 taxmann.com 409 (Gujarat) (ii) Ankit Agrochem(P) Ltd. Vs. JCIT, Range-1, Bikaner (2018) 89 Taxmann.com 45(Rajasthan) (iii) Aradhna Estate (P) Ltd. Vs. DCIT, Circle-1(1) (2018) 91 Taxmann.com 119 (Gujarat), (iv) AGR Investment Ltd. Vs. Additional Commissioner of Income Tax (2011) 197 Taxmann.com 177 (Delhi) and one judgement of ITAT, Agra reported in case of Anil Kumar Singhal Vs. ITO, Ward-1(1) Agra (2013) 33 Taxmann.com 434 (Agra Trib). **Basis** these authorities (supra) the Ld. CIT(A) has held "Hence, the AO was well within his rights to reopen the assessment proceedings even on the basis of information received from the Investigation Wing though the AO has clearly recorded the finding that reopening was done **on the basis of documents on record as well as information received from the Investigation Wing.**

(Emphasis Supplied)

The Ld. CIT has held that "the AO has power to reopen a case, provided there is tangible material to come to the conclusions that there is escapement of income of the assessee. The reasons must have a live link with the formation of belief. At the stage when the AO reopens an assessment, it is not necessary that the material should conclusively prove or establish that the income has escaped assessment. Only a reason to believe at the stage of reopening is all that is relevant. At the stage of issue of notice , the only question is whether there was

relevant material on which a reasonable person could have formed a requisite belief. Whether the material would conclusively prove the escapement of income is not the concern at that stage. The Ld. CIT(A) has also placed reliance on judgement of Hon'ble Supreme Court of India in case of ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. 291 ITR 500 (SE) wherein it was held that the only requirement to be fulfilled for issuing notice for reopening was that the AO must have reason to believe that income chargeable to tax has escaped assessment. The reason to believe does not have to be final opinion that addition would certainly be made. Reliance was further placed on the judgement of Hon'ble Gujarat High Court in case of Peass Industrial Engineers (P) Ltd. Vs. Dy. CIT 72 Taxmann.com 302 (2016) wherein the Hon'ble High Court has upheld the initiation of proceedings under section 147 of Income Tax Act, 1961 by observing as under :-

""At the initial stage what is required is reason to believe, but not established fact of escapement of income Therefore, at this stage only question whether there was relevant material to form a reasonable belief is to be seen. In the background of facts, there is specific information received about 'K' and it has been prima facie found that the assessee is also the beneficiary of the said 'K. At this stage of the proceeding, the factum of said aspect whether the assessee is beneficiary or not is not to be finally adjudicated upon by the Assessing Officer. Therefore, the Court is not in a position to dwell into it, but only has to examine whether there is a reasonable belief arrived at or not. From the basis of aforesaid circumstances prevailing on record, it appears that the Assessing Officer is justified prima facie in arriving at conclusion to reopen the assessment. A liberty is always available to the assessee to justify or to deal with the same, but this is not the stage where the process of reopening based upon aforesaid material is to be intercepted."

Basis above too, the Ld. CIT(A) held that " Thus, it is a settled principle of law that at the time of issue of notice under section 148, it is not necessary for the AO to 'establish beyond doubt' that income has escaped assessment. As per law, at this stage there should only exist 'reason to believe' that income has escaped assessment and the case needs reopening. It may or may not ultimately result into addition depending upon the outcome of inquiries. Hence, the reopening of the case under section 148 of the Act is valid and grounds of appeal at 1 & 2 were rejected by the Ld. CIT(A).

15. The ground nos. 4 & 5 of the assessee before the Ld. CIT(A) was (1) the Ld. AO ought not to have made addition of Rs. 61,39,524/- on basis of material placed on record (2) and further the Ld. AO also ought not to have made addition of Rs. 1,22,790/- in view of facts and material on record. The Ld. CIT(A) in the impugned order has stated that Ld. AO reached the conclusion of above addition basis bogus purchases from M/s Hari Trading Company and M/s Shubham Agro India on certain reasons which are as under:

- a. *Notices sent under Section 133(6) to the said concerns remained unserved with the comments "the person left for a new address".*
- b. *Investigation carried out by the Investigation Wing revealed that the said entities were controlled by Sh. Hitesh Jain and signed cheques of more than 20 entities were found from his premises.*
- c. *Sh. Hitesh Jain in his statement during search proceedings confirmed the fact that these companies are engaged in issuing and receiving bills only.*
- d. *The said persons were not produced before the Assessing Officer during the assessment proceedings.*
- e. *No confirmations were filed.*

The AR of the assessee vehemently denied that the said purchases from M/s Shri Hari Trading Co. and M/s Shubham Agro India are bogus. AR conveyed that there has been movement of goods which is duly certified by the VAT authorities and that the goods purchased have been entered in the stock register therefore no disallowance on account of bogus purchases can be made. The Ld. CIT(A) has also discussed the modus operandi of bogus purchases as "**Bogus purchases are made from paper companies to whom cheque payments are made and cash is received back. The bank accounts of the paper companies clearly depict the above picture wherein the cheque amounts are credited and immediately there is drawing in cash or debit of cheque to other accounts from where the cash is withdrawn. The inflation of purchases and corresponding sales leads to increased turnover which helps in availing better loan facilities from the**

banking authorities. Also, bogus expenditure leads to reduction in the profits of the assessee leading thereby to lower taxes."

The assessee had made purchases to the tune of Rs. 61,39,524/- from M/s Shri Hari Trading Company and M/s Shubham Agro India. The Ld. CIT(A) in view of "Modus Operandi" as stated further states that M/s Shri Hari Trading Co. and M/s Shubham Agro India were merely entry provider and who received / earned commission on the said accommodation entries. In an analysis the Ld. CIT(A) in the impugned order has averred and stated that purchases from M/s Shri Hari Trading Company and M/s Shubham Agro India are not genuine and there is plethora of evidence to the establish that the said transactions are not genuine due to following:

- 1. The alleged suppliers of goods are not available and no verification could be done with them.*
- 2. Notices sent under Section 133(6) to the said concerns remained unserved with the comments "the person left for a new address".*
- 3. Investigation carried out by the Investigation Wing revealed that the said entities were controlled by Sh. Hitesh Jain and signed cheques of more than 20 entities were found from his premises.*
- 4. Sh. Hitesh Jain in his statement during search proceedings confirmed the fact that these companies are engaged in issuing and receiving bills only.*
- 5. The said persons were not produced before the Assessing Officer during the assessment proceedings.*
- 6. No confirmations were filed.*
- 7. Even during the appellate proceedings, the AR in his reply dated 24.04.2023 has conveyed at serial no. 9 of the reply that "confirmation from the parties in such short span of time may not be possible".*
- 8. In the absence of suppliers, who have been categorized as accommodation entry providers, the alleged purchases made by the assessee concern from them cannot be considered as genuine and has to be treated as unexplained and bogus purchase u/s 69C of the Income Tax Act, 1961.*

The Ld. CIT(A) therefore has held that “Hence, the, bogus purchases of Rs. 61,39,524/- made by the assessee from M/s. Shri Hari Trading Co. and M/s. Shubham Agro India shall be treated as unexplained expenditure u/s 69C of the Income Tax Act, 1961. Also, the addition made by the AO of Rs. 1,22,790/- on account of commission paid for the alleged bogus accommodation entries is held to be justified as this is a normal rate of commission taken by the entry operators for providing accommodation entries. The appellant could not provide confirmations from the alleged sellers even during the appellate proceedings.”

The Ld. CIT has placed reliance on the judgments of following Courts in support of his finding they are (1) PCIT Surat Vs. T R Kapadia reported at 256 Taxmann 213 (This case was distinguished as in case of supplier also confirmed the transaction whereas in instant case sellers have not confirmed the transactions) (2) N.K Industries Ltd. Vs. CIT reported in 84 Taxmann.com 195 (SC) which has confirmed the judgement of Gujarat High Court in case of NK Industries Vs. DCIT reported in (2016) 72 Taxmann.com 289 (Gujarat) wherein it was held as “Unexplained expenditure (Bogus purchase)-Entire purchases shown on basis of fictitious invoices was debited in trading account though Tribunal made addition of 25 per cent of total purchase came to a categorical finding that there were purchases from bogus suppliers-Whether Tribunal should have made addition of total purchases – Held, yes [Para 6] [In favour of revenue]”

The Ld. CIT(A) in the impugned order also has placed reliance on the judgment of Hon’ble Gujarat High Court in case of Sanjay Oil Cake Industries Vs. CIT reported in (2009) 316 ITR 274 (Gujarat) that “Where certain additions were made on account of inflated purchase price and alleged sellers were not traceable and though payments had been made by account payee cheques, entire amounts so deposited had been withdrawn by bearer cheques, Tribunal was justified in sustaining addition.”

The Ld. CIT(A) in the impugned order has also placed reliance on order of ITAT Mumbai Bench in case of Soman Sun Citi Vs. JCIT in ITA No. 2960/Mum/2016 dt. 23/10/2017 by holding further that right of cross examination is not absolute. No prejudice is caused to the assessee by non granting of cross examination if the assessee has not discharged the primary onus. The fact that purchase bills are produced and payment is made through banking channel is not sufficient if the other evidence is lacking. The CIT(A) has further relied upon decision of ITAT Mumbai in case of Navin Shantilal Mehta Vs. ITO (2018) 90 Taxmann.com 16 (Mumbai) and PBA Infrastructure Ltd. Vs. ACIT(2017) 86 Taxmann.com 198 (Mumbai) wherein it has been held that "where assessee was found to have made bogus purchases from several hawala operators and those sellers were not found existing on given addresses, addition under section 69C was justified. The Ld. CIT(A) finally even on merits upheld the addition of sum of Rs. 62,62,314/- under section 69C on account of bogus purchases made from non existent suppliers and the commission paid too was confirmed.

16. The assessee being aggrieved by the impugned order of Ld. CIT(A) has raised following grounds of appeal before us in the second appeal in terms of Form No. 36 which is form of appeal to this Tribunal.

1. *On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in issuing the notice u/s 148 of the Income Tax Act with regard to reopening of the case.*

2. *On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the validity of notice issued under section 148 of the Income Tax Act whereas as per facts and other material placed on record, notice issued under section 148 of the Income Tax Act is an illegal and invalid notice issued without any proper and valid reasons.*

3. *On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred by holding the validity of notice issued u/s 148 of the Income Tax Act without considering the fact that the assessee appellant has duly explained with evidence, in response to notice u/s 133(6) of the Income Tax Act, all the alleged purchases of Rs. 61,39,524/- considered as escaped assessment.*

4. On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred by holding that the purchases of Rs. 61,39,524/- as bogus and deemed income u/s 69C of the Income Tax Act without appreciating that these purchases are already accounted for in the return filed. Therefore, provisions of section 69C are not applicable.

5. On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred by confirming addition of Rs. 61,39,524/-merely on the ground that the confirmation from the concerned party from whom purchases made has not been furnished.

6. On the facts and the circumstances of the case and in law and material placed on record, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 61,39,524/-.

7. On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred by upholding the addition of Rs. 1,22,790/-as unexplained expenditure u/s 69C of the Act merely on presumption.

8. That the assessee appellant craves to add or amend the grounds of appeal.

RECORD OF HEARING

17. The hearing before this Tribunal took place on 08/08/2024, when both the parties appeared before us and were patiently heard on merits of their respective submissions. Full and complete opportunity was afforded to both Ld. AR and Ld. DR and both parties were treated equally. The Ld. AR has filed on record brief synopsis dated 18/07/2024, paper books dt. 23/01/2024 from page nos 1 to 124, another paper book dt. 08/08/2024 from pages 1 to 55, set of judgments. The Ld. DR has filed written submissions dt. 29/04/2024 with page nos 1 to 70. The Ld. AR at the outset assailed the order of Ld. AO and impugned order on ground that Income Tax Authorities in law have no jurisdiction to reopen the assessment proceedings u/s 147/148 of the Income Tax Act, 1961 as there is **no material on record basis** which it can be said that there are reasons to belief that any income chargeable to the tax has escaped assessment for any assessment year. With regard to reason recorded by Ld. AO it was contended that so called information received from DDIT (Investigation) Karnal was a borrowed information and in such circumstances satisfaction too is one which is borrowed. Under 147 of the Income Tax Act, 1961 there has to be

independent formation of belief by the Ld. AO. He himself has to be form a belief. The Ld. AO was not aware about anything else other than the report of the investigation wing. There is thus no independent application of mind. There was no document or any other information on the file of AO. Reliance was placed on several authorities / case laws in support of the contentions canvassed by Ld. AR which are enumerated in the synopsis filed. The Ld. AR then contended that before original assessment order dt. 22/05/2015 (paper book page 35 to 38) these are replies of the assessee which clearly establishes that all material information and documents which were sought were provided for from time to time. He emphasized from para 1.1 & 1.2 of the original assessment order dt. 22/05/2015 that all that was sought from assessee was given, the case was discussed books of account produced and test checked. Contents from para 1.1 & 1.2 of original assessment order at page 35 of Paper Book were read out by Ld. AR. Important paragraphs of replies filed before original assessment order dt. 22/05/2015 was passed which were at page 29,31,32 were highlighted. It was therefore contended that no income chargeable to tax has escaped assessment by reason of any failure on part of the assessee or to disclose fully and truly all material fact necessary for his assessment for that assessment year. Therefore notice is bad in law in terms of proviso to section 147. The Ld. AR emphatically stated that assessee is not liable in law to disclose each and every purchases, in ITR and nothing prevented Ld. AO while carrying out original assessment proceedings to seek such details of each and every purchases. It was further contended that **post original assessment order** dt. 22/05/2015 by notice dt. 20/03/2020 information u/s 133(6) of the Income Tax Act, 1961 for A.Y. 2013-14 were called wherein it was communicated to assessee company that information from O/o DDIT(Investigation) has been received that during the course of search proceedings in case of Hitesh Jain, he has admitted that he was engaged in providing accommodation entries by providing bogus bills without actual

delivery of goods. That Kissan Fats Ltd. the assessee company made payment of Rs. 29,90,477/- to M/s Shree Hari Trading Co. (Prop. Pradeep) and another payment of Rs. 31,49,4047/- to one M/s Shubham Agro India (Prop Sushil Sharma). It was stated that the said information has been brought on record in a search operation that was conducted under section 132 on 23/05/2017 in cse of Shri Hitesh Jain Prop. M/s Mitter Jain Rajesh Kumar" and during the course of search proceedings Shri Hitesh Jain admitted of being involved in providing accommodation entries through floating a number of bogus entities including M/s Shree Hari Trading Co. (Prop Pradeep) Delhi and M/s Shubham Agro India (Prop. Sushil Sharma) New Delhi. The said notice contents on page 39,40 and 41 of paper book were read out during the course of hearing and so also reply of assessee to it on pages 42,43, & 44 of paper book. The Ld. AR brought to our notice that the assessee company has no connection with Shri Hitesh Jain. Hitesh Jain is not Karta / Proprietor of M/s Shri Hari Trading Co. (HUF) and M/s Shubham Agro India (Proprietor Firm). No statement of Pradeep (Karta) of M/s Shri Hari Trading Company and Shri Sushil Sharma (Proprietor) of M/s Shubham Agro India has been recorded. Any statement of third party which is not connected with buyer and seller is irrelevant and baseless especially so when goods have been procured, received, processed and further sold as finished goods. The Ld. AR then brought to our notice that the assessee company is in the business of procuring Rice Bran for further processing to extract edible oil. That from these two parties the assessee company procured Rice Bran through commission agents. **The raw material are procured through various commission agents on Pan India basis and upon booking of Raw material, the commission agents arranges the entire procurements of goods and at the year end commission is paid to respective commission agents. All these transactions are duly recorded in the books and so also production from these goods are recorded. Copy of accounts of Shri Hari Trading Co. (HUF) and M/s Shubham Agro India from books of assessee alongwith few extracts of copies of invoices,**

copy of transport company receipt (bilty), copy of excise and taxation Department of Punjab declaration reflecting the detail of vehicle crossed from barrier consigner and consignee detail, cop of weight receipt and copy of material receipt voucher prepared at factory are all on record in paper book.

The Ld. AR therefore **basis** these documents which are at pages 45 to 86 of paper book of both parties (supra) including ledger statement of these two parties in books of assessee company; contended that goods have been procured in legal manner especially state VAT Department barrier receipt is enclosed reflecting movement of goods to M/s Kissan Fats Ltd the assessee. **The Ld. AR then contended that assessee company did not receive further goods from these two concerns after financial year 2012-13 A.Y 2013-14 and therefore any confirmation from these parties are not possible.** Further Tonns of Rice Bran is procured and final product is edible oil. Raw material is sourced and obtained by commission agents from multiple sources. Hence there cannot be a direct connect between specific purchase and specific sale as **this is possible in trading but not manufacturing of edible oil.** Finally reliance was placed on order of ITAT in case of Pradeep Kapoor Vs. ITO reported in (2024) 162 taxmann.com 549 in support of plea that when everything is disclosed at the time of original assessment under section 143(3) period beyond four years on account of failure to disclose material facts fully and truly does not stand and therefore the reopening notice issued beyond four years was illegal.

18. Per contra Ld. DR vide written submissions dt. 29/04/2024 has contended as follows:

(1) That the assessee company has made payment of Rs. 29,90,477/- to M/s Shri Hari Trading Company (Proprietor Pradeep), old Anaj Mandi, Narela, Delhi and another payment of Rs. 31,49,047/- to M/s Shubham Agro India(Proprietor Sushil Sharma) Pana Udyan, Narela, Delhi(Basis information from DDIT(Inv) Karnal). The AO has stated that though documentary evidences for impugned purchases have been produced by the assessee company but it has failed to establish the genuineness of the parties from whom the impugned purchases have claimed to be made. Independent inquiries were made from these two parties by sending notices under section 133(6) of the Income Tax Act, 1961 but all notices returned

unserved with comment “ **The person left for a new address**”. AO therefore has rightly concluded that these parties are conduits, non genuine and not involved in sale and purchase of Rice Bran. Thus addition of Rs. 62,62,314/- inclusive of commission of 2% on account of availing accommodation entries is justified as bogus parties which are non existent are involved. Assessee too has failed to prove genuineness of both parties in any manner whatsoever. With regard to ground taken by the assessee in appeal “that the validity of notice issued u/s 148 is illegal and invalid, does not carry any merit and the same is required to be rejected. A search operation was conducted u/s 132 of the Act on 23.05.2017 by the Investigation wing in the case of Sh. Hitesh Jain Prop. M/s Mittersain Rajesh Kumar, Karnal. During the course of search proceedings, Sh. Hitesh Jain in his statement recorded had admitted of being involved in providing accommodation entries through floating a number of bogus entities including M/s Shree Hari Trading Co. (Prop. Pardeep), 2093, Shop No. 11, 1st Floor, Old Anaj Mandi, Narela, Delhi and another M/s Shubham Agro India (Prop. Sushil Sharma), C-69, Pana Udyan, Narela, New Delhi.

M/s Kissan Fats Pvt. Ltd. has also made certain payments to M/s Shree Hari Trading Co. (Prop. Pardeep), 2093, Shop No. 11, 1st Floor, Old Anaj Mandi, Narela, Delhi and another M/s Shubham Agro India (Prop. Sushil Sharma), C-69, Pana Udyan, Narela, New Delhi, therefore, which are non-genuine parties, not involved in sale and purchase transactions but merely acting as conduits, involved to provide accommodation entries to various beneficiaries. On receipt of such information, the A.O. had examined the material available on record and formed the 'reasons to believe' regarding the escapement of income after due application of mind and accordingly the case of the assessee was re-opened u/s 148 of the Act after due approval from the PCIT(Central), Ludhiana. Therefore, the ground of the appeal taken by the assessee is not acceptable.

18.1 With regard to ground that Ld. CIT(A) upheld notice under section 148 despite assessee explaining fully and truly all in response to notice under section 133(6) about alleged purchases of Rs. 61,39,324 which is considered as escaped assessment; it is contended that “During the course of enquiry proceedings, notices u/s 133(6) of the I.T. Act were issued by the Assessing Officer to the assessee company after getting approval from the concerned higher authority. A copy of the letter No. 1250 dated 11.03.2020 of the Assessing officer i.e. ACIT,CC-1, Ludhiana asking for approval from Pr. CIT (Central), Ludhiana for issuance of notice u/s 133(6) of the Act in the above mentioned case is placed at page No. **10-13** of the Paper Book. An approval was granted by the O/o Pr. Commissioner of Income Tax (Central), Ludhiana vide letter No. 7201 dated 16.03.2020. A copy of the same is placed at page No. **14** of the Paper Book.

Verification letters/notices u/s 133(6) of the Act were issued to the assessee vide letter dated 20.03.2020 and 02.11.2020, asking to provide certain details with regard to the above said transactions. A copy of these notices are placed at page No. **15-18** of the Paper Book.

In response to the same, assessee had not provided complete information/documents and it had further submitted that the assessee company had not received further goods from the above said two parties and also failed to furnish the confirmed copies of accounts of these parties. Accordingly, after considering the reply of the assessee, the A.O. had formed the reasons to believe for escapement of income."

18.2 "Accordingly, proceedings were re-opened u/s 147 of the Income Tax Act by the Assessing Officer after following the due procedure as prescribed in the I.T. Act, 1961. Relevant facts with regard to the reopening proceedings viz-a-viz issuance and service of notice u/s 148 of the I.T. Act, 1961 are discussed as under in order to prove that due procedure was followed by the Assessing Officer in initiating the proceedings u/s 147 of the I.T. Act, 1961 :-

(i) Proper reasons for initiating proceedings u/s 147 of the I.T. Act, 1961 were duly recorded by the Assessing Officer, i.e. Dy. Commissioner of Income Tax, Central Circle-1, Ludhiana and proposal was sent to the competent authority i.e. the Pr. CIT (Central), Ludhiana through proper channel seeking approval to issue notice u/s 148 of the Act vide letter No. 573 dated 15.02.2021, which is placed at page No. **19-24** of the Paper Book.

(ii) The necessary approval was duly obtained in writing in specified proforma from the office of the Pr. Commissioner of Income Tax (Central) Ludhiana for the issue of Notice u/s 148 of the Act vide letter No. Pr. CIT(C)/Ldh/JB-II/2020-21/4945 dated 19.02.2021. Copy of the same is placed at page No. **25-26** of the Paper Book. In the given facts of the case, it can be said that the competent authority

has applied his mind on the issue involved and has accorded his approval in accordance with the provisions of the Act.

(iii) Notice u/s 148 of the I.T. Act, 1961 was issued by the Assessing Officer on 01.03.2021. A copy of the same is placed at page No. **27** of the Paper Book.

(iv) Assessee filed an objection on issuing notice u/s 148 of the Act on 20.07.2021, which was disposed off by the Assessing Officer vide order dated 24.01.2022. A copy of the same is placed at page No. **28-30** of the Paper Book..”

18.3 “Notice u/s 148 of the Act for A.Y. 2013-14 was issued to the assessee on the basis of valid reasons and sufficient material by applying proper application of mind. The department had information that the assessee had taken bogus accommodation entries. Though the assessee had furnished documentary evidences for the impugned purchases, but had failed to establish the genuineness of the parties from whom the impugned purchases have claimed to be made, so the A.O. had reasons to belief and that this material was sufficient to prove that the assessee had unexplained income.”

18.4 “The AO did form a prima facie belief of escapement of income on the basis of indubitable and credible information in respect of the assessee. Therefore, it was never borrowed satisfaction and reassessment proceedings were opened on well justifiable belief and satisfactory reasons. All the essential parameters for reopening the case of the assessee were satisfied and due procedure was followed in assumption of jurisdiction to assessee. Thus, this ground of appeal raised by the assessee has no valid point to stand.

In this regard, reliance is placed on the following cases :

- **Raymond Woolen Mills Ltd. v. ITO And Others (Hon'ble Supreme Court) [236 ITR 341]**

In determining whether commencement of reassessment proceedings was valid it has only to be seen 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 is not a thing to be considered at this stage.

Copy of judgement is placed at page No. **31-32** of the Paper Book.

- **Rajat Export Import India Pvt. Ltd. vs ITO (Hon'ble High Court of Delhi)**

It is also well settled that at the stage, that is at the stage when reasons are recorded for reopening the assessment, the Assessing Officer is not required to build a fool proof or a fort like case for making addition to the assessee's income, all that he is required at that stage is to form a prima facie opinion or belief that income has escaped assessment."

Copy of judgement is placed at page No. **33-47** of the Paper Book.

- **ACIT vs M/s Kisco Casting (P) Ltd. (Hon'ble ITAT, Chandigarh) [ITA No. 685/CHD/2011]**

Where the information is factual and not false one and the same has merely been communication to the AO, he would be within his statutory right to invoke the provisions of Section 147 read with section 148 of the Act.

Copy of judgement is placed at page No. **48-70** of the Paper Book. "

18.5 It was finally prayed basis above the appeal of the assessee be dismissed.

Findings & Conclusions

19. We now examine the legality, validity and the propriety of the impugned order. We hold that the Ld. AO has accepted the documentary evidences for impugned purchases but simultaneously has held that the assessee has failed to establish the genuineness of the parties from whom the impugned purchases have claimed to be made. These findings are upheld by

the Ld. CIT(A) in the impugned order under challenge too. In this regard, we hold that the Ld. AO and so also Ld. CIT(A) have attempted to blow hot and cold. One cannot approbate and reprobate. The authorities below miserably failed to appreciate the trade practice that in commercial parlance the assessee company procures raw material for edible oil in tons i.e Rice Bran through several commission agents on Pan India basis who organizes everything for them and once they are engaged it is their responsibility to procure the rice bran from start to finish meaning source the best raw material rice bran of good quality, quantity and competitive price acceptable to the assessee company. The assessee company has no role and control much less even an interaction with such suppliers of rice bran. Each and every responsibility from start to finish is of commission agents they not only identify the party but ensures that raw material is delivered to the assessee company till factory gate/warehouse of the assessee company. In return the assessee company pays them a consideration amount which is generally 1 to 2% of the value of the raw material which is popularly called "Commission or Dalali". This aspect explained to us has not been considered by the authorities below when interaction took place and a biased finding has come to be given to the assessee company despite a valid explanation to them. Hence we do not find any merit in the aforesaid finding of Ld. AO upheld and sustained by the Ld. CIT(A). This factual assertion of the assessee has not been taken into consideration at all by the authorities below while adjudging and adjudicating the case, an approach wholly untenable in law and fact of the present case. The authorities must appreciate trader parlance, practices, trade name, customs and usages, popular hearing in trade first before venturing to adjudge and adjudicate the case.

19.1 We hold that merely because nothing has come out fruitfully in favour of Revenue in independent inquiries carried out by sending notices to M/s Shri Hari Trading Co. and M/s Shubham Agro India as notices were unserved with remark and comment "**the person left for a new address**". In our considered view

person '**left for a new address**' means **person is in existence but has changed his address**. It cannot lead to a presumption and assumption that person is non existence or bogus or fictitious. We also hold that merely because a person is not found at his given address it cannot be said that person is not in existence or such a person or party is bogus and fictitious. In view of notices returning back, nothing prevented the Department in independent inquiries to go deeper into the probe or to make a further detailed inquiries before terming these two entities as bogus and fictitious. **The result of inquiries made with the banks and its outcome is not spelt out in the orders of the lower authorities which is shocking and surprising to us.** However in the absence of anything spelt out no adverse inference can be drawn that both parties supra were bogus and fictitious. Needless to state the Department has enough coercive powers to unravel the truth in a lawful manner when their probe reached at dead end when notices were returned unserved. In such a situation it is not just open for the Income Tax Authorities to blindly say that both the parties are bogus and fictitious in so far as purchases made by the assessee company is concerned. Mysterious are ways of doing investigation and drawing an adverse inference about bogus nature of transaction done by the assessee company particularly so when Department **themselves admit that assessee has furnished documentary evidences for the impugned purchases.** It has not come any where on record that Department carried out on spot verification or made field inquiries to ascertain the factual position. Address of one of the party i.e' M/s Shri Hari Trading Company (Proprietor Pradeep) 2093, Shop No. 11, First Floor, old Anaj Mandi, Narela, Delhi, **perse appears to be of a "Anaj Mandi"** and nothing prevented the Department to carry out deep inquiries at said "Anaj Mandi". Nobody seems to have visited the said place from the side of Department. No inquiries in the neighbor hood seems to have been made. The inquiries thus were botched up i.e; a bungled task i.e; to spoil something by doing it badly.

19.2 The contention of Ld. AR and so also material on record clearly indicate that goods rice bran were procured legitimately in the normal course of trade, were accounted for, by assessee company in their books of accounts and it is not proper to hold that M/s Shri Hari Trading Company (Prop. Pradeep) and M/s Shubham Agro India (Prop Sushil Sharma) are not involved in sale and purchase transactions but merely acted as **conduits** i.e; **channels**. The assessee company's purchases are reliable in the circumstances in view of all the documents produced. **Documents produced have not been held as bogus and fictitious.**

19.3 We notice that basis information and material provided by the assessee company paper book pages 45 to 86 which contains material particulars about Shubham Agro India Delhi and Shri Hari Trading Company Delhi together with documents like invoice, showing a number and date, TIN No, details of Truck / Wagon Number, RR/GR No., name of transporter, quantity in bags, particulars of goods, weight, rate, amount of invoice, signature, mobile no. **terms as per Delhi Grain Merchants Association**, freight paid etc. (page 46 of paper book) **no inquiry seems** to be have been conducted with regard to mobile number **mentioned on invoice : 8447798428**, no inquiry with **Delhi Grain Merchant Association. No inquiry is made with Navneen Transport Co.** despite his invoice on record (page 47 of paper book), declaration of Excise and Taxation Department of Punjab VAT on record (at page 48) weighing receipt on record (at page 49) receipt (at page 50 of paper book). There is series of such documents on record of both parties (supra) which establishes that goods were purchased by the assessee company and no inquiry was conducted on documents so produced by the assessee company before Re-assessment order was passed on 23/03/2022. What is **more surprising** is that these documents were placed on record as early as **26/01/2021** in response to notice dt. 20/03/2020 and 02/11/2020 under section 133(6) of the Income Tax Act, 1961. The assessee company had fully discharged the burden of proof and finding recorded by the

Ld. AO and sustained by the Ld. CIT(A) in the impugned order that assessee has failed to **discharge burden of proof is all wrong**. We have perused all documents produced by assessee before us in form of paper book filed on 23/01/2024 and 08/08/2024 and we have no hesitation to hold that the purchases are genuine and Department has failed to inquire into the material placed on record much prior to reassessment order dt. 23/02/2022 was passed. The assessee did not prevented the Department for probing further on material placed and to **establish contrary** further role of Hitesh Jain has not been discussed elaborately save except that he has given accommodation entries by floating bogus firm. His statement is not disclosed despite request, made much earlier. What prevented Department to disclose the same is not spelt **out at all**.

19.4 We hold that present case is not one where assessee is required to giveproof of identity of the creditors, capacity of creditors to advance money. In so far as genuineness of transactions of purchases are concerned with regard to both the parties from whom the purchases were made all the documents which matters have been placed on record and the Department in the assessment order has accepted the same in para 7 wherein the following is recorded:

“7. The submissions of the assessee has been carefully perused. From that, it is clear that though the assessee has furnished documentary evidences for the impugned purchases, but has failed to establish the genuineness of the parties from whom the impugned purchases have claimed to be made.”

19.5 Basis above we hold that after discharge of full and complete burden of proof in form of all documentary evidences with regard to purchases made from M/s Shri Hari Trading Company (Prop. Pradeep) and M/s Shubham Agro India (Prop. Sushil Sharma) **just because Department’s inquiry under the Act with regard to these entities did not yield result**, the burden of proof with regard to whereabouts of these parties cannot be shifted upon the assessee company,

particularly so when raw material 'Rice Bran' for manufacturing edible oil as per custom and usage of trade is purchased through commission agents on Pan India basis where price is sole consideration and presence of commission agents ensures that prices are at arm's length. No direct contact is there between seller and buyer. This fact too could have been verified by Department by making trade inquiries or on spot verification at Anaj Mandi at Delhi. Where at least one of the seller is located who is even member of Delhi Grain Merchant Association. Department in the instant case has done only paper inquiry by writing to banks and sellers of goods which did not yield any response and therefore Department cannot throw ball back into the assessee's court to search party with whom stray and few purchases have been made that too through commission agents. In worst case scenario assessee has discharged initial burden of proof and later burden of proof which gets shifted on Revenue is not discharged.

19.6 We also hold that Ld. CIT(A) has relied upon. Investigation on Hitesh Jain done by Investigation Wing of Income Tax, his statement, seizure made at his place, non production of seller of goods, no confirmation from such seller as grounds to sustain the finding of Ld. AO. Surprisingly finding on merits of documents of purchases before Ld. CIT(A) have taken a back seat. Investigation Report of Investigation Wing of Income Tax Department, statement of Hitesh Jain, seizure made at Hitesh Jain premises, are not disclosed to assessee despite request made much earlier prior to reassessment. Further instant case is not one of loan confirmation where confirmation or production of persons is required to confirm whether loan is taken or not and there creditworthiness. The transaction of purchases in a manufacturing enterprise especially in the industry of edible oil are sourced Pan India through commission agents only, therefore obtaining confirmation or producing these persons before Ld. AO does not arise particularly so when purchases were very few. And upon failure, to draw an adverse inference is farfetched in our considered view particularly so when everything was given on purchases to the Department. Further in replies to

notices all particulars of Assessee company was furnished including books of account. It is surprising and shocking that closing balance, opening balance and final sales have not been disputed by the Department. Under these facts to question purchases are shocking. It does not lie in the mouth of the Department to question purchase only when there is no material on record doubting sales.

Order

19.7 In the circumstances we set aside the impugned order of Ld. CIT(A) on merits. Since we have decided the case on merits other legal submissions made on applicability of Section 147/148 and notice being time barred does not survive for our adjudication and adjudgment and we express no opinion on it.

20. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 26/08/2024

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar