

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

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

आयकर अपील सं./ITA No. 243/JP/2024  
निर्धारण वर्ष / Assessment Years : 2012-13

Goyal Vegoils Limited C/o Goyal Vegoils Villahe Kasar, NH-12, Tehsil Ladpura, Kota	बनाम Vs.	DCIT, Circle-02, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCG 2595 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rajendra Sisodia, CA  
राजस्व की ओर से / Revenue by : Sh. Anoop Singh, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 05/08/2024  
उदघोषणा की तारीख / Date of Pronouncement: 27/08/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Because the assessee was dissatisfied with the finding so recorded in the order of Commissioner of Income Tax, Appeal, Udaipur-2 dated 01/02/2024 [here in after 'CIT(A)'] for assessment year 2012-13 passed u/s. 250 of the Act. That order of the Id. CIT(A) is passed because the assessee challenged the assessment order dated 21/11/2019 passed under section 147 r.w.s. 143(3) of the Act, by DCIT, Circle-02, Kota.

2. In this appeal, the assessee has raised following grounds: -

*"1. The notice issued u/s. 148 and consequential reassessment order passed u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 dated 21.11.2019 are bad in law for the want of valid jurisdiction to issue notice u/s. 148 of the Act.*

*2. That the learned CIT(A) erred in law and on facts in sustaining the addition of Rs.17,97,469/- out of addition of Rs. 18,85,279/- made by the Assessing Officer on account of obtaining accommodation entry and commission paid thereupon, when the reopening was based on identical facts as during the earlier reassessment proceedings and thus amounted to change of opinion which is not a valid ground for reopening of assessment, as held by the Supreme Court in the case of M/s Mangalam Publications vs. CIT.*

*3. The A.O/CIT(A) had grossly erred in making/sustaining addition merely on the basis of statement of third party, without bringing any corroborative evidence in support of same.*

*4. The appellant reserves it right to add, amend, alter or modify any of the grounds stated hereinabove either before or at the time of hearing."*

3. Succinctly, the fact as culled out from the records is that the assessee is engaged in the business of manufacturing and sale of edible vegetable refined oil. Return of income for the A.Y 2012-13 was filed by the assessee on 24/09/2012 declaring total income of Rs. 10,84,97,130/-. The case was selected for scrutiny and assessment u/s 143(3) of the Act was finalized on 28.02.2015 determining the total income at Rs. 10,95,19,420/-. Subsequent thereupon, the case was reopened and assessment u/s 143(3) r.w.s. 147 of the Act was finalized on 26/12/2018 determining the total income at Rs. 10,84,97,130/-.

Subsequent thereto, information was received from the office of the Assistant Director of Income tax (Inv), Rohtak vide his letter F.No.ADIT(Inv)/RTK/2018-19/4373 dated 20-03-2018 regarding the accommodation entries provided to the assessee by Shri Vipin Garg (PAN:AFKPK9148Q), 68/3, Old Anaj Mandi, Charkhi Dadri, Haryana during the F.Y.2011-12 relevant to A.Y.2012-13. On perusal of the information received the issues relevant to the income / assessment of the assessee for the A.Y.2012-13 emerged are briefly noted as under:

During the investigation proceedings in the case of Sh. Vipin Garg (PAN: AFKPK9148Q) by the Assistant Director of Income tax (Inv.), Rohtak, it was detected that Shri Vipin Garg was running a money laundering racket and providing all sorts of accommodation entries to the parties on their requirement. Sh. Vipin Garg, has further admitted the same on oath that with operating total 18 (Eighteen) Bank Accounts in the name of different concerns, he was providing accommodation entries against a commission charged at the rate of 0.5% to 2.0% and no business transactions were carried out in fact in any of the concerns controlled by him which were only used to provide bogus accommodation entries to the beneficiaries. It was also further found that apart from 18 (Eighteen) Bank Accounts already detected, Sh. Vipin Garg, is operating 21 (Twenty One) other Bank Accounts for the same purpose.

3.1 The assessee M/s Goyal Vegoils Ltd., Kota is also one of such beneficiary, who has got such accommodation entries through the Bank Accounts operated by Shri Vipin Garg during the financial year 2011-12 relevant to assessment year 2012-13. Hence these bogus accommodation entries as beneficiaries are found recorded in the books of the assessee

which necessitating reopening of the case of the assessee as per provision of section 147 of the Act. As the issue under consideration were never examined by the AO during the course of regular assessment / reassessment carried out, for these reasons the Id. AO noted that it is not a case of change of opinion by the Id. AO. Since there was passage of four years from the end of assessment year under consideration necessary permission to issue u/s. 148 of the Act was obtained by the PCIT as per provision of section 151 of the Act.

The notice u/s. 148 of the Act was issued on 29.03.2019 and in response the assessee filed the return of income on 15.04.2019 declaring income of Rs. 10,84,97,130/-.

The assessee asked for the reasons recorded which was provided and the assessee filed the objection to it which was disposed by the Id. AO on 09.09.2019 by a separate order.

3.2 During the assessment proceeding, copy of statement of Shri Vipin Kumar Garg was provided to the assessee company because the assessment proceeding was initiated on the basis of that statement.

Based on the information provided and the query raised by the Id. AO. The Id. AO based on the material on record noted that the assessee

company has admitted that it has entered into sale transaction of Rs. 18,84,337/- (including the VAT amount ) with M/s. Shri Ram Trading Company during the year under consideration. Ld. AO further noted that in the case of Shri Vipin Kumar Garg (PAN: AFKPK9148Q) by the Assistant Director of Income tax (Inv.) Rohtak, it was detected that Shri Vipin Kumar Garg was running a money laundering racket and providing all sorts of accommodation entries to the parties on their requirement. Shri Vipin Kumar Garg, has further admitted the same on oath that with operating total 18 (Eighteen) Bank Accounts in the name of different concerns, he was providing accommodation entries against a commission charged at the rate of 0.5% to 2.0% and no business transactions were carried out. In fact in any of the concerns controlled by him which were only used to provide bogus accommodation entries to the beneficiaries. It was also further found that apart from 18 (Eighteen) Bank Accounts already detected, Shri Vipin Kumar Garg, is operating 21 (Twenty One) other Bank Accounts for the same purpose.

The assessee M/s Goyal Vegoils Ltd., Kota is also one of such beneficiary, who has got such accommodation entries through the Bank Accounts operated by Shri Vipin Kumar Garg during the financial year

2011-12 relevant to assessment year 2012-13. Hence, it is concluded that the assessee Company has obtained accommodation entries from M/s Shree Ram Trading Co., Prop. Shri Vipin Garg (PAN:AFKPK9148Q), 68/3, Old Anaj Mandi, Charkhi Dadri, Haryana during the F.Y.2011-12 relevant to A.Y.2012-13 for the amount of Rs. 18,84,337/-.

The Id. AO noted that the documentary evidence submitted by the assessee Company appears to be prepared to justify the transactions properly. The findings of the ADIT(Inv.), Rohtak cannot brush aside that Shri Vipin Garg used to provide bogus accommodation entries to the beneficiaries. Since the assessee company has obtained accommodation entry (in cash) of Rs. 18,84,337/- from M/s Shree Ram Trading Company. Therefore, income of Rs. 18,85,279/- (18,84,337 + 942, 0.5% commission) was added in the total income of the assessee.

4. Aggrieved from the assessment order so passed by the DCIT, Circle-2, Kota, assessee preferred and appeal before Id. CIT(A), Udaipur-2. Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“The argument of the appellant are considered and found that while making addition the AO has not considered this amount as genuine sale. If genuine sale was not there then there are three possibilities. First possibility is that the purchase must have been bogus. Second possibility is that purchase is true and



reason of the failure of the assessee to furnish full and true particulars at the time of original assessment. It may be true that the assessee received the sale receipts through banking system.

However, the material that was present before the Assessing Officer, on the basis of which he recorded reasons and re-opened the assessment, throw considerable doubt on the veracity, correctness, completeness and truth of the particulars furnished by the assessee at the time of the original assessment. This is particularly so, having regard to the statement of Sh. Vipin Kumar garg in which he admitted to having carried on the business of providing accommodation entries. The assessee has received sale consideration from entity of Sh. Vipin Kumar Garg. It is well settled that at the time of issuing notice under section 148, the Assessing Officer is only required to reach a tentative or prima facie belief regarding escapement of income and that requirement is satisfied in the instant case.

In view of the foregoing discussion, it is held that the notice issued by the Assessing Officer under section 148 was valid and well within jurisdiction. He had reason to believe that income chargeable to tax had escaped assessment because of the failure of the assessee company to furnish fully and truly all material particulars necessary for its assessment. There is no merit in this ground of appeal.

This ground of appeal is treated as dismissed.”

5. As the assessee did not find any favors, from the appeal so filed before the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the assessee, the Id. AR of the assessee has filed a detailed written submissions and the same is reproduced herein below:

The appellant respectfully begs to submit following facts and details for your honor's kind consideration in support of grounds of appeal already submitted :

- Background and action of the Ld. Assessing Officer and CIT(A) –  
The appellant had filed its return for AY 2012-13 in compliance to notice u/s 148, disclosing an income of Rs. 10,94,87,130/-. The return was scrutinized u/s 143(3) r.w.s.147 and was accordingly assessed on 21.11.2019 at an income of

Rs.11,03,82,410/- creating a demand of Rs.9,14,190/- Addition of Rs. 18,85,279/- was made on account of accommodation entry and commission paid to obtain the same. The Ld.CIT(A) sustained the addition to the extent of Rs.17,97,469/-.

- Brief facts of the case-

The appellant is engaged in the business of manufacturing and sale of refined vegetable oil. The appellant filed original return of income for the A.Y. 2012-13 on 24.09.2012 declaring total income of Rs. 10,84,97,130/-. The case was selected for scrutiny and assessment u/s 143(3) of the Act was finalized on 28.02.2015 determining the total income at Rs. 10,95,19,420/-. Subsequent thereupon, notice u/s 148 was issued on 29.03.2018 and reassessment u/s 143(3) r.w.s. 147 of the Act, was finalized on 26.12.2018 determining total income of Rs.10,84,97,130/-. Once again after receiving information from the office of the Assistant Director of Income Tax (Inv), Rohtak vide his letter dated 20-03-2018 regarding the accommodation entries provided to the appellant by Sh.Vipin Garg during F.Y.2011-12, the AO issued notice u/s 148 of the Income Tax Act 1961 on 29.03.2019. The assessment was finalized at an income of Rs. 11,03,82,410/- making an addition of Rs.18,85,280/-, out of which addition to the extent of Rs.17,97,469/- was sustained by the CIT(A) against which the appellant is in appeal before the Hon'ble Tribunal.

- Submission on the grounds of appeal :

Re : Gr. No. 1 The notice issued u/s. 148 and consequential reassessment order passed u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 dated 21.11.2019 are bad in law for the want of valid jurisdiction to issue notice u/s. 148 of the Act.

- 1.1 The appellant very humbly submits that pursuant to filing of ITR on 24.09.2012, notice u/s 143(2) was issued in the case. During the course of assessment, complete books along with bills/vouchers and all the documents called for by the AO were submitted. Complete details relating to purchase and sale were produced, which were examined by the then AO. The AO, having satisfied himself with the genuineness of the claims of the assessee, finalized the assessment on 28.02.2015, making additions of Rs.10,22,290/- on account of disallowances out of various expenses, which were deleted (Except Rs.1,50,000/-) by CIT(A) vide his order dated 15.09.2016.
- 1.2 Almost 37 months later, notice u/s 148 was issued to the assessee alleging that the assessee has taken accommodation entry to the tune of 24,66,24,284/-, on the basis of input received from DDIT(Inv.) New Delhi, vide his letter dated 23.03.2018. Once again complete books along with bills/vouchers and all the documents called for by the AO were submitted. Complete details relating to purchase and sale were produced, which were examined by the then AO. The reassessment was completed u/s 143(3) r.w.s.147 accepting the returned income.
- 1.3 Then again after another 12 months from the issue of earlier 148 notice, another notice for reopening the case was issued alleging that the assessee has taken accommodation entry to the tune of 8,35,000/-, on the basis of input received from

DDIT(Inv.) Rohtak, vide his letter dated 20.03.2018. Once again complete books along with bills/vouchers and all the documents called for by the AO were submitted. Complete details relating to purchase and sale were produced, which were examined by the then AO. The submission and the evidence did not find favor with the AO and the reassessment was completed u/s 143(3) r.w.s.147 at an income of Rs.11,03,82,410/- making an addition of Rs.18,85,279/-

- 1.4 Quite surprisingly, one AO on the same set of documents has held the transactions to be genuine while the other AO has held the transactions as bogus being Accommodation entries. Further, the letter on the basis of which reassessment notice was issued on the second occasion was already available with the AO prior to the issue of reassessment notice on the first occasion. The letter of ADIT(Inv.), Rohtak (basis of second reassessment notice) is dated 20.03.2018, while the letter of DDIT(Inv.), New Delhi (basis of first reassessment notice) is dated 23.03.2018. Notice u/s 148 on the first occasion was issued on 29.03.2018 and the assessment order in the case was passed on 26.12.2018.
- 1.5 It is stated that the Information referred to in the reasons for reopening is the report of the ADIT (Inv.) Rohtak, dated 20.03.2018, which was very much available with the Department and the AO nine months prior to the completion of original assessment u/s 143(3) r.w.s.147 on 26.12.2018, and also prior to the issue of notice u/s 148 for initiating reassessment for the first time.. The Department failed to make use of it while completing the first reassessment. It is not a case of the Department that some new tangible material post completion of re- assessment u/s 143(3) r.w.s.148 on 26.12.2018 came into its possession. In such circumstances, there being no new tangible material with the AO, the case of the appellant could not have been reopened, as the same would amount to revision. Reliance in this regard is placed on the decision of Hon'ble Bombay High Court in the case of Jainam Investments vs. Assistant Commissioner Of Income Tax decided on 24 August, 2021. The Hon'ble Court has held – 14. *Therefore, there is no tangible material which has come to the knowledge of the Assessing Officer while reopening the assessment. Moreover, if one considers the opening paragraphs of the reasons for reopening, it says "A search/survey action u/s. 132/133A of the Income Tax Act, 1961 was carried out on 25/10/2016 in the cases of JSK Industries Pvt. Ltd., EMI Transmission Ltd. & Karamtara Engineering Pvt. Ltd. and other related group entities (together referred to as JEK group) ..... During the course of Survey action u/s. 133A conducted on 25.10.2016 at the premises of M/s. Jainam Investments ..... accommodation entries in the form of bogus loans in its books from various Bhanwarlal Jain group of entities .....". These were material available even before the first order was passed because the first order was passed on 20th December 2016. Nowhere in the reasons for reopening, it is mentioned that these tangible materials were obtained or received much after the original assessment order was passed. Moreover, the statement of Bhanwarlal Jain recorded on 11 th October 2013 has been relied upon, whereas the original assessment, after considering the statement and all other material, was completed on 20 th December 2016. We repeatedly asked Mr. Suresh Kumar to identify the fresh tangible material that was available with the department and the date on which it was received to which there was no answer because it is*

not stated in the reasons for reopening. Therefore, we cannot accept the reason for reopening with regard to the entries regarding these five entities.

1.6 As no new tangible material came into the possession of the AO post completion of the earlier reassessment on 26.12.2018 and the basis for issuing notice u/s 148 in the case, i.e. the letter of ADIT(Inv.) Rohtak dated 20.03.2018 already being available with the AO much before finalization of the earlier reassessment, no notice could have been validly issued in view of the decision in the case of Jainam Investments vs. Assistant Commissioner Of Income Tax, referred to supra. Therefore, notice issued u/s 148 dated 29.03.2019 is without jurisdiction and so the assessment made in consequence thereto is void-ab-initio.

1.7 Without prejudice to the above, it would be pertinent to mention that the issue relating to accommodation entries was already examined at the time of reassessment proceedings on earlier occasion. Issuing a notice for re-assessment on the same issue, amounts to change of opinion by the AO. The assessee relies on the decision in the case of Aaroni Commercials Ltd. vs. Deputy Commissioner of Income-tax-2(1) (2014) 44 taxmann.com 304 (Bombay) wherein it was observed - 12) *Therefore the power to reassess cannot be exercised on the basis of mere change of opinion i.e. if all facts are available on record and a particular opinion is formed, then merely because there is change of opinion on the part of the Assessing Officer notice under [Section 147/148](#) of the Act is not permissible. The powers under Section-147/148 of the Act cannot be exercised to correct errors/mistakes on the part of the Assessing Officer while passing the original order of assessment. There is a sanctity bestowed on an order of assessment and the same can be disturbed by exercise of powers under [Sections 147/148](#) of the Act only on satisfaction of the jurisdictional requirements. Further, the reasons for reopening an assessment has to be tested/examined only on the basis of the reasons recorded at the time of issuing a notice under [Section 148](#) of the Act seeking to reopen an assessment. These reasons cannot be improved upon and/or supplemented much less substituted by affidavit and /or oral submissions. Moreover, the reasons for reopening an assessment should be that of the Assessing Officer alone who is issuing the notice and he cannot act merely on the dictates of any another person in issuing the notice. Moreover, the tangible material upon the basis of which the Assessing Officer comes to the reason to believe that income chargeable to tax has escaped assessment can come to him from any source, however, reasons for the reopening has to be only of the Assessing Officer issuing the notice. At the stage of issuing notice under [Section 148](#) of the Act to reopen a concluded assessment the satisfaction of the Assessing Officer issuing the notice is of primary importance. This satisfaction must be prima facie satisfaction of having a reason to believe that income chargeable to tax has escaped assessment.*

13) Keeping in view the above broad parameters of the jurisdiction of the Assessing Officer to reopen assessments completed under [Section 143\(3\)](#) of the Act, the impugned notice and order have to be examined. Counsel for the parties proceeded on the basis that the impugned notice dated 28 March 2013 seeking to reopen the assessment for A.Y. 2008-09 was a notice within a period of four years from the end of the relevant assessment year. Therefore, in such a case the test of failure to

*disclose truly and fully all material facts necessary for assessment during the original assessment proceedings does not arise for consideration. In the present facts the notice to reopen the assessment for A.Y. 2008-09 was issued on 28 March 2013 and the reasons seeking to reopen the assessment is that the petitioner had so written/manipulated its account that the normal business profits in share trading was claimed as short term capital gain so as to attract the lower rate of tax.*

14) *We find that during the assessment proceedings the petitioner had by a letter dated 9 July 2010 pointed out that they were engaged in the business of financing trading and investment in shares and securities. Further, by a letter dated 8 September 2010 during the course of assessment proceedings on a specific query made by the Assessing Officer, the petitioner has disclosed in detail as to why its profit on sale of investments should not be taxed as business profits but charged to tax under the head capital gain. In support of its contention the petitioner had also relied upon CBDT Circular No.4/2007 dated 15 June 2007. (The reasons for reopening furnished by the Assessing Officer also places reliance upon CBDT Circular dated 15 June 2007). It would therefore, be noticed that the very ground on which the notice dated 28 March 2013 seeks to reopen the assessment for assessment year 2008-09 was considered by the Assessing Officer while originally passing assessment order dated 12 October 2010. This by itself demonstrates the fact that notice dated 28 March 2013 under [Section 148](#) of the Act seeking to reopen assessment for A.Y. 2008-09 is based on mere change of opinion. However, according to Mr. Chhotaray, learned Counsel for the revenue the aforesaid issue now raised has not been considered earlier as the same is not referred to in the assessment order dated 12 October 2010 passed for A.Y. 2008-09. We are of the view that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. If an Assessing Officer has to record the consideration bestowed by him on all issues raised by him during the assessment proceeding even where he is satisfied then it would be impossible for the Assessing Officer to complete all the assessments which are required to be scrutinized by him under [Section 143\(3\)](#) of the Act. Moreover, one must not forget that the manner in which an assessment order is to be drafted is the sole domain of the Assessing Officer and it is not open to an assessee to insist that the assessment order must record all the questions raised and the satisfaction in respect thereof of the Assessing Officer. The only requirement is that the Assessing Officer ought to have considered the objection now raised in the grounds for issuing notice under [Section 148](#) of the Act, during the original assessment proceedings. There can be no doubt in the present facts as evidenced by a letter dated 8 September 2012 the very issue of taxability of sale of shares under the head capital gain or the head profits and gains from business was a subject matter of consideration by the Assessing Officer during the original assessment proceedings leading to an order dated 12 October 2010. It would therefore, follow that the reopening of the assessment by impugned notice dated 28 March 2013 is merely on the basis of change of opinion of the Assessing Officer from that held earlier during the course of assessment proceeding leading to the order dated 12 October 2010. This change of*

*opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment.*

- 1.8 Existence of the reason to believe that income chargeable to tax has escaped assessment is a jurisdictional condition for invoking the power under section 147 of the Act, 1961, both within and beyond a period of four years from the end of relevant assessment year. The Assessing Officer is enjoined to record reasons before a notice to reopen the assessment under section 148 of the Act is issued. In case, the assessment is reopened beyond the period of four years, where the assessment was completed under section 143(3) of the Act, an additional condition that the income must have escaped assessment on account of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment is required to be fulfilled. The existence of reason to believe is further qualified by the fact that it should be based on tangible material. As already made clear in para 1.4 to 1.6 above, there was no new tangible material before the AO. Firstly, it cannot be the product of mere ipse dixit of the Assessing Officer. Secondly, it should not partake the character of a mere change in opinion as regards the same material and facts, which were considered at the time of original assessment. For the power is of reassessment and not review. Once the primary facts necessary for assessment are fully and truly disclosed and the Assessing Officer takes a conclusive view thereon, it is not permissible to reopen the assessment based on the very same material on the premise that it is susceptible to a different opinion favorable to the revenue. Reference in this regard may be made to the observation made by the Hon'ble Supreme Court in the case of Mangalam Publications vs. CIT Civil Appeal Nos. 8580-8582 of 2011 wherein it has been held-

*42. We may also mention that while framing the initial assessment orders of the assessee for the three assessment years in question, the assessing officer had made an independent analysis of the incomings and outgoings of the assessee for the relevant previous years and thereafter had passed the assessment orders under Section 143(3) of the Act. We have already taken note of the fact that an assessment order under Section 143(3) is preceded by notice, enquiry and hearing under Section 142(1), (2) and (3) as well as under Section 143(2). If that be the position and when the assessee had not made any false declaration, it was nothing but a subsequent subjective analysis of the assessing officer that income of the assessee for the three assessment years was much higher than what was assessed and therefore, had escaped assessment. This is nothing but a mere change of opinion which cannot be a ground for reopening of assessment.*

- 1.9 In this case, during the assessment as well as reassessment proceedings, assessment orders were passed u/s 143(3) of the Act. Notices under Section 143(2) and 142(1) of the Act were issued, by which appellant was called upon to furnish details which were duly made available. The appellant did not make any false declaration. The AO thereafter passed a detailed order u/s 143(3) making additions on different counts. Once again during reassessment proceedings, appellant was called upon to furnish details in respect of the alleged accommodation entries. The appellant provided the sale bills, transportation receipts, copy of ledger account of parties and the bank account to prove the genuineness of the transactions. No false

declaration on any aspect was either made on this occasion as well. However, the AO did not discuss this fact in his assessment order, but at the same time after duly examining the books and the evidence produced by the assessee, passed the assessment order u/s 143(3) r.w.s. 147 accepting the returned income. It is not an immutable rule that an assessment order should contain reference and/or discussion on such query. Therefore, it is abundantly clear that the issue relating to accommodation entries mentioned in the reasons for reopening was a subject of consideration of the Assessing Officer while completing reassessment on the earlier occasion. So, it is apparently clear that reassessment is based on change of opinion.

1.10 The gist of the above decision is that once a query is raised during assessment proceedings and assessee has replied to it, it follows that the query raised was a subject matter of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. Issuing notice of reassessment on the same issue, would amount to change of opinion, which is not sustainable in law.

1.11 In the case of Oracle Financial Services Software Limited Vs DCIT, the Hon'ble Bombay High Court held - *For the foregoing reasons, we are satisfied that, in the peculiar facts of the case, the impugned notice under section 148, of the Act, 1961 can be said to be based on a mere change of opinion. In view of the settled legal position that mere change of opinion does not furnish a justification for formation of reason to believe that income chargeable to tax has escaped assessment, we find the impugned action legally unsustainable.*

1.12 The Hon'ble Supreme Court in the case of ACIT vs. Marico Ltd. decided on 01.06.2020 has held - S. 147: *The reasons in support of the s. 148 notice is the very issue in respect of which the AO had raised a query during the assessment proceedings and the Petitioner had responded justifying its stand. The non-rejection of the explanation in the Assessment Order amounts to the AO accepting the view of the assessee, thus taking a view/forming an opinion. In these circumstances, the reasons in support of the notice proceed on a mere change of opinion and would be completely without jurisdiction.*

1.13 In Bhavani Gems Private Limited Vs ACIT, Writ Petition No. 804 of 2022 decided on 27.04.2022, the Hon'ble Bombay High Court has held - *Change of opinion does not constitute reason to believe for Income escapement.* The relevant portions of the judgement are reproduced as under-

9] *In our view, the reason to reopen is purely on the basis of change of opinion. Indisputably queries have been raised during the assessment proceedings regarding large share premium received during the year, the details of investors and petitioner has provided all details sought for. While providing the workings, petitioner also explained that the Goodwill of Rs.26 Crores has been factored while arriving at the share premium. Even in the assessment order, the Assessing Officer has referred to notice issued under section 143(2) as well as 142(1) of the Act and the Assessing Officer has also confirmed having received all information. 10] As held by this Court time and again and particularly in Aroni Commercials Ltd. Vs. Deputy Commissioner*

*of Income Tax -2 (1)1 that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised.*

*11] Having considered the reasons and documents annexed to the petition and as no reply has been filed, there can be no doubt in the present facts that very issue of share premium and Goodwill was a subject matter of consideration by the Assessing Officer during the original assessment proceedings. In our view, the reopening of assessment by impugned notice dated 30.03.2021 is merely on the basis of change of opinion of the Assessing Officer from that held earlier during the course of assessment proceedings and this change of opinion does not constitute justification and/or reason to believe that income chargeable to tax has escaped assessment.*

1.14 Without prejudice to the above, the reassessment notice is invalid as it is merely based on Investigation Wing information. In the assessee's case, the AO received information from the Investigation Wing, Rohtak, who had carried out survey / search operations wherein it was established that Shri Vipin Garg was running money laundering racket and providing accommodation entries to various parties against a commission. On the basis of the information received from another agency, there cannot be any reassessment proceedings. However, after considering the information or material received from other source, the Assessing Officer is required to consider the material on record in case of the assessee and thereafter is required to form an independent opinion on the basis of the material on record that the income has escaped assessment. In the assessee's case, the assessing officer has failed to do so. Without forming such an opinion, solely and mechanically relying upon the information received from other source, there cannot be any reassessment for the verification, and particularly when the issue has already been examined in the original assessment u/s 143(3) and thereafter u/s 143(3) r.w.s.148. From the reasons recorded, it is clear that the impugned reopening proceedings were on the borrowed satisfaction. No independent opinion was formed by Assessing Officer in the assessee's case under consideration. Under the circumstances, the assumption of the jurisdiction to reopen the assessment under section 147 of the Act is bad in law and needs to be quashed.

1.15 The Hon'ble ITAT, Surat in the case of Sandipkumar Parsottambhai Patel vs. ITO in ITA Nos. 08 & 09/SRT/2019 vide its judgement dated 29.11.2021, in exactly identical circumstances, following their earlier decision in the cases of Nishant Kantilal Patel & Muktaben Nishantbhai Patel has quashed the reassessment proceedings.

1.16 The Hon'ble High Court of Bombay in the case Principal Commissioner of Income-tax-5 v. Shodiman Investments (P.) Ltd. reported in 422 ITR 337 holding that reopening notice on the basis of intimation from DDIT (Investigation) about a particular entity entering into suspicious transactions, was clearly in breach of the settled position of law that reopening notice has to be issued by the Assessing Officer on his own satisfaction and not on borrowed satisfaction.

In view of the above submission and case laws, the reopening of the case and the consequent reassessment order may kindly be quashed.

Re : Gr. No. 2 - That the learned CIT(A) erred in law and on facts in sustaining the addition of Rs. 17,97,469/ out of addition of Rs. 18,85,279/- made by the Assessing Officer on account of obtaining accommodation entry and commission paid thereupon, when the reopening was based on identical facts as during the earlier reassessment proceedings and thus amounted to change of opinion which is not a valid ground for reopening of assessment, as held by the Supreme Court in the case of M/s Mangalam Publications vs. CIT.

- 2.1 The case was reopened on the basis of information passed on by ADIT(Inv.) Rohtak, that the assessee has transacted with M/s Shree Ram Trading Company (Proprietary concern of Vipin Kumar Garg) which was used for providing accommodation entries (as admitted by Vipin Kumar Garg), for an amount of Rs.8,35,000/-. The details of this transaction were provided in the letter by the ADIT, and it was alleged that the assessee has taken an accommodation entry.
- 2.2 In the reply filed during the course of reassessment proceedings, the assessee stated that during the relevant year, it had entered into sale transactions aggregating Rs.18,83,557/- In support of the sale transactions, the assessee adduced the following evidences- (i) invoice cum delivery challans (ii) Weighment slips of tankers (iii) LRs (iv) bank statement evidencing payment received (v) Copy of ledger account of Shree Ram Trading Company. (vi) Copy of computerized stock register evidencing the transactions of sale. As the sales were made outside the state, declaration in Form VAT 49 was duly filed. The concessional rate of 2% CST was charged, which means that the sales were made against C Form from the purchaser. The AO did not ask for any further clarification. The assessee was given to believe that the AO is satisfied with the explanation offered and evidences adduced. Had the AO any doubts about the authenticity of the sale invoices, he could have made inquiries from the AO (sales tax) or the Incharge (sales tax check post). Inquiries could have been made from the Transporter or from the party to whom the delivery was made. But the AO did not conduct any inquiry, whatsoever, and held the genuine sales of the assessee to be accommodation entries solely on the basis of the statements of Vipin Kumar Garg, that his firm Shree Ram Trading Co. was used to provide accommodation entry. Without issuing any show cause notice for the proposed additions, the AO passed the assessment order adding the total sale transactions disclosed by the assessee as accommodation entries plus commission thereon calculated at a certain percentage.
- 2.3 Quite interestingly, the AO added the aggregate amount of the two sale bills plus commission thereon calculated @ 0.05%, whereas in the reasons he had held the credit of Rs.8,35,000/- deposited in the bank account of the assessee plus commission @ 0.5% to 2% being accommodation entry and commission thereon, as escaped assessment, instead of adding the credit made into the bank account. When the entire assessment is based on the finding given by the ADIT (Inv.) Rohtak, on the basis of statements recorded by him (the ADIT) any addition apart from the reported accommodation entry through bank account operated by Vipin Garg, is not

justifiable. The report is totally silent on any transaction apart from Rs.8,35,000/- deposited in the bank account of the assessee. So, when nothing is mentioned in the report of the investigation wing in respect of the other transaction and no inquiry whatsoever has been made by the AO in this respect, the addition made is invalid and baseless.

- 2.4 It is submitted that the basic principles of law as have been consistently adopted by the courts are:

- a. The person who alleges should prove
- b. All adverse material is required to be supplied to the person against whom the allegation is made
- c. No findings can be recorded on surmises and conjectures
- d. Adverse action can be initiated only based on evidence

- 2.5 As against the aforesaid principles of law, in the present case, the transaction of the assessee is held bogus only and only on the basis of report of the Investigation Wing. The report was prepared on the basis of statement of Vipin Garg without referring to any underlying documents. Chain of flow of cash has also not been established. Except oral testimony, which also remains uncorroborated, as there is no reference of any material found, nothing was brought on record by Id. AO. Vipin Garg has never named the assessee in his statements. The evidences submitted by the assessee have not been found to be false, fabricated or forged. It is a trite law that documentary evidences shall prevail when weighed against the oral evidence. The assessee has not been provided with the opportunity to cross examine the person whose statement has been relied upon. The assessee has also not been provided opportunity to cross examine the person who has prepared the said report. It is submitted that if the information is gathered behind the back of the assessee and the same is acted upon then, as per the principles of natural justice, the assessee should be provided with such information and should be allowed opportunity of cross examination.

- 2.6 A perusal of the assessment order clearly shows that the Assessing officer was carried away by the report of the Investigation Wing. It can be seen that the entire assessment has been framed by the Assessing Officer without conducting any enquiry from the relevant parties (the broker/the party to whom the stuff was delivered to/the transporter) or independent source (the sales tax authority) or collecting any evidence to disprove the assertion made by the assessee. He has merely relied upon the information received from the Investigation Wing and the statements recorded by them. These statements can not be used to draw any adverse inference against the assessee. At this juncture, it would be appropriate to refer to the judgement of Hon'ble Supreme Court in the case of CIT vs. Sunita Dhadha wherein it has been held - *S. 143(3)/ 292C: If the AO wants to rely upon documents found with third parties, the presumption u/s 292C against the assessee is not available. As per the principles of natural justice, the AO has to provide the evidence to the assessee and grant opportunity of cross-examination. Secondary evidences cannot be relied on as if neither the person who prepared the documents*

*nor the witnesses are produced. The violation of natural justice renders the assessment void. The Dept cannot be given a second chance (All judgements considered)*

- 2.7 In view of the above judgement of the Supreme Court, as the AO relied on the statement of Vipin Garg which was recorded by ADIT(Inv.) Rohtak, the presumption u/s 292C was not available against the assessee. These statements are binding on Vipin Garg and not the assessee. It is apparent from the Assessment Order that the Assessing Officer has not conducted any independent and separate enquiry in the case of the assessee. Even, the statement recorded by the Investigation Wing has not been got confirmed or corroborated by the person during the assessment proceedings. Under such circumstances, the addition made needs to be deleted.
- 2.8 In Para-13(iv) the AO has held - Therefore, the documentary evidence submitted by the assessee Company appear to be prepared to justify the transactions properly. The findings of the ADIT (Inv.), Rohtak cannot brush aside that Shri Vipin Garg used to provide bogus accommodation entries to the beneficiaries. The sole basis for making the impugned addition is the ADIT's report which has been relied blindly and accepted as a Gospel truth by the AO. If the documentary evidence submitted by the assessee appeared to be bogus, it was incumbent on the AO to establish it. Simply on the basis of assumptions and presumptions, no addition can be validly made.
- 2.9 The Ld.CIT(A) too, has heavily relied on the statements of Vipin Garg recorded by the investigation wing. His findings are given in Para-4.3 of his order. The conclusions drawn by him start from page-27. In para-3 of this page, the CIT(A) has mentioned that the statements were recorded during search, which is factually incorrect. As a matter of fact, the statements were recorded during the course of investigation in the office of ADIT(Inv.) Rohtak. The CIT(A) has further observed that the appellant has not established that the statement of purchaser recorded during search was incorrect. It is impossible to establish a particular fact stated by someone as incorrect unless and until such a person is produced and cross examined. Since, no such opportunity was provided to the assessee, the same could not be established. In para-5, the CIT(A) has observed - The appellant claimed that services of broker were used by it. However, name and address of such broker is not mentioned in the reply. The broker may be actually facilitating in providing accommodation entries. The name or address of the broker was never asked for either by the AO or the CIT(A). However, the relevant invoices produced before the AO clearly mentioned the name and address of the broker. The account of the broker (Ramesh Trading Company) is being provided herewith, which may kindly be admitted as additional evidence under Rule-29 of the ITAT Rules. With regard to opportunity of cross examination, the CIT(A) has observed - The AO has followed the principles of natural justice. The AO has provided the copy of evidences relied upon to the assessee, therefore, if the AO has relied upon the statement, no prejudice is caused to the assessee. Therefore, the argument of the appellant are not found to be acceptable. It may be mentioned that simply providing the statements is of no avail. It is further submitted that one of the main principles of Natural Justice is 'audi alteram partem', that is, 'hear the other side.' This rule makes cross examination as a sine qua non of due process of taking evidence and no adverse inference can be drawn against a party unless the party is put on notice of

the case made out against him. The assessee must be supplied the contents of all such evidences, both oral and documentary, so that he can prepare the case against him. This necessarily also postulates that he should cross examine the witness on whose statement the AO relies to hold the sale as sham or not genuine. It is trite that if an Authority is relying on the testimony of a witness, the assessee is required to be afforded an opportunity to cross-examine him failing which the testimony cannot be utilized against the assessee. If this procedure is not followed, then there would be a case of denial of natural justice to the assessee and the addition on the basis of such statements/ material cannot stand. Addition on account of accommodation entry cannot be made on basis of uncontroverted oral statement of a third party. The assessment based on statement without giving an opportunity is not sustainable in law. The above view is supported by the decision of Honble Supreme Court in the case of Andaman Timber Industries Vs. Commissioner of Central Excise (2015) 281 CTR 241 (SC) wherein the Honble Court observed - 6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

2.10 The appellant in support of his contentions. The appellant further relies upon the following judicial authorities:

- (i) Kishinchand Chellaram (AIR 1980 SC 2117)
- (ii) State of M.P. v. Chintaman Sadashiva Waishampayan AIR 1961 SC 1623
- (iii) Lakshman Exports Ltd. v. Collector of Central Excise (2005) 10 SCC 634
- (iv) Rajiv Arora v. Union of India and Ors. AIR 2009 SC 1100
- (v) CIT Vs. SMC Share Brokers Ltd., (2007) 288 ITR 345 (Del)
- (vi) Prakash Chand Nahta Vs. CIT, (2008) 301 ITR 134 (MP)
- (vii) Bangodaya Cotton Mills Ltd. vs. CIT [2009] 21 DTK 200 (Cal)
- (viii) CIT Vs. Sanjeev Kumar Jain (2009) 310 ITR 178 (P&H) (
- (ix) CIT & Anr. Vs. Land Development Corporation (2009) 316 ITR 328 (Kar)
- (x) CIT Vs. Rajesh Kumar (2008) 306 ITR 27 (Del)
- (xi) Heirs & LRs of Late Laxmanbhai S. Patel Vs. CIT (2009) 222 CTR (Guj) 138
- (xii) CIT Vs. Pradeep Kumar Gupta (2008) 303 ITR 95 (Del)

- (xiii) CIT Vs. Dharam Pal Prem Chand Ltd. (2007) 295 ITR 105 (Del)
- (xiv) CIT Vs. A.N. Dyaneswaran (2008) 297 ITR 135 (Mad)
- (xv) CIT Vs. S.M Aggarwal 292 ITR 43
- (xvi) Straptex India (P) Ltd. Vs. DCIT [2003] 84 ITD 320 (Mum)
- (xvii) R.W. Promotions (P.) Ltd. v. Asstt. CIT [2015] 61 taxmann.com 54 (Bom.)
- (xviii) Obulapuram Mining Co, (P.) Ltd. v. Dy. CIT 160 ITD 224 (Bang. - Trib.)
- (xix) CIT v. Indrajit Singh Suri [2013] 33 taxmann.com 281/215 Taxman 581 (Guj.)
- (xx) Smt. Sunita Dhadda v. Dy. CIT [2013] 33 taxmann.com 639 (JP.- Trib.)

2.11 The Ld.CIT(A) has finally relied on the tests of human probability in confirming the addition, referring to the decisions in the case of Sumati Dayal vs. CIT (214 ITR 801). Reliance placed by him on the decision of the Apex Court in the case of Sumati Dayal (supra) is wholly misplaced. In that case, the assessee therein had claimed income from horse races and the finding of fact recorded was that the assessee therein had not participated in races, but purchased winning tickets after the race, with the unaccounted money. However, this is quite different from the factual matrix at hand. In the present case, the documentary evidence clearly shows that sale was made and there was no question of introducing unaccounted money by the assessee. As regards the decision of Sumati Dayal vs CIT (supra), the Hon'ble Delhi High Court in a recent judgment in the case of Pr. CIT vs. Smt. Krishna Devi (431 ITR 361) under almost similar facts and circumstances, has disregarded the principle of preponderance and has held that evidence produced by the assessee over power the principle of preponderance. Entire conspectus of law on alleged penny stock issue was discussed at length by Hon'ble Delhi high court in this case. The order of Hon'ble ITAT order was approved by Hon'ble High court and the gist of the decision was - *S. 10(38) Bogus Capital Gains from Penny Stock: The fact that there was an astounding 4849.2% jump in the share price within two years, which is not supported by the financials, does not justify the AO's conclusion that the assessee converted unaccounted money into fictitious exempt LTCG to evade taxes. The finding is unsupported by material on record & is purely an assumption based on conjecture. The theory of human behavior and preponderance of probabilities, based on Sumati Dayal v. CIT 214 ITR 801 (SC), cannot be cited as a basis to turn a blind eye to the evidence.* Though, the findings were in respect of bogus LTCG from penny stocks, the central spirit was the same, i.e. the finding is unsupported by material on record and is purely an assumption based on conjecture. The theory of human behavior and preponderance of probabilities, cannot be cited as a basis to turn a blind eye to the overwhelming evidence produced by the appellant to prove the genuineness of the sale transactions.

2.12 It may be mentioned that in the case of Pr. CIT vs. Smt. Krishna Devi, besides the detailed report of the investigation wing, there were statements of brokers and operators, all of whom admitted that the share transactions were bogus and were merely accommodation entries. To prove the genuineness of these transactions, the assessee provided enough evidence of purchase and sale of shares which could not be controverted by the AO. The Hon'ble Delhi High Court after taking into consideration the decision of Hon'ble Supreme Court rendered in the case of Sumati Dayal, held that the direct evidences produced by the assessee overpower the general report of the investigation wing, and the theory propounded in Sumati Dayal

can not be cited as a basis to turn a blind eye to the evidence. In the instant case also, against the generalized report of the investigation wing based on statement of Vipin Garg, the assessee filed ample direct evidence of sale which could not be controverted by the AO. Therefore, the reliance by the CIT(A) on the case of Sumati Dayal in confirming the addition is misplaced.

Re : Gr. No.3 The AO/CIT(A) had grossly erred in making/sustaining addition merely on the basis statement of a third party without bringing any corroborative evidence in support of the same.

- 3.1 The Ld.AO has made the addition solely on the basis of statement of Vipin Garg (a third party). Apart from the bald statement, there is not an iota of corroborative evidence in support of the same. It may be mentioned that Vipin Garg did not mention the name of the assessee anywhere in his statements. He never deposed that his firm has provided accommodation entry to the appellant. He had only made a general statement that his firm M/s Shree Ram Trading Co. provides accommodation entries to parties through its PNB account in the name of the firm.
- 3.2 While completing the assessment, the AO held the amount shown as sales in the books of the assessee as accommodation entries. Interestingly, the AO accepted the purchases, sales and stock as genuine and still ruled that sales to the extent of Rs.18,84,337/- are accommodation entries. It may be mentioned that the sales made to Shree ram Trading Company were duly supported by sales invoice, weighment slips, corresponding entries in duly audited sales book and stock register, LRs and bank statement. Ignoring all these evidences and simply relying on the statements of Vipin Garg, the AO made the additions. The AO held two sale transactions made to Shree Ram Trading Co. to be bogus. The one was in respect of which he had recorded the reason and had been even communicated by the ADIT(Inv.) while the other addition was in respect of a sale which had no mention or reference in the report of the ADIT(Inv.) He eventually made addition of the payment that was remitted through ICICI Bank, though no mention of this bank account was made either in the report of the ADIT or in the statements of Vipin Garg. So, there is no basis at all for adding this impugned sale amount as bogus.
- 3.3 In holding the genuine sales as accommodation entries, the AO adduced no corroborative evidence. It would not be out of place to mention that the books of accounts of the Assessee are duly audited by a Chartered Accountant. Thus, there is no scope of any default on the part of the assessee company. It is pertinent to mention here that the Ld. AO has not doubted the purchases, opening stock and quantitative tally. It is a matter of record that the purchase & sale have duly been reflected in the VAT return filed before the VAT Authorities and assessee company has duly paid the VAT thereon. Hence the sales made by the assessee company is genuine and can not be added as accommodation entry merely on third party statement unless they are proved as bogus on the basis of some reliable evidence. In this regard reliance can be placed on the judicial pronouncement as mentioned here in below :

1. DCIT Vs Subhash Chand Gupta (ITAT Delhi)
2. CIT v/s Kailash Jewellery House ITA 613/2010

The Ld. assessing officer had made the addition by considering the sales already reported in books of account, as accommodation entry not even specifying the provision of the Income Tax Act 1961 under which the said addition was made which tantamounts to double taxation

- 3.4 In this case the addition was made by the assessing officer strongly relying upon the information received from the Investigation wing. He never gave attention to the fact that the entire books of account for the same financial year had been scrutinized not even one time but two times before reopening the case under section 148 with respect to the issue of sale transaction made with M/s Shri Ram Trading Company, and every time entire opening stock, sales, purchase and closing stock made during the year stood accepted. Accordingly the opening and closing stock and trading accounts including sales and purchase had not been disturbed. In these circumstances, it can be said that the sales made by the Assessee company is out of its opening stock and purchases and hence the sales made during the year therefore shall not be treated as unexplained income. The rule of consistency is a well-established and recognized principle applicable to the Income-Tax proceedings. Even The Hon'ble Supreme Court has approved the principle of consistency in the case of Radhasoami Satsang vs. CIT [1992] 193ITR 321, when they observed that where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. Though the principle of res-judicata is not applicable in the income-tax matter, but findings of earlier years on the same matter are relevant as per the ratio laid down in

- (a) Sardar Kehar Singh Vs. CIT [1992] 195 ITR 769 (Raj),
- (b) Taraben Ramanbhai Patel Vs. ITO [1995] 215 ITR 323(Guj ) and
- (c) CIT Vs. Hindusthan Motors Ltd. [1991] 192 ITR 619 (Cal ).
- (d) Hon'ble Apex Court in Parashuram Pottery Works Co. Ltd. Vs. ITO [1977] 106 ITR 1 (SC)

- 3.5 In a very recent decision, ITAT, Mumbai in the case of Jitendra Udaylal Jain vs. National Faceless Assessment Centre (NFAC) in ITA No. 2042/MUM/2023 held that Addition based on third party statement without tangible material is unsustainable. Hon'ble ITAT Bangalore in the case of Dr. Sreenivasulu Reddy Ponnaluru Vs ACIT in ITA No. 673/Chny/2022 has held that Addition on third-party information without corroborative evidence is unsustainable.

In view of the submission made and the case laws of different judicial forums cited, it is requested that the additions made by the AO and sustained by the CIT(A) may kindly be deleted.

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S.No.	Particulars	Page No.
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1.	Copy of reasons for reopening (Notice dated 29.03.2019)	1-7
2.	Copy of reasons for reopening (Notice dated 29.03.2019)	8-9 /
3.	Copy of invoices cum delivery challans of sales made to Shree Ram Trading Co.	10-11
4.	Copy of weightment slips of sales	12-13
5.	Copy of transportation receipts	14-15
6.	Copy of ledger account of Shree Ram Trading Co.	16
7.	Copy of Bank account of the assessee evidencing receipt of payment against sales made	17-18
8.	Copy of Sales register for 5.4.2011	19
9.	Copy of Stock register evidencing the impugned sales	20
10.	Copy of documents pertaining to Ramesh Trading Co.(Broker)	21-24

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S. No.	Particulars	Page No.
1	Dr. Srinivasulu Reddy Ponnaluru vs. ACIT	1-10
2	Copy of reasons for reopening (Notice dated 29.03.2019)	11-57
3	Copy of notice u/s 142(1) issued at the time of original assessment calling for complete details of production and sale	58-63

7. The Id. AR of the assessee in addition to the written submission so filed vehemently argued that there must be some finality as to the multiple proceeding initiated by the lower authority. This is the third round of the litigation and the assessment has been re-opened after the four years. The assessment has been re-opened based on the same material that is already available on record.

The assessee has made the sales to the person and has not made any purchases to avail any accommodation entry. The sales have been made after handing over the goods and taking the money of the sale of goods by normal banking channel. The assessee nowhere except for

transaction of Rs. 18,84,337/- alleged to have been involved. This isolated transaction cannot be a basis to reopen the completed assessment. The assessee in support of the transaction provided, Invoice, ledger, LR receipt for the transport of the goods, details of the broker through whom the transaction entered. The Id. AO has not touched upon any of the evidences so failed and merely based on the third party statement made the addition.

8. Per contra, Id. DR is heard who relied on the findings of the lower authorities. He also submitted that these are accommodation entry provider cases wherein the statement of that person is recorded and he has submitted the list of transaction wherein the assessee is also involved in bogus accommodative entry transactions. Therefore, the addition so made and sustained by the Id. CIT(A) is based on the information and reasons so recorded should be sustained.

Since, the assessment is in third round of litigation, the reopening is based on the tangible material placed on record and thus, the re-opening made by the Id. AO is justified and to drive home this contention the Id. DR relied upon the following case laws :

Sr, No.	Name of the case
1.	[1999] 236 ITR 34 (SC) SUPREME COURT OF INDIA Raymond Woollen Mills Ltd. v. Income-tax Officer
2.	[2023] 148 <a href="https://www.taxmann.com">taxmann.com</a> 446 (Delhi) HIGH COURT OF DELHI Saif II Mauritius Company Ltd. v. Assistant Commissioner of Income-tax

3.	[1999] 103 TAXMAN 562 (PAT.) HIGH COURT OF PATNA P.K. Haldar & Co. v. Commissioner of Income-tax
4.	[2002] 123 Taxman 756 (Calcutta) HIGH COURT OF CALCUTTA Ispat Industries Ltd. v. Deputy Commissioner of Income-tax
5.	[2023] 153 <a href="http://taxmann.com">taxmann.com</a> 25 (Gujarat) HIGH COURT OF GUJARAT Akshat Pramodkumar Chaudhary v. Deputy Commissioner of Income-tax
6.	[2022] 139 <a href="http://taxmann.com">taxmann.com</a> 198 (Gujarat) HIGH COURT OF GUJARAT Amar Jewellers Ltd. v. Assistant Commissioner of Income-tax
7.	[2018] 94 <a href="http://taxmann.com">taxmann.com</a> 393 (Gujarat) HIGH COURT OF GUJARAT Amit Polyprints (P.) Ltd. v. Deputy Commissioner of Income-tax
8.	[2018] 91 <a href="http://taxmann.com">taxmann.com</a> 119 (Gujarat) HIGH COURT OF GUJARAT Aradhna Estate (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-1(1)
9.	[2023] 152 <a href="http://taxmann.com">taxmann.com</a> 573 (SC) SUPREME COURT OF INDIA Ajay Gupta v. Income-tax Officer
10	[2019] 101 <a href="http://taxmann.com">taxmann.com</a> 231 (Madhya Pradesh) HIGH COURT OF MADHYA PRADESH Etiam Emedia Ltd. v. Income-tax Officer-2(2)
11	[2020] 115 <a href="http://taxmann.com">taxmann.com</a> 338 (Delhi) HIGH COURT OF DELHI Experion Developers (P.) Ltd.
12	[2018] 91 <a href="http://taxmann.com">taxmann.com</a> 181 (Gujarat) HIGH COURT OF GUJARAT Jayant Security & Finance Ltd. v. Assistant Commissioner of Income-tax, officer Circle 1(1)
13	[2012] 18 <a href="http://taxmann.com">taxmann.com</a> 83 (Delhi) IN THE ITAT DELHI BENCH Ms. Rainee Singh v. Income-tax Officer
14	[1995] 83 TAXMAN 194 (MAD.) HIGH COURT OF MADRAS Panchugurumurthy v. Commissioner of Income-tax
15	[2016] 72 <a href="http://taxmann.com">taxmann.com</a> 302 (Gujarat) HIGH COURT OF GUJARAT Peass Industrial Engineers (P.) Ltd. v. Deputy Commissioner of Income-tax
16	[2020] 114 <a href="http://taxmann.com">taxmann.com</a> 718 (Gujarat) HIGH COURT OF GUJARAT Purnima Komalkant Sharma v. Deputy Commissioner of Income-tax, Circle 1
17	[2022] 139 <a href="http://taxmann.com">taxmann.com</a> 409 (Gujarat) HIGH COURT OF GUJARAT Pushpa Uttamchand Mehta v. Income-tax Officer
18	[2023] 153 <a href="http://taxmann.com">taxmann.com</a> 282 (Kolkata - Trib.) IN THE ITAT KOLKATA BENCH 'A' Tarasafe
19	[2021] 128 <a href="http://taxmann.com">taxmann.com</a> 229 (Gujarat) HIGH COURT OF GUJARAT Bhanuben Mansukhlal
20	[2021] 129 <a href="http://taxmann.com">taxmann.com</a> 48 (Gujarat) HIGH COURT OF GUJARAT Kaushaliya Sampatlal Dudani v. Income-tax Officer, Ward 1(3)
21	[2021] 129 <a href="http://taxmann.com">taxmann.com</a> 119 (Gujarat) HIGH COURT OF GUJARAT Nishant Vilaskumar Parekh v. Income-tax Officer, Ward 1(3)
22	[2022] 138 <a href="http://taxmann.com">taxmann.com</a> 50 (Gujarat) HIGH COURT OF GUJARAT Nishant Vilaskumar Parekh v. Income-tax Officer
23	[2021] 131 <a href="http://taxmann.com">taxmann.com</a> 42 (Gujarat) HIGH COURT OF GUJARAT Sameer Gulabchand Shah HUF v. Income-tax Officer, Ward 1(3)
24	[2021] 127 <a href="http://taxmann.com">taxmann.com</a> 679 (Gujarat) HIGH COURT OF GUJARAT Silverdale Inn (P.) Ltd. v.
25	[2021] 129 <a href="http://taxmann.com">taxmann.com</a> 68 (Gujarat) HIGH COURT OF GUJARAT Vilas Vrajlal Parekh HUF
26	[2021] 133 <a href="http://taxmann.com">taxmann.com</a> 397 (Gujarat) HIGH COURT OF GUJARAT Zaveri & Company (P.) Ltd. v. Deputy Commissioner of Income-tax
27	[1980] 4 Taxman 83 (Delhi) HIGH COURT OF DELHI Commissioner of Income-tax v. H.P. Sharma

	S. RANGANATHAN AND D.R. KHANNA, JJ
28.	[2006] 151 Taxman 41 (Delhi) HIGH COURT OF DELHI Consolidated Photo & Finvest Ltd. v. Assistant Commissioner of Income-tax
29.	[2009] 315 ITR 84 (Bombay) HIGH COURT OF BOMBAY Yuvraj v. Union of India
30.	[2011] 197 Taxman 415 (Delhi) HIGH COURT OF DELHI Honda Siel Power Products Ltd. v. Deputy Commissioner of Income-tax.
31.	[2012] 2ltaxmann.com438 (Delhi) HIGH COURT OF DELHI Money Growth Investment &
32.	[2014] 41taxmann.com21 (Delhi) HIGH COURT OF DELHI OPG Metals & Finsec Ltd. v. Commissioner of Income-tax
33.	[2021] 128taxmann.com369 (Jaipur - Trib.) IN THE ITAT JAIPUR BENCH 'A' Smt. Uma Mandal v. Income Tax Officer, Ward 5(4), Jaipur

9. We have heard the rival contentions and perused the material placed on record. Ground no. 2 & 3 raised by the assessee is related the quantum addition made in the hands of the assessee for an amount of Rs. 18,85,279/- while relying on the statement of Shri Vipin Kumar Garg who alleged to have been found engaged to providing the accommodation entry. In the operations carried out by the revenue in that case of that person the assessee is found to be beneficiary for sale of goods by the assessee to the concern named Shri Ram Trading Company run by Shri Vipin Kumar Garg. The bench noted that in the case of the assessee this is the third round of litigation wherein the assessment was re-opened to verify the transaction of that entry provider. The bench noted that assessee made a sale transaction for an amount of Rs. 18,84,337/- (including VAT) with Shri Ram Trading Company to support the transaction of sale the assessee has submitted the copy of account of Shri Ram Trading Company in the books of the

assessee company along with copy of sale invoices cum delivery challan having details of brokers through which these transactions were entered, lorry receipt details of transporters etc. By placing all these detailed evidences on record, the assessee has substantiated the transactions with M/s Shree Ram Trading Company. The payment for the sale of goods has been received by the assessee company by normal banking transactions. The assessee has placed everything related to the sale transaction on record before the Id. Assessing Officer. The Id. Assessing Officer has not controverted all these series of evidences so as to justify the sale transaction, but has merely based on the statement of Shri Vipin Garg added a sum of Rs. 18,85,279/- which is nothing but the sale consideration already reflected in the books of accounts of the assessee.

10. The said transaction being recorded in the regular books of accounts the separate addition without rejecting the books of accounts cannot be made in the hands of the assessee. To our view also get support from our Hon'ble Jurisdiction Rajasthan high court in the case of CIT Vs. Pink City Developers [99 taxmann.com 422 (Rajasthan) ]. In that case the Hon'ble High court held that;

7. The counsel for the respondent contended that the Tribunal while considering the objection of section 145(3) of the Income-tax Act has rightly observed as under :

"(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144."

8. Taking into considerations, the overall facts and circumstances of the case, we are of the opinion that the Tribunal while confirming the order passed by the Commissioner of Income-tax (Appeals) has not committed any error, therefore, the issue is answered in favour of the assessee and against the Department.

Thus we find from the record that the books of accounts of the assessee has not been rejected order has been passed as per provisions of section 143(3) of the Act. Thus, making addition of the sale which was duly reflected in the books of the assessee making the separate addition with reducing the said sale already offered by the assessee is not correct.

The bench further noted that coordinate bench Mumbai in the case of Jitendra Udaylal Jain vs. National Faceless Assessment Centre (NFAC) in ITA No. 2042/Mum/2023 and in the case of Dr. Sreenivasulu Reddy Ponnaluru vs. ACIT in ITA No. 673/Chny/2022 have also held that merely on the third party statement no addition can be made.

Based on this discussion we do not find any reason to sustain the addition and therefore, we direct to delete the said addition made by the

Assessing Officer and in the result ground no. 2 & 3 raised by the assessee stands allowed.

Ground no. 4 being general and there is no specific grievance raised by the assessee therefore, the same is not required to be adjudicated.

Ground no. 1 raised by the assessee is technical ground and we have already allowed the appeal of the assessee on merits. Therefore, this ground becomes educative in nature.

In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 27/08/2024.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 27/08/2024

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- Goyal Vegoils Limited, Kota
2. प्रत्यर्थी / The Respondent- DCIT, Circle-02, Kota
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 243/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar