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

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

आयकर अपील सं./ITA. No. 540, 1044 & 1045/JPR/2024
निर्धारण वर्ष/Assessment Years : 2018-19, 2016-17 & 2017-18

M/s Yogesh Ginning Mill Khesti Wale, Near Sitaram Mandir, Govindgarh, Alwar.	बनाम Vs.	The ACIT, Circle-1, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACIPG1584D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Paridhi Jain, Adv.
राजस्व की ओर से/ Revenue by : Shri Gajendra Singh (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 28/10/2024
उदघोषणा की तारीख/Date of Pronouncement : 12/12/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present bunch of three appeal were listed together were argued together with the consent of the parties and that is why disposed off with the common order.

2. The details of the respective order which are challenged before this tribunal which were passed by the Commissioner of Income Tax (Appeal)- 4, Jaipur [for short CIT(A)] passed on dates and f for the assessment years mentioned as tabulated here in below, in turn those orders were arises because the assessee has

challenged the assessment order passed on various dates mentioned herein below by the ACIT, Circle-1, Alwar under the provision of Income tax Act, 1961 (for short “Act') for the years reads as under :

Asstt. Year	Appeal No.	Reference to the dated of order of the ld. CIT(A)	Reference to the order of the ld. AO date and section under which the order is passed	
2018-19	540/JPR/2024	28.02.2024	27.12.2019	143(3) r.w.s 153C
2016-17	1044/JPR/2024	10.07.2024	27.12.2019	143(3) r.w.s 153C
2017-18	1045/JPR/2024	10.07.2024	27.12.2019	143(3) r.w.s 153C

3. At the outset, the ld. AR has submitted that the matter pertaining to A.Y. 2018-19 in ITA no. 540/JPR/2024 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical in other assessment year and even grounds are also identical. Therefore, for the purpose of the present discussions, the facts of the case of ITA No. 540/JPR/2024 are taken as a lead case.

4.1 In ITA No. 540/JPR/2024 the assessee has raised following grounds:-

"1) The Learned Commissioner of Income Tax (Appeals) -4, Jaipur (Herein referred to as "Learned CIT(A)") has erred in law and on facts in upholding the assessment Order passed u/s 143(3) r.w.s. 153C of the Act with creating a demand of Rs. 2368011 and returned income of Rs. 783760 was enhanced to Rs. 2575910, passed by the Assessing Officer, ACIT, Circle 1. Alwar (Herein referred to as AO) and dismissing the appeal.

2) The Learned CIT(A) has erred in law and on facts in not considering notice issued u/s 143(2) was time barred and the order passed without following the mandatory procedures of the act and by not providing the proper opportunity of being heard.

3) (a) The Learned CIT(A) has erred in law and on facts in upholding the Order of AO in which AO had made addition of Rs. 10,82,000 u/s 68 on account of cash seized by GPR, which was made in the assessment order dated 27.12.2019 passed u/s 143(3) r.w.s. 153C of the Act without appreciating the facts and submissions made during the course of assessment proceedings. which is unjustified, unwarranted and excessive.

(b) The Learned CIT(A) has erred in law and on facts in upholding the Order of AO in which AO had made addition of Rs. 3,60.000 u/s 68 on account of unexplained cash credits, which was made in the assessment order dated 27.12.2019 passed u/s 143(3) rw.s. 153C of the Act without appreciating the facts and submissions made and documents submitted during the course of assessment proceedings, which is unjustified, unwarranted and excessive.

4) The Learned CIT(A) has erred in law and on facts in upholding the Order of AO in which AO had made addition of Rs. 3,50,150 by invoking section 145(3), which was made in the assessment order dated 27.12.2019 passed u/s 143(3) r.w.s. 153C of the Act without appreciating the facts and submissions made during the course of assessment proceedings, which is unjustified, unwarranted and excessive

5) The Learned CIT(A) has erred in law and on facts in concluding the Appeal and passed the order u/s 250 of the Act on 28.02.2024 without giving the reasonable opportunity of being heard and without taking into consideration the submissions and by violating the principle of natural justice

6) Your appellant craves leave to add to, alter, amend or delete any of the foregoing grounds of appeal.

4.2 In ITA No. 1044/JPR/2024 the assessee has raised following grounds:-

"1) The Learned Commissioner of Income Tax (Appeals) -4. Jaipur (Herein referred to as "Learned CIT(A)") has erred in law and on facts in upholding the assessment Order passed u/s 143(3) row.s. 153C of the Act with creating a demand of Rs. 489302 and returned income of Rs. 443946 was enhanced to Rs. 1588039, passed by the Assessing Officer, ACIT, Circle 1. Alwar (Herein referred to as AO) and dismissing the appeal.

2) The Learned CIT(A)" has erred in law and on facts in upholding the addition without giving the reasonable opportunity of being heard and without taking into consideration the submissions and by violating the principle of natural justice.

3) The Learned CIT(A) has erred in law and on facts in not considering notice issued u/s 143(2) was time barred and the order passed without following the mandatory procedures of the act and by not providing the proper opportunity of being heard.

4) The Learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 10.22.940 u/s 68 on account of unexplained cash credits, which was made in the assessment order dated 27.12.2019 passed u/s 143(3) r.w.s 153C of the Act without appreciating the facts and submissions made and documents submitted during the course of assessment proceedings, which is unjustified, unwarranted and excessive.

5) That the Learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 1,21,153 by rejecting books of accounts and by invoking section 145(3) without finding out any defects in books of accounts in the assessment order dated 27.12.2019 passed u/s 143(3) rw.s. 153C of the Act without appreciating the facts and submissions made during the course of assessment proceedings, which is unjustified, unwarranted and excessive.

6) That Learned CIT(A) has erred in law and on facts in upholding the invocation of the provisions of section 145(3) and rejecting the books of accounts regularly maintained and duly audited and holding that the books of accounts were not absolutely reliable.

7) The Learned CIT(A) has erred in law and on facts in wrongly upholding the penalty proceeding under section 271(1)(c), which is unjustified, unwarranted and bad in law.

8) The Learned CIT(A) has erred in law and on facts in upholding the charge of Interest u/s 234A, 234B & 234C.

9) Your appellant craves leave to add to, alter, amend or delete any of the foregoing grounds of appeal."

4.3 In ITA No. 1045/JPR/2024 the assessee has raised following grounds:-

"1) The Learned Commissioner of Income Tax (Appeals) -4, Jaipur (Herein referred to as "Learned CIT(A)") has erred in law and on facts in upholding the assessment Order passed u/s 143(3) r.w.s. 153C of the Act with creating a demand of Rs 561565 and returned income of Rs 532951 was enhanced to Rs 844531, passed by the Assessing Officer, ACIT, Circle 1. Alwar (Herein referred to as AO) and dismissing the appeal.
2) The Learned CIT(A)" has erred in law and on facts in upholding the addition without giving the reasonable opportunity of being heard and without taking into consideration the submissions and by violating the principle of natural justice.
3) The Learned CIT(A) has erred in law and on facts in not considering notice issued u/s 143(2) was time barred and the order passed without following the mandatory procedures of the act and by not providing the proper opportunity of being heard.
4) The Learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 4,41,000 u/s 68 on account of unexplained cash credits, which was made in the assessment order dated 27.12. 2019 passed u/s 143(3) rw s. 153C of the Act without appreciating the facts and submissions made and documents submitted during the course of assessment proceedings, which is unjustified. unwarranted and excessive.
5) That the Learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 4,03.531 by rejecting books of accounts and by invoking section 145(3) without finding out any defects in books of accounts in the assessment order dated 27.12.2019 passed u/s 143(3) r.w.s. 153C of the Act without appreciating the facts and submissions made during the course of assessment proceedings. which is unjustified, unwarranted and excessive.

6) That Learned CIT(A) has erred in law and on facts in upholding the invocation of the provisions of section 145(3) and rejecting the books of accounts regularly maintained and duly audited and holding that the books of accounts were not absolutely reliable.
7) The Learned CIT(A) has erred in law and on facts in wrongly upholding the penalty proceeding under section 271AAC(1), which is unjustified, unwarranted and bad in law.
8) The Learned CIT(A) has erred in law and on facts in upholding the charge of interest u/s 234A, 234B & 234C.
9) Your appellant craves leave to add to, alter, amend or delete any of the foregoing grounds of appeal."

5. First, we take up the appeals of the assessee in ITA no. 540/JPR/2024, wherein the brief fact as culled out from the record that the assessee had filed his ITR, declaring total income of Rs.7,83,760/- after claiming of deduction of Rs.42,909/- under Chapter VIA. A satisfaction note, from the case of Shri Siya Ram Mahajan, having PAN No. AXZPR8999R, was drawn on 12.12.2019, for initiation of action u/s 153C in the instant case & accordingly, a notice u/s 153C dated 07.11.2019 was issued requiring the assessee to file his ITR within stipulated time. In response thereto, ld. AR of the assessee, on 05.12.2019 furnished a copy of ITR of the assessee. Consequently, a notices u/s 143(2) & 142(1) dated 06.12.2019 was issued requiring the assessee to furnish certain details/documents. In response thereto, the ld. AR of the assessee furnished the requisite details/documents as called

for from time to time. For the year under consideration the assessee engaged in manufacturing business of Cotton Seed, Mustard Oil, Mustard Cake & trading business of Binola, Cotton & other agriculture product in his proprietary concern in the name & style of M/s Yogesh Ginning Mill. In addition to this the assessee had also been derived income by way of LIC Commission & Interest.

5.1 In this case a cash amount of Rs.10.82 lakh was seized from the possession of Shri Siya Ram Mahajan by SHO, GRP Thana, Ajmer, on 09.10.2017. Enquiries were conducted, under commission u/s 131(1)(d), by the Deputy Commissioner of Income Tax (Inv.), Alwar, to ascertain the sources of cash seized by SHO, GRP Thana, Ajmer, & statement of Shri Siya Ram Mahajan were recorded, on oath u/s 131, by the Deputy Commissioner of Income Tax (Inv.), Alwar. In that statement he stated that his cousin, namely Shri Yogesh Chand Gupta Prop. M/s. Yogesh Ginning Mill i.e. the assessee had given him cash of Rs. 10.85 lakhs for purchase of cotton from farmers. But due to increase in rates the deal was not finalised and upon his return journey on 09.10.2017 GRP at Ajmer Railway Station he was caught with cash in his possession. Further he stated the place he stated to have visited

had no knowledge of and with whom he had contacted. On being asked he submitted that at Ajmer Railway Station he met some Roshan Gurjar & he had visited Merta, Ajmer & its nearby places, with Roshan Gurjar. However, the assessee couldn't provide address or contact No. of Roshan Gurjar.

5.2 As Shri Siya Ram Mahajan has stated that the cash seized from his possession belonged to his Cousin Shri Yogesh Chand Gupta, i.e. the assessee, the statement of assessee were also recorded, on oath u/s 131, by the Deputy Commissioner of Income Tax (Inv.) Alwar. However, the assessee could not provide contract details, i.e. address & contact No. of Roshan Gurjar. The ld. AO noted that Shri Siya Ram Mahajan was neither employee of the assessee nor working on commission basis. It was also noted that the assessee never purchased any goods from Ajmer or its nearby places earlier and Shri Siya Ram Mahajan was also not sent for purchase in past. The assessee admitted that the cash seized by GRP from the possession of Shri Siya Ram Mahajan belonged to him but failed to explain the source of cash seized except stating that he has made withdrawal of cash on 26.09.2017 and the cash was seized on 09.10.2017. As there was gap of 13 days and the assessee could not provide the details of parties from the cash

purchase was to made the cash found was considered as unexplained and accordingly addition of Rs. 10,82,000/- was made in the hands of the assessee.

5.3 Ld. AO also noted that the assessee had raised huge amount of unsecured loan below Rs. 20,000/- from 25 different parties. To support the claim of having taken cash loan the assessee has submitted copy of Aadhar Card, as identification of these lenders. The assessee was required to produce those lenders but failed to produce and therefore, that amount of Rs. 3,60,000/- were considered as unexplained cash credits and was considered as income u/s. 68 of the Act.

5.4 Ld. AO noted that the trading result shown by the assessee as compared with the last year wherein the net profit rate was 1.04 % whereas for the year under consideration it was 0.55 % considering that down fall in the trading results the assessee was called upon to produce his books of accounts which were produced. Ld. AO noted that the assessee do not maintain the quantity wise stock register the closing stock was not verifiable. Ld. AO from the books so produced noted that the assessee has debited the expenses in cash and as such excess booking of

expenses cannot be ruled out and that is why he invoked the provision of section 145(3) of the Act and considered to estimate the profit @ 1 % thereby making addition of Rs. 3,50,150/-.

6. Aggrieved, from the aforesaid assessment made in the case of the assessee. The assessee challenged the finding of the ld. AO before the ld. CIT(A). The ld. CIT(A) after hearing the contention and submission of the assessee dismissed the appeal of the assessee. The relevant observation of the ld. CIT(A) is reiterated herein below :

> " Ground No. 2
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> 5.3 From the record, it is noticed that cash of Rs 10.82 lacs was seized from the possession of Shri Siya Ram Mahajan by the SHO, GRP Thana, Ajmer on 09/10/2017. When asked about the source of cash found in his possession, Shri Mahajan explained to the SHO that the cash belonged to Shri Yogesh Chand Gupta, his cousin brother, who had given the cash to him for purchase of cotton from Ajmer. Since the purchase transaction could not materialize, he was carrying back the cash with him. During inquiry by the Investigation Wing, Shri Mahajan, in his statement recorded on oath u/s 131 on 15/12/2017, reiterated his statement given before the SHO, GRP, Ajmer. On 28/2/2018, warrant of authorization u/s 132A was executed and the cash seized from the possession of Shri Mahajan was taken over by the Income Tax Department.
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> Again during the course of scrutiny assessment proceedings in the case of Shri Mahajan, he reiterated his earlier stand that the money found in his possession belonged to the appellant, Shri Yogesh Chand Gupta. The statement of Shri Yogesh Chand Gupta, the appellant, was also recorded during the scrutiny proceedings in the case of Shri Siya Ram Mahajan, wherein he confirmed the statement of Shri Mahajan and admitted that the cash of Rs. 10.82 lacs belonged to him, which is

stated to have given to Shri Mahajan for purchase of cotton from Ajmer and the source of cash was stated to be out of amount of Rs. 15 lacs withdrawn from bank by the appellant.

Proceedings u/s 153C were initiated in the case of the assessee, Shri Yogesh Chand Gupta, after recording satisfaction and notice u/s 153C was issued. In response to the notice so issued, the appellant filed return of income. During the course of assessment proceedings, the assessee was called up on to explain the source of cash of Rs. 10.82 lacs seized from the possession of Shri Siya Ram Mahajan, which, as per statement recorded u/s 131 of Shri Mahajan by the ADIT on 07/12/2017, belonged to the appellant. During the course of assessment proceedings, the statement of the appellant was again recorded u/s 131 on 21/06/2019, wherein he, inter-alia, stated that he is an agent of LIC and was also Prop. Of Yogesh Ginning Mill Alwar. He admitted that usually purchases of cotton were made from Local Mandi and from Warangal/UP/MP/Ajmer etc as per requirement and during the year under consideration, the purchases were to the tune of Rs. 8.04 crore out of which cash purchases were of Rs. 16.17 lacs. The appellant admitted that he never purchased any goods from Ajmer in Rajasthan and also that the cash purchases were made at his mill premises only. He stated that he had withdrawn Rs. 15 lac from Bank on 26.09.2017 and out of this amount, Rs. 10.85 lacs were given to his cousin viz Siya Ram Mahajan for purchase of cotton through one Shri Roshan Gurjar of Ajmer. Since the deal did not materialize, Shri Majahan, while returning to Alwar, was caught by GRP at Ajmer Railway Station.

However, the appellant could not provide the contact details of Roshan Gurjar. In view of the statement of the appellant that he made cash purchases in his Mill only and never sent his cousin to Ajmer for making purchases earlier and also the fact that the appellant could not establish the direct link between the cash withdrawn from the bank on 26.09.2017 and the amount stated to have been given to his cousin on 08.10.2017, the AO did not accept the appellant's version and treated the cash of Rs. 10.82 lac as unexplained and added the same to appellant's income by invoking Sec. 68.

5.4 It is noticed that when the appellant's cousin is stated to have met Shri Roshan Gurjar at Ajmer for purchase of cotton, which statement stands confirmed by the appellant also, then nothing prevented the appellant from giving his complete details and information with regard to the persons contacted at Ajmer for purchase of cotton. This could

have helped the AO to ascertain the correct facts and substantiate the claim of the appellant that he had sent his cousin with money to purchase cotton through Shri Roshan Gurjar. The appellant, for reasons best known him, failed to furnish the complete details of Shri Roshan Gurjar. The appellant himself had asserted that he never made any purchases from Ajmer and cash purchases were only made at his Mill at Alwar. In such a situation, the plea of sending his cousin with money for purchase of cotton from Ajmer through Shri Roshan Gurjar, whose contact details and whereabouts were not furnished despite specific requirement made, appears to be a concocted one, without any supporting material. When viewed from this angle, the claim of the appellant of having given the money of Rs. 10.82 lacs on 8.10.2017 out of withdrawals of Rs. 15 lacs on 26.09.2017 appears to be an after-thought to explain the seized cash from his cousin.

As noted by the Id. AO, on being asked the address & contact No. of Roshan Gurjar, Sh. Siya Ram Mahajan couldn't provide the same & stated that Yogesh told him that Roshan Gurjar would meet him at Ajmer Railway Station & he met him there. He, with Roshan Gurjar, went to Merta & 3-4 other villages but name of villages are not remember to him. On being asked that at where he went at Merta with Roshan Gurjar, he couldn't provide any detail. It was also stated that the Sh. Mahajan is neither partner of appellant Sh. Yogesh's concern nor working on commission/salary for him.

As noted by the Id. AO it is stated by the appellant in statement on oath u/s 131 that in respect of cash purchases it was stated that cash purchases were made at his Mill premises only. He is having a License issued by Krishi Upaj Mandi Samiti. Baroda Meo. for making cash purchases in Mandi Area Govindgarh. He further stated that he had given cash of Rs. 10.85 lakh to his cousin, namely Shri Siye Ram Mahajan. on 08.10.2017 for making purchases of cotton from the farmers of Ajmer & its nearby places. Sh. Siya Ram had never made purchases for the appellant earlier.

As stated on oath, at Ajmer Railway Station the Sh. Siya Ram met Shri Roshan Gurjar & Sh. Siya Ram went with Roshan Gurjar but Roshan Gurjar was fraud, therefore, Sh. Siya Ram was returning with cash but GRP caught him at Ajmer Railway Station with cash of Rs.10.82 lakh. It was also stated that the Sh. Siya Ram is neither partner of appellant's concern nor working commission/salary for him. on

From the above discussion it is quite clear that the Siya Ram Mahajan was neither employee of the assessee nor working on commission basis, the Assessee is having a License issued by Krishi Upaj Mandi Samiti, Baroda Meo. which authorized him to make purchases in cash in Mandi Area Govindgarh

It is pertinent to mention here that the assessee makes cash purchases at his mill premises only and did never purchased any goods from Ajmer or its nearby places earlier. Further he did never sent Shri Siya Ram Mahajan for making any purchases earlier.

The appellant failed to furnish any documentary evidence in respect of sources with respect to the cash seized by the GRP except submitting that he had withdrawn cash on 26.09.2017. It is pertinent to mention here that the cash was seized on 09.10.2017 & there is a gap of 13 days from the cash withdrawn from Bank & the cash was seized.

In the business when cash is withdrawn, the same is withdrawn for the immediate and identified purpose. The appellant has given a justification explanation telling the purpose for which the cash was withdrawn and how the transaction did not take place.

The appellant submitted that he had withdrawn cash of Rs.15.00 lakh on 26.09.2017 from Bank for purchase of cotton, as Zamidars agreed to sale goods to him but the goods were not supplied. The cash withdrawn from Bank were kept with him in wait of supply of goods but the goods were not supplied. On 08.10.2017, he handed over cash of Rs. 10.85 lakh to his cousin. However, the appellant failed to explain details of Zamidars who agreed to sale goods & didn't supplied later on. Further, no explanation in respect of difference amount of Rs 4.15 lakh (15.00 lakh 10.85 lakh) is given.

The appellant never purchased cotton from Ajmer or its nearby areas earlier. The appellant never send Siya Ram Mahajan for making purchase earlier. Siya Ram Mahajan was neither employee of the assessee nor working on commission basis, the Assessee is having a License issued by Krishi Upaj Mandi Samiti, Baroda Meo, which authorized him to make purchases in cash in Mandi Area Govindgarh.

During assessment proceedings the appellant didn't produce his Books of Accounts, together with Purchase Register, therefore, it is not known that as to how much amount of cotton was purchased by the assessee at from 26.09.2017 to 08.10.2017. Further as per monthly figures

submitted by the appellant during assessment proceedings, the appellant had made purchases worth Rs. 2,07,35,288/- during Spetember & worth Rs. 2,68,26,175/- during October. The source of the same remains unverified as to how much of the cash withdrawn was utilized in making such purchases.

From the above, following conclusions emerge:-

(a). The purpose for which the cash was allegedly withdrawn by the appellant and how the transaction failed are unbelievable and beyond human probabilities considering various circumstantial factors and absence of various explanations from the side of the appellant as discussed in detail in the assessment order. The explanation is more of a cooked story. The conclusion which arises is that, the cash was withdrawn by the appellant from the bank account on 26 September for some other purposes which has not been disclosed by the appellant.

(b). The appellant has not produced the books of accounts and other details as called during assessment proceedings and the appellant has not been able to substantiate such cash was not spent anywhere else. As the appellant did not submit the details and did not produce the books f accounts adverse inference has correctly been drawn in the assessment order.

(c). In view of the discussion above, the cash withdrawn on 26 September is not substantiated by the appellant to be the source of the cash found with the cousin of the appellant by the GRP.

On these facts of the case, the AO is justified in treating the amount as unexplained and making the impugned addition.

In the light of discussion made above, the addition of Rs. 10,82,000/- made by the AO is confirmed and appeal is dismissed."

Ground No. 3

6.3 From the record, it is seen that the appellant had shown cash credits in the names of as many as 25 persons, totaling to Rs. 3,60,000/-. When required to explain the identity and creditworthiness of these creditors, the appellant simply filed their Adhar Card. Then the AO required the assessee to produce these creditors for verification, which the appellant failed to comply with. The AO accordingly disbelieved these credits and added the same to the total income u/s 68. Mere production of the Aadhar card does not mean that such

persons in whose name and details are mentioned in the Aadhar Card have actually lent the money to the appellant. The appellant has not discharged its burden to prove the identity of the creditors and the capacity of the creditors and the genuineness of the transaction by not producing the creditors as required by the AO. Also no confirmations were filed.

In Kale Khan Mohammed Hanif Vs. CIT, the Hon'ble Supreme Court held that it is well established that the onus of proving the source of a sum of money found to have been received by the assessee is with him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was not taxable as per the provisions of the Act. In absence of such proof, the Income Tax Officer is entitled to treat it as taxable income.

In the case of Roshan Di Hatti v. Commissioner of Income-tax [1977] 107 ITR 938 (SC)[08-03-1977] it is held by the Hon'ble Supreme Court as under-

"Now, the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. If he disputes the liability for tas, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such peool, the revenue is entitled to treat it as taxable income. This was laid down as far back as 1958 when thì court pointed out in A. Govindarajulu Mudaliar v. Commisioner of Income-tax [1958] 34 ITR 807, 810 (SC) that:

"There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipts are of an assessable nature

In the case of Kale Khan Mohammad Hanif v. Commissioner of Income Tax [1963] 50 ITR 1 (SC) [08-02-1963] it is held by the Hon'ble Supreme Court as under:-

"It seems to us that the answer to this question must be in the affirmative and that is h it was answered by the High Court It is well established that the onus of proving th source of a sum of money found to have been received by the assessee is on him. If h disputes liability for tax, it is for him to show either that the receipt was not income that if

it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income-tax Officer is entitled to treat it as taxable income: see A Govindarajulu Mudaliar v. Commissioner of Income-tax [1958] 34 ITR 807 (SC)".

As per judgements of Hon'ble Supreme Court in the case of CIT v. M.Ganapathi Mudaliar [1964] 53 ITR 623 (SC)/A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC), where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assesse, it is not necessary for the department to locate its exact source.

Referring to the above judgements of Hon'ble Supreme Court, it is held by the Hon'ble ITAT in the case of Navin Shantilal Mehta v. Income-tax Officer, Ward-32 (2) (4), Mumbai [2018] 90 taxmann.com 16 (Mumbai Trib.) as under:-

"3.2 As per section 68 of the Act, onus is upon the assessee to discharge the burden so cast upon. First burden is upon the assessee to satisfactorily explain the credit entry contained in his books of accounts. The burden has to be discharged with positive material (Oceanic Products Exporting Co. v. CIT [2000] 241 ITR 497 (Ker.). The legislature had laid down that in the absence of satisfactory explanation, the unexplained cash credit may be charged u/s 68 of the Act. Our view is fortified by the ratio laid down in Hon'ble Apex Court in CIT v. P. Mohankala [2007] 291 ITR 278/161 Taxman 169. A close reading of section 68 and 69 of the Act makes it clear that in the case of section 68, there should be credit entry in the books of account whereas in the case of 69 there may not be an entry in such books of account. The law is wellsettled, the onus of proving the source of a sum found to be received/transacted by the assessee, is on him and where it is not satisfactorily explained, it is open to the Revenue to hold that it is income of the assessee and no further burden lies on the Revenue to show that income is from any other particular source. Where the assessee failed to prove satisfactorily the source and nature of such credit, the Revenue is free to make the addition. The principle laid down in CIT v. M. Ganpati Mudallar [1964] 53 ITR 623 (SC)A. Govinda Rajulu Mudaliar v. CIT [1958] 34 TTR 807 (SC) and also CIT v. Durga Prasad More [1969] 72 ITR 807 (SC) are the landmark decisions. The ratio laid down therein are that if the explanation of the assessee is unsatisfactory, the amount can be treated as income of the assessee. The ratio laid down in CIT v. Daulat Ram Rawatmal [1973] 87 ITR 349

(SC) further throws light on the issue. In the case of a cash entry, it is necessary for the assessee to prove not only the identity of the creditor but also the capacity of the creditor and genuineness of the transactions. The onus lies on the assessee, under the facts available on record. A harmonious construction of section 106 of the evidence Act and section 68 of the Income Tax Act will be that apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of the creditors. In CIT v. Korlay Trading Co. Ltd. [1998] 232 ITK 820 (Cal.), it was held that mere mention of file number of creditor will not suffice and each entry has to be explained separately by the assesseeCIT v. R.S. Rathaore [1995] 212 ITR 390/86 Taxman 20 (Raj.). The Hon'ble Guwahati High Court in Nemi Chandra Kothari v. CIT [2003] 264 ITR 254/[2004] 136 Taxman 213 held that transaction by cheques may not be always sacrosanct.....".

(Emphasis Supplied)

In the present case, the appellant has failed to discharge his primary onus and, accordingly, the AO has rightly treated the cash credits as unexplained.

Even though the assessing authority has rejected the books of accounts of the appellant, the addition under section 68 can be made. The Hon'ble Supreme Court in the case of Commissioner of Income-tax v. Devi Prasad Vishwanath [1969] 72 ITR 194 (SC)(01-08-1968) has held as under:-

"There is nothing in law which prevents the Income-tax Officer in an appropriate case in taxing both the cash credit, the source and nature of which is not satisfactorily explained. and the business income estimated by him under section 13 of the Income-tax Act, after rejecting the books of account of the assessee as unreliable. This was so decided in Kale Khan Mohammad Hanif v. Commissioner of Income-tax [1963] 50 ITR 1 (SC), Whether in a given case the Income-tax Officer may tax the cash credit entered in the books of account of the business, and at the same time estimate the profit must, however, depend upon the facts of each case.

……..

The High Court, in disposing of the application under section 66(2), expressed the vi that because the amount of Rs. 20,000 was entered in

the books of account of the business there was some material to hold that the amount was income of the assessee from business and not from some other source. But it was not open to the High Court to dire the Tribunal to state a case on a question which was never raised before or decided by the Tribunal at the hearing of the appeal. The question again assumes that it was for the Income-tax Officer to indicate the source of the income before the income could be held taxable and unless he did so, the assessee was entitled to succeed. That is not, in our judgment, the correct legal position. Where there is an explained cash credit, it is open to the Income-tax Officer to hold that it is income of the assessee and no further burden lies on the Income-tax Officer to show that that income is from any particular source. It is for the assessee to prove that even if the cash credit represents income it is income from a source which has already been taxed".

As per the head notes "Section 145 of the Income-tax Act, 1961 (Corresponding to section 13 of the Indian Income tax Act, 1922] Method of accounting System of accounting Assessment year 1946-47 Whether where there is an unexplained cash credit it is open to ITO to hold that it is income of assessee and no further burden lies on ITO to show that income is from any particular source Held, yes".

As per the above judgement, the observations of the Hon'ble Allahabad High Court that because the amount was entered in the books of account of the business, there was some material to hold that the amount was income of the assessee from the business and not from some other source, were not approved by the Hon'ble Supreme Court and was reversed, as it was held by the Hon'ble Supreme Court that it assumed it was for the Income-tax Officer to indicate the source of the income which was not the correct legal position and that where there is an explained cash credit, it is open to the Income-tax Officer to hold that it is income of the assessee and no further burden lies on the Income-tax Officer to show that that income is from any particular source. It is for the assessee to prove that even if the cash credit represents Income it is income from a source which has already been taxed.

Further it is held by Hon'ble Allahabad High Court in the case of Commissioner of Income-tax-1 v. G.S. Tiwari & Co. (2014) 41 taxmann.com 17 (Allahabad)/[2014] 220 Taxman 111 (Allahabad) (Mag.)/[2013] 357 ITR 651 (Allahabad)[30-05-2013] that (headnote extract) In course of assessment, Assessing Officer noted that

assessee had not maintained proper books of account He thus rejected book results and estimated net profit rate of 8 per cent under section 44AD Assessing Officer also made certain addition under section 68 in respect of unexplained cash credit Commissioner (Appeals as well as Tribunal held that once addition was made on estimate basis under section 44AD, no separate addition could be made in respect of cash credit under section 68 Whether there is nothing in law which prevents Assessing Officer in an appropriate case in taxing both sundry credit, source and nature of which is not satisfactorily explained, and business income estimated by him after rejecting books of account of assessee as unreliable Held, yes. The relevant part of the judgement is as under:-

"10. It may be mentioned that in the case of CII v. Maduri Rajalahgari Kistaiah [1979] 120 ITR 294 (AP), it was observed that where a particular business income of the assessee has been estimated and determined and in such a case certain sundry creditors are found, the AO may be precluded from adding the said unexplained sundry creditors as undisclosed income from the business, the income of which was determined on estimate basis. But where the unexplained sundry creditors are not referable to the business income of the assessee which was estimated, the AO is not precluded from treating the unexplained sundry creditors as income from other sources such as salaries securities or any others income from a business, the source of which was not disclosed by the assessee Where certain unexplained sundry creditors are found in the account books of the assessee whose business income la determined on estimate basis and not on the basis of his returned income, the AO is not prevented from treating the unexplained sundry creditor standing in the books of account as income from undisclosed sources.

11. In the instant case, the consistent plea of the assessee was that the sundry creditors at genuine but at any point of time the assessee take the stand that the sundry creditors any referable to the income of the business which has been determined on estimate basis Hence, the assessee must be held to have failed to establish that the unexplained sundry creditors were referable to the business income. The addition of the unexplained sundry creditors as income from other sources by the AO, therefore, was held valid.

12. Further, the Hon'ble Apex Court in the case of CIT v. Devi Prasad Vishwanath Prasad [1969] 72 ITR 194 observed that where there is an unexplained credit, it is open to the AO to hold that it is income of the

assessee, and no further burden lies on the AO to show that the income is from any particular source. It is for the assessee to prove that, even if the sundry creditors represents income, it is income from a source which has already been taxed. There is nothing in law which prevents the AO in an appropriate case in taxing both the sundry credit, the source and nature of which is not satisfactorily explained, and the business income estimate by him after rejecting the books of account of the assessee as unreliable."

In view of the above discussion, the addition of Rs. 3,60,000/- made by the AO is sustained and the appeal on this ground is dismissed.

Ground No. 4

7.3 It is noticed that during the assessment proceedings, the AO noted that the gross profit declared by the appellant during the year under consideration was 4.06% as against GP rate of 5.66% shown in the preceding year. When required to explain the reasons for downfall in profit rate, the appellant explained that the sales during the year had increased as compared to last year by 1.73 times and the downfall in decline in GP rate is attributable to hike in sales. The AO did not fully accept the explanation given by the appellant and required him to furnish complete sale bills, purchase bills, vouchers for expenses etc. for verification. As mentioned in Page 10 of the assessment order, the appellant failed to furnish the complete ale bills, purchase bills, vouchers for expenses etc. The appellant did not also maintain stock register and stock details. The appellant did not produce the books of accounts.

In such a situation, when the appellant failed to furnish the complete sale and purchase bills, vouchers for expenses, stock register, quantitative details etc. and to explain the downfall in profit with supporting evidences, the action of the AO in rejecting the books of account by invoking Sec. 145(3) and making trading addition of Rs. 3,50,150/- is found to be in order. Accordingly, the addition made by the AO is confirmed and the appeal on this ground is dismissed.

8. Ground of Appeal No. 5 is as under:

"That the wise authority has erred to made an addition without providing proper opportunity which is against the natural justice."

8.1 In this regard it is noticed that the appellant has not made any substantive arguments on the issue. Further it is noticed that the details

and books of accounts were called from the appellant however the same were not produced in terms of the discussion in the assessment order. In respect of each addition the opportunity was provided to the appellant for example in case of addition on account of unexplained creditors the appellant was provided more than one opportunity to produce the documents or produce the creditors. In view of this factual background it cannot be agreed that the appellant was not provided sufficient opportunity of being heard. Further the opportunities have been provided in the present appeal proceedings. Accordingly this ground of appeal is hereby dismissed.

9. Ground of Appeal No. 6 is as under:

"That the wise authority has wrongly initiated assessment proceedings by invoking section 153C which is unjudicious and against the facts."

9.1 The appellant did not make submission on the Ground of Appeal No. 6. The same is treated as not pressed.

Accordingly, this ground of appeal is dismissed.

10. Ground of Appeal No. 7 is as under:

"That the wise authority has wrongly initiated penalty under section 271AAB and 271AAC which is unjudicious and against the law."

10.1 The submissions of the appellant as per the statement of facts enclosed with Form No. 35 and reiterated during the appellate proceedings are summarized as under:

Vide dt. 09/01/2024

Se we request your kind self to consider our reply and delete all the additions made by the assessing authority along with penalty proceedings initiated will 271AAN, 271AAC(1) and oblige.

10.2 The ground is general in nature. This ground is consequential in nature and the challenges by the appellant against the respective additions as raised in this appeal have already been adjudicated in the grounds of appeal in the earlier part of this order. In view of this, this ground of appeal does not require separate adjudication. Accordingly, the Ground of Appeal raised by the appellant on this issue is disposed off.

11. Ground of Appeal No. 8 is as under:

"That the assessee has reserved his right to add or alter any of the grounds of appeal at any time during the course of proceedings."

11.1 The appellant has not added or altered any of the above mentioned grounds of appeal. Accordingly such mention by the appellant in its ground is treated as general in nature, not needing any specific adjudication and is accordingly treated as disposed off.

12. In the result, the appeal of the appellant is dismissed."

7. Feeling dissatisfied from the above order of the ld. CIT(A), the assessee has preferred the present appeal on the ground as stated hereinabove. In support of the grounds so raised the ld. AR of the assessee filed the following written submission:

1. "That the appellant is the proprietor of the firm naming M/s Yogesh Ginning Mill engaged in the business of manufacturing and trading of Cotton Seeds, Musturd Oil, Mustard Cake, Binola, Cotton and other agriculture products. The appellant also earns commission income from LIC during the year under consideration.
2. That the appellant had duly filed his Income Tax Return with Audited Financial Statements duly disclosing all the income for the year under consideration i.e. AY 2018-19 on 30.09.2018, which was already on record of learned assessing officer.
3. That the books of accounts were duly audited by the Chartered Accountant verifying and expressing the true and fair view of such accounts. The auditor had duly verified the all the transactions of the firm including cash withdrawal, cash purchased, cash uses, banking entries, unsecured loan received, turnover, profit ratio, expenses, each and every item of balance sheet, capital account, trading account and profit and loss account, in detail before expressing his opinion on the same.
4. That the cashcash of Rs 10,82,000/- seized by GRP on 09.10.2017 from Shri Siya Ram Mahajan (cousin of appellant). As per statements recorded of appellant and Siya Ram Mahajan which is placed on file it was clear cut clarified that the cash which was seized on 09.10.2017 belongs to appellant and the source of same was also clarified before the assessing authority that cash was withdrawn from bank by appellant on dated 26.09.2017 for business purpose. But it is submitted that in case Shri Siya Ram Majahan, addition of Rs 10,82,000/- was done in his returned income but later in Appeal stage addition of Rs 10,82,000/- was deleted from Shri Siya Ram Mahajan.

5. Thereafter, the addition of the Rs 10,82,000/- was made in the additions of appellant. Addition of same amount in the hand of two assessee by the assessing authority is bad in law.
6. That notice u/s 143(2) of the act was issued on 07.11.2019 for AY 2018-19, which was time barred, that the return filed by the appellant u/s 139 has been selected for scrutiny and to produce evidence in support of ITR filed, but with no mention of cash seized by GRP. As per Section 143 of the act, notice u/s 143(2) must be served within 6 months of the end of the financial year in which return u/s 139 has been filed.
7. That on 18.11.2019, the appellant duly submitted his reply that the return filed is a valid return and audit report with audited financial statements has already submitted online in support of ITR filed.
8. That on 06.12.2019, notice u/s 142(2) was issued to appellant asking a lot of information and documents to be submitted in a short span of time of 5 days till 11.12.2019 out of which 2 days were holidays in a hurry.
9. That on 20.12.2019, the appellant had duly submitted the information and documents asked for in notice u/s 142(1), as available which fully complied and explained the transaction/cash credit etc. The documents submitted was complete supporting of the details asked which were also verified by the auditors in the audit report.
10. That on 22.12.2019, notice u/s 142(2) was again issued to appellant asking for more information and documents to be submitted till 24.12.2019.
11. That, in response to notice u/s 142(2), the appellant being law abiding citizen and being fully cooperative in assessment proceeding, duly submitted the information and documents on 24.12.2019.
12. That, without considering the Audit Report along with the Audited Financial Statements and without issuing any show cause notice and without providing the opportunity of being heard, by violating the principle of natural justice and procedures laid down under the act, passed an order in hurry to complete the assessment on 27.12.2019 u/s 143(3) r.w.s. 153C of the act.
13. That the assessment order dated 27.12.2019 was passed u/s 153C without issuing any notice u/s 153C as mentioned in the order.
14. That the assessment order dated 27.12.2019 was passed without proposing the addition to be made in any show cause notice and draft assessment order as per the procedures laid down in the act.
15. That the assessment order dated 27.12.2019 was passed ignoring the audited financial statements and making addition on assumptions and ignoring the submissions and without providing the enough time to provide more satisfactory details. The appellant has provided the complete details. Further the whole proceeding is incorrect and time barred initially.
16. That the learned AO vide assessment order dated 27.12.2019 made addition Rs. 10,82,000 u/s 68 on account of cash seized by GRP ignoring the fact that such cash is out of the cash withdrawn from bank account and is in nature of normal business transactions.
17. That the cash seized by GRP as mentioned above was seized from Shri Siya Ram Mahajan, cousin of the appellant. The cash seized belonged to

the appellant and this fact was fairly accepted by the appellant in his statements and he had also provided the detailed explanation regarding the source of such during the statement and assessment proceedings and even in First appeal written submissions. That the cash was out of cash withdrawn from the bank of the appellant and he has given the cash to his cousin for the purchase of cotton from nearby places of Ajmer, but the purchase could not complete, and Shri Siya Ram Mahajan was returning back with the cash and at that time cash was seized. It was clearly explained that this is purely a business transaction in the ordinary course of business and out of bank withdrawal only. This can be further verified from the appellate proceeding of Shri Siya Ram Mahajan which was decided in favour of Shri Siya Ram Mahajan.

18. That the learned AO vide assessment order dated 27.12.2019 made addition Rs. 3,60,000 u/s 68 on account of unexplained cash credits by ignoring the fact that accounts of the appellant have been duly audited and all the details of cash credit have been duly submitted. It is submitted that the details of Cash credit were already attached with the audited accounts of the appellant which was already attached with the audited financial statements. Even though all the accounts of the appellant had been verified and audited by the auditor, the appellant had duly produced the identity of all the creditors in such a short span of time given by the assessment authority.
19. That the learned AO vide assessment order dated 27.12.2019 made addition Rs. 3,50,150 by invoking section 145(3) without finding any defects in the books of accounts and by ignoring the fact that accounts of the appellant have been duly audited.
20. It is submitted that in case of accounts being audited by the auditors, Section 1435(3) cannot be invoked.
21. That the learned AO made the trading addition on account of variance in Gross profit and Net profit rate, completely ignoring the fact that the accounts has been duly audited and verified by the auditor and sales & purchases were also vouched and verified by the GST and VAT assessments.
22. That even audited financial statements was already on record, the appellant also submitted following information and documents during assessment proceedings along with the reply dated 20.12.2019 & 24.12.2019:
    1. Cash Book
    2. Details of Bank Accounts along with Bank Statements
    3. Copy of computation of total income
    4. Audited balance sheet, profit and loss, trading account and capital account along with schedules
    5. List of unsecured loans
    6. Copy of Aadhar Card of person from whom unsecured loan is outstanding.
    7. List of Sundry debtors and sundry creditors along with their ledgers.
    8. Details of loan and advance along with ledgers.
    9. Item wise purchase on monthly basis.

10. Item-wise sales on monthly basis.
11. Fixed asset Chart
12. Sales & Purchase Register & Journal Register
13. Copy of Expense ledger

23. That being aggrieved by assessment order dated 27.12.2019, the appellant had filed the first appeal against the order of Assessing Officer, ACIT, Circle-1, Alwar on 07.01.2020.
24. That the appellant during the first appellate proceeding duly submitted the written submissions explaining each and every point in detail with supporting documents.
25. That the commissioner of Income Tax (Appeals) -4, Jaipur passed a non-speaking order without considering the information and documents submitted.
26. That the Commissioner of Income Tax (Appeals) -4, Jaipur passed an order u/s 250 dated 28.02.2024 by upholding the order of the Assessing Officer, ACIT, Circle -1, Alwar dated 27.12.2019 for the assessment year 2018-19 passed U/s 143(3) r.w.s. 153C of the Income Tax Act, 1961.
27. That, the order passed by appellate authority is incorrect as the order was passed without considering the documents and information submitted during assessment proceeding and in written submissions and oral hearing to the appellate authority.
28. That the order passed by appellate authority upholding the invocation of Section 145(3) without appreciating the facts that the accounts of the appellant were audited and were already on record is incorrect.
29. That, the order passed by appellate authority is incorrect in upholding the addition made of Rs. 10,82,000 u/s 68 on account of cash seized by GRP ignoring the fact that such cash is out of the cash withdrawn from bank account and is in nature of normal business transactions, addition made of Rs. 3,60,000 u/s 68 on account of unexplained cash credits and addition made of Rs. 3,50,150 by invoking section 145(3) without finding any defects in the books of accounts and by ignoring the fact that accounts of the appellant have been duly audited and all the details of cash credit have been duly submitted.
30. That the appellate authority has erred that the ground no. 1 of the first appeal was not pressed but the same was pressed during oral submissions and which was not considered by the by appellate authority while passing the order.
31. That the appellate authority mentioned that the source of cash was not explained by the appellant but it is submitted that the appellant has duly submitted during the whole proceedings that the cash seized was from the cash withdrawn from bank account. It is submitted that difference of 13 days between cash withdrawn and cash seized is very normal duration.
32. That the appellate authority mentioned that the appellant does not produced books of accounts, but it is submitted that appellant books are audited and audited books of accounts was already on record with the department.
33. That, it is submitted that the appellant has duly submitted the copy of Aadhar card of the all the cash creditors from whom loan was availed

along with the reply of notice u/s 142(1). The Aadhar contained the details and the address also. If the authority was in doubt, then it could have issued notice/summon u/s 131 to call them. No such action was taken. It is also submitted that for the cash creditors of less than Rs. 20000, PAN card is not mandatory. Thus, the rejection is bad in law.

34. That it is submitted that appellant has submitted that Sales and purchase bills was never called for by learned assessing authority. As they have called for so many information from the appellant, if there is need for sales and purchase bills to verify sales and purchase, they can specifically ask for the same rather than invoking Section 145(3) by rejecting the books.
35. That the learned appellate authority has molded the facts as per his convenience, which is wrong. It is mentioned as reproduced above that learned assessing authority had asked for "bills/Vouchers etc." through notice u/s 142(1), i.e. they have specifically asked for purchase and sales bills. But it is to be submitted that notice u/s 142(1) had mentioned "Bills/vouchers for expenses, etc, for verification", not bills/ vouchers in general to include Sales and purchases bills. It is to be submitted that learned assessing authority had never asked for sales and purchase bills, so it is wrongly said by the learned appellate authority that it was incumbent upon the appellant to have produced the sales and purchase bills which would show the quantities for the verification of the learned AO.
36. That it is submitted that the notice issued u/s 143(2) was time barred as the notice to be served within 6 months from the end the return is furnished under section 139 or in response of notice u/s 142(1) not in response to notice u/s 153C. So the notice issued u/s 143(2) is time barred and bad in law.
37. That the order dated 27.12.2019 was passed by learned AO is without issue of Show cause notice and Draft assessment order, and the appellant has duly submitted the legal provisions and judgements in support of his grounds. So the contention of the learned appellate authority in this regard is incorrect.
38. That the learned appellate authority is wrong in mentioning that Ground no. 6 of first appeal was not pressed, it was duly pressed by the appellant.
39. That the judgements reflected in the appellate authority's order are not applicable as the facts of the case. Applicable judgements by the appellant on the facts of the case will be submitted during the hearing.
40. That, being aggrieved from the said order dated 28.02.2024 for the assessment year 2018-19 the appellant is preferring this appeal on the following grounds of appeal and other grounds as may be taken at or before the time of hearing.

<u>Grounds of Appeal:</u>

1) Ground No. 1

The Learned Commissioner of Income Tax (Appeals) -4, Jaipur (Herein referred to as "Learned CIT(A)") has erred in law and on facts in upholding the assessment Order passed u/s 143(3) r.w.s. 153C of the Act with creating a demand of Rs. 2368011 and returned income of Rs. 783760 was enhanced to

Rs. 2575910, passed by the Assessing Officer, ACIT, Circle 1, Alwar (Herein referred to as AO) and dismissing the appeal.

A. Order u/s 153C without issuing notice u/s 153C
   i) It is submitted that learned authority has passed the order under section 153C without issuing notice under 153C/153A, which is bad in law.
   ii) It is submitted that learned authorities in Assessment order and Order u/s 250, mentions that the notice u/ 153C was issued to assesse on 07.11.2019, which is wrong as no such notice was ever issued.
   iii) As per Section 153C, notice under section 153C to be issued for initiating assessment/ reassessment proceedings u/s 153C, after recording satisfaction note by assessing officer on receipt of such information. In the given case it is mentioned that satisfaction note was drawn on 12.12.2019 and notice u/s 153A was issued on 07.11.2019 before recording satisfaction note. It is submitted that both the facts are wrongly mentioned and bad in law.
   iv) That reference can be made to the decision of ITAT Ahmedabad in case of Deputy Commissioner of Income-tax v. Suraj Ltd., dated 14.08.2024 held that

14.Even if we accept the contention of the Revenue that there was no requirement of transfer of seized documents from one AO to another in this case, the proceeding under Section 153C of the Act could have been initiated only after recording of satisfaction by the AO of the Searched person. It has been held by the Hon'ble Supreme Court in the case of Super Malls (P.) Ltd. v. Pr. CIT[2020] 115 taxmann.com 105/273Taxman 556/423 ITR 281 (SC)that before issuing notice under Section 153C of the Act the AO of these arched person must be satisfied that any document seized or requisitioned belongs to a person other than these arched person. There cording of satisfaction by the AO of these arched person is sine quanon to initiate proceeding u/s 153C of the Act, even in a case where the AO of these arched person and AO of the other person is common. To quote from the order of the Hon'ble Supreme Court:

"6. This Court had an occasion to consider the scheme of Section 153Cof the Act and the conditions precedent to be fulfilled/complied with before issuing notice under Section 153Cof the Act in the case of Calcutta Knitwears (supra) as well as by the Delhi High Court in the case of Pepsi Food Pvt. Ltd.(supra).As held, before issuing notice under Section 153C of the Act, the Assessing Officer of these arched person must be "satisfied" that, inter alia, any document seized or requisitioned "belongs to" a person other than these arched person.…

6.1…. At the same time, the satisfactionnote by the Assessing Officer of these arched person that the

documents etc. so seized during thesearchand seizure from these arched person belonged to the other person and transmitting such material to the Assessing Officer of the other person is mandatory. However, in the case where the Assessing Officer of these arched person and the other person is the same, it is sufficient by the Assessing Officer to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, then the requirement of Section 153C of the Act is fulfilled. In case, where the Assessing Officer of these arched person and the other person is the same, there can be one satisfaction note prepared by the Assessing Officer, as hehimself is the Assessing Officer of thesearchedperson and also the Assessing Officer of the otherperson. However, as observed hereinabove,he must be conscious and satisfied that the documentsseized/recovered from thesearchedperson belonged to the other person. In such a situation, thesatisfactionnote would be qua the other person. The second requirement of transmitting the documentsso seized from thesearchedperson would not be there as he himself will be the Assessing Officer of thesearchedperson and the other person and therefore there is no question of transmitting such seizeddocuments to himself.
(Emphasis supplied.)

15.Thus, therecordingofsatisfactionby theAOof thesearchedperson is a mandatory requirement forinitiation of proceeding under Section 153C of the Act. It is only byrecordingthesatisfactionthat thecommonAOassumes the jurisdiction to issue notice u/s 153C of the Act in respect of the other person.Further, it is only on the date of Recordingofsatisfactionthat theAOof the other person will assume thejurisdiction to initiate proceeding under Section 153C of the Act in respect of the other person. Therefore, thesubmission of the Revenue that only the date ofsearchneeds to be applied to calculate the time limit in thepresent case, is neither correct nor in accordance with the provision of law as well as the decision of Hon'bleSupreme Court in the case ofSuper Malls (P.) Ltd.(supra). It doesn't matter whether the assessee is related orunrelated to thesearchedgroup. The date ofrecordingofsatisfactionby theAOof thesearchedperson will bethe relevant date to initiate the proceeding under Section 153C of the Act and the time limit of six assessmentyears has to be computed with reference to the date ofrecordingofsatisfactionby theAOof thesearchedperson. The seized documents pertaining to the other person will be deemed

to be transferred to theAOof theother person on the date ofrecordingofsatisfactionby the commonAO. Since, the Revenue has not producedthesatisfactionnoterecordedby the commonAOin this case, one can only presume thatsatisfactionwasrecordedimmediately prior to the issue of notice under Section 153C of the Act. As per standard practice of the Department the notice u/s 153C is issued immediately after recording of satisfaction.

v) Therefore, the whole proceedings initiated u/s 153c is bad in law and liable to be dropped.

B. Order u/s 143(3) without issue appropriate Show Cause notice

i) The learned assessing authority had not issued any show cause notice to the appellant and passed the order by making addition, which is illegal, unjust, arbitrary and violating the principle of natural justice as no opportunity of being heard was given regarding the additions made.

ii) In the present matter as evident from records no Show Cause notice was issued and no addition was proposed. Without proposing the demands, all the demands were made in Order dated 27.12.2019. In such a situation the entire order is null.

iii) The Ld. AO has flouted Hon'ble Supreme Court guidance in case of
a. Andaman Timber Industries Vs. CCE (281 CTR 241),
b. Sahara India (Firm) vs. CIT and another (300 ITR 403 (SC).
On strict adherence to Principle of Natural Justice, violation of which is held to be fatal to the assessment.

iv) The Hon'ble ITAT in case of Manjit Kaur Vs ITO (ITAT Chandigarh) (ITA No. 593/CHD /2022) dated 24.03.2023 has held that the assessment order is bad in law for the reason that the assessing authority passed the order u/s 143(3) of the Act without issuing mandatory notice u/s 143(2) of the Act.

v) The Hon'ble ITAT in case of ITO Vs Mohammed arif Ibrahim bhai Shaikh (ITAT Ahmedabad) (I.T.A. No. 1115/Ahd/2019) dated 31.05.2022 has held that no addition can be made in the order beyond the scope of SCN The relevant para giving said observation reads as under:

From the above it appears that while considering the matter on merit after perusal of the remand report furnished by the Ld. AO and the reply filed by the appellant against the same, the Ld. CIT(A) came to the finding that the show-cause issued by the Ld. AO though proposing disallowance of Rs.1.24 crores, the addition was ultimately made to the tune of Rs.4.265 crores violating of the principle of natural justice. The judgement passed by Hon'ble Delhi High Court in the case of Maruti Suzuki India Ltd vs. Addl. CIT reported in, TPO (2010) W.P. (C) 6876 of 2008 has been duly taken care of by the Ld. CIT(A) in concluding that non-issuance of proper show cause can be fatal to the proceeding under the Income Tax Act. The Ld. AO clearly failed in issuing the appropriate show-cause notice thereby

clearly vitiated the principle of natural justice by making addition of Rs.4.625 crores against the proposed addition of Rs.1.25 without showing reason as to how the same figure went up to Rs.4.625 crores as has rightly been agitated by the appellant before him. In our considered opinion such finding is found to be justified for the reason cited therein.

vi) Any assessment order passed and raising demand without issuing show cause notice for the same is void ab initio and liable to be quashed. In Metal forgings Limited V. Union of India -2002 (11) TMI 90- Supreme Court of India, it was held that communications, orders, suggestions or advices from the department cannot be deemed to be a show cause notice. There must be a specific show cause notice indicating the amount demanded and calling upon the appellant to show cause is necessary.

vii) Thus, the order is bad in law and liable to be set aside.

2) Ground No. 2

The Learned CIT(A) has erred in law and on facts in not considering notice issued u/s 143(2) was time barred and the order passed without following the mandatory procedures of the act and by not providing the proper opportunity of being heard.

i) The learned assessing authority has served the notice u/s 143(2) on 06.12.2019 for the return filed u/s 139 on 27.10.2017. The last date to issue such notice was 30.09.2018. So, learned assessing authority served the notice u/s 143(2) 06.12.2019 i.e. time barred.

ii) In this regard your kind attention is also invited towards the provisions of section 143(2) of the Income Tax Act, before amendment in 2021, which reads as under:

Assessment - Section 143

(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the appellant has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the appellant a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the appellant may rely in support of the return:

Provided that no notice under this sub-section shall be served on the appellant after the expiry of six months from the end of the financial year in which the return is furnished.

iii) After filing a return of income u/s 139(1), 139(4), 139(5), 142(1) if income tax authority considers, it is necessary or expedient to ensure that appellant has not understated the income or has not computed excessive loss or has not under-paid the taxes in any manner, shall serve on the appellant a notice requiring him, on a

date to be specified therein, either to attend the office of Assessing Officer or to produce or cause to be produced before Assessing Officer any evidence on which the appellant may rely in support of the return. Provided that no notice under this sub-section shall be served on the appellant after the expiry of six months from the end of the financial year in which the return is furnished.

iv) The provisions of section 143(2) of the Act did not give option to make an assessment under Section 143(3) but make it obligatory to comply with these provisions before making assessment under section 143(3) or section 144 as the case may be. However, the assessment of the "search year" has to be completed u/s 143(3) or u/s 144, and issue of notice u/s 143(2) is mandatory for that year.

v) Reliance can be placed in the decision of the Honorable Supreme Court in case of Hotel Blue moon in 321 ITR 362 has held that omission on the part of the assessing authority to issue notice under section 143(2) cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice under section 143(2) cannot be dispensed with.

vi) The notice issued u/s 143(2) was time barred and assessment made by the learned assessing authority is invalid and liable to be set aside.

3) Ground No. 3

(a) The Learned CIT(A) has erred in law and on facts in upholding the Order of AO in which AO had made addition of Rs. 10,82,000 u/s 68 on account of cash seized by GRP, which was made in the assessment order dated 27.12.2019 passed u/s 143(3) r.w.s. 153C of the Act without appreciating the facts and submissions made during the course of assessment proceedings, which is unjustified, unwarranted and excessive.

A. It is submitted that the learned AO has made an addition of Rs 10,82,000/- on account of cash seized by GRP on 09.10.2017. In this regard we would like to content that the cash which was seized by GRP from Shri Siya Ram Mahajan (cousin of appellant) belongs to appellant itself. As per statements recorded of appellant and Siya Ram Mahajan which is placed on file it was clear cut clarified that the cash which was seized on 09.10.2017 belongs to appellant and the source of same was also clarified before the assessing authority that cash was withdrawn from bank by appellant on dated 26.09.2017 for business purpose.

B. It is submitted that in case Shri Siya Ram Majahan, addition of Rs 10,82,000/- was done in his returned income but later in Appeal stage addition of Rs 10,82,000/- was deleted from Shri Siya Ram Mahajan. In the appeal order of Shri Siya Ram Mahajan, CIT Appeals Alwar has clearly passed the order that the cash which was seized belongs to the appellant and valid source of same was also provided which is cash withdrawal from bank on dated 26.09.2017 and 13 days gap for holding cash is genuine in business.

C. It is submitted that the addition of same amount in the hands of two assessee causing double taxation is bad in law.
D. In case of Gordhan, Delhi Vs Appellant ITA No 811/Del/2015 it was held by ITAT, Delhi Bench no addition can be made by AO on the sole reason that there is a time gap of 5 months unless the amount in question has been used by the appellant for any other purpose. Further in case of R K Dave Vs Income Tax Officer 94 TTJ Jodh 19 (2005) Hon'ble ITAT Jodhpur held that no addition can be made mere on the fact that the appellant could not explain the time gap between withdrawal and Investment or where amount was kept would not itself justify the addition, The claim of the appellant could have been rejected only if the source of balance in the bank account was not established or it could have been demonstrated that the amount so withdrawn was utilized elsewhere, there we do not final any justification for sustaining the impugned addition and addition is deleted.
E. It is submitted that the appellant withdrawn cash for business purpose and in order to purchase cotton in discounted price he has sent Shri Siya Ram Mahajan to Merta, Ajmer and its nearby places. But the deal was not finalized as Shri Roshan Gurjar who has given assurance to appellant that he will provide good quality cotton at cheap price was fraud and as a result Shri Siya Ram Mahajan was coming back to Alwar when the cash was seized. The assessing authority has contended that the appellant has never purchased cotton from Merta, Ajmer and nearby places which is wrong as it has no relation with the addition made by the assessing authority as appellant has proved the source of cash. So, the opinion of assessing authority is wrong on the basis of which he has made addition of Rs 10,82,000/-.
F. That CIT Appeals, Alwar has favour our opinion at Page no 8 Para No 1 line no 4 and again at Page No 9 Para 1 in case of 'Shri Siya Ram Mahajan Appeal No 393/2019-20 dated 22.08.2019.
G. Further the reason of sending Shri Siya Ram Mahajan to Merta, Ajmer was due to the fact that he was appellant’s cousin and since the appellant was purchasing cotton first time from Merta, Ajmer and nearby places he need some honest and reliable person which in his opinion was Shri Siya Ram Mahajan and as a result he sent him. But since the deal was not finalized as Roshan Gurjar was fraud as stated in above para, which was apparently good for appellant as Shri Roshan Gurjar was a fraud, otherwise the cash can be stolen or cotton which he might purchase was of very cheap quality as Shri Roshan Gurjar never appeared thereafter before appellant. Further Shri Siya Ram Mahajan was in continuously touch with the appellant over telephone and after verification that Shri Roshan Gurjar was fraud he finally told Shri Siya Ram Mahajan to get back without purchase as soon as he can.
H. That the appellant thereafter never tried to contact Shri Roshan Gurjar as he was fraud and tried to save his cash from him which he successfully done as a result he has not made any enquiry to get his

mobile number and address. But the assessing authority is not able to understand the appellant situation.

I. That the assessing authority has mentioned in the order that the appellant has not produced the figures of cotton seed which was purchased by the appellant from 26.09.2017 to 08.10.2017 which is baseless as it has no relevance with the addition of Rs 10,82,000/- as addition was done by assessing authority on account of failure of cash source.

J. It is submitted regarding the source of cash, the appellant has duly produced the bank statement in which cash withdrawal of Rs 15,00,000/- was done from bank account on dated 26.09.2017 and after 13 days time he sent Siya Ram Mahajan for purchase of cotton. The assessing authority has contended that 13 days gap is huge in his order but the same is not as per normal business procedure. CIT Appeal, Alwar has also mentioned in Appeal order of Siya Ram Mahajan at Page no 8 Para No 1 line no 4 that holding of cash for 13 days is a normal feature in business. Further the remaining cash which was withdrawn from bank was used in business activity purpose.

K. The assessing authority on the grounds which he has made addition in the assessment order of Rs 10,82,000/- are totally baseless and without looking into the facts of the case. He has made up his mind right from the beginning to add Rs 10,82,000/- in his total income inspite of the fact that the source of cash was duly justified by the appellant.

L. Thus the addition by invoking sec 68 rws 115BBE of Rs 10,82,000/- is totally wrong as the appellant has duly furnished the details of source of cash and the said fact was also supported by CIT Appeals, Alwar in case of Shri Siya Ram Mahajan. Further the penalty proceedings initiated u/s 271AAB is also liable to be dropped on the above proceedings.

M. Thus, the addition of Rs. 10,82,000 u/s 68is bad in law and liable to be set aside.

(b) The Learned CIT(A) has erred in law and on facts in upholding the Order of AO in which AO had made addition of Rs. 3,60,000 u/s 68 on account of unexplained cash credits, which was made in the assessment order dated 27.12.2019 passed u/s 143(3) r.w.s. 153C of the Act without appreciating the facts and submissions made and documents submitted during the course of assessment proceedings, which is unjustified, unwarranted and excessive.

A. The assessing authority has made an addition on account of unexplained cash creditors of Rs 3,60,000/- during the assessment proceedings. The learned assessing authority has given order to verify small pretty loans taken from different persons by appellant during the year for which the appellant has duly given the identity of all the creditors. Since the business is in its 3rd year of operation of business and bank finance was not readily available hence the appellant has taken these pretty loans from his known person. Some of the loans are old ones as they have been carried forwards from last year. Further the

appellant at the time of assessment proceedings has produced Identity of all creditors and proved the genuineness of transaction.

B. It is submitted that regarding producing the same before assessing authority, the assessing authority has issued notice u/s 142(1) dated 22.12.2019 for producing all the creditors in person till 24.12.2019 only, it was done in hurry as last date to complete assessment was 31.12.2019 and giving such a short notice is clear violation principle of natural justice. Further appellant vide letter dated 11.12.2019 has already intimated to the assessing authority that his wife is going medical treatment in Pune and he need time to collect papers which is demanded in notice but inspite of that the appellant has produced all the documents which was needed by assessing authority as and when demanded by him. But since the matter was time barring the assessing authority has given short span of time and he himself told the appellant to submit the identity of creditors which we have submitted before him.
C. Further as per sec 68 the appellant needs to prove the genuineness of transaction, identity of creditors and capacity of creditors to advance money. The appellant had duly satisfied all the above conditions as the identity of all creditors was duly submitted by him before assessing authority. Regarding the capacity of creditors to advance money, all amounts are below Rs 20,000/- and all creditors are agriculturists/traders which have capacity to lend such small amount of money to appellant and all these agriculturists/traders have soft corner with the appellant as they run business with him. Regarding the genuineness of transaction, the identity which was submitted by appellant before assessing authority was given by creditors only from whom advance was taken which shows that the advances are received by these creditors otherwise it was not possible from appellant side to submit identity of all the creditors. Further since all the agriculturists/traders have income below exemption limit hence PAN card cannot be furnished before which was intimated to assessing authority also in our reply.
D. In the case Commissioner Of Income Tax vs M/S.Mark Hospitals (P) Ltd on 3 December, 2014 Madras High court it was held that mere non-producing of PAN and ITR of creditors does not prove that the creditors are not genuine. If the appellant has furnished the identity and genuineness of transaction than AO cannot made the addition which is same in our case as the appellant has proved the genuineness, creditworthiness and identity of all creditors.
E. Further since the time was given less due to time barring case the appellant could not produce the creditors but assessing authority himself insisted to produce the identity of creditors which the appellant successfully produce before the assessing authority as he was trying to finalize the case due to time barring assessment. Hence the addition on account of unexplained creditor u/s 68 is liable to be deleted on account of above grounds as the addition was made by assessing authority on baseless grounds and without providing any proper opportunity and overlooking of documents submitted by appellant.

N. It is important to note that the appellant duly produces and submitted the identity of the creditors in the form of Aadhar card, which duly contains the full details of the creditors. Even otherwise if the department had further doubt about the transaction or identity of creditors, then they could have issued notice or summon u/s 131 of the act directly to such creditors to verify the same.

F. Thus, the addition of Rs. 3,60,000 u/s 68is bad in law and liable to be set aside.

4) Ground No. 4

The Learned CIT(A) has erred in law and on facts in upholding the Order of AO in which AO had made addition of Rs. 3,50,150 by invoking section 145(3), which was made in the assessment order dated 27.12.2019 passed u/s 143(3) r.w.s. 153C of the Act without appreciating the facts and submissions made during the course of assessment proceedings, which is unjustified, unwarranted and excessive.

A. It is submitted that the assessing authority has invoked sec 145 and trading addition of Rs 3,50,150/- was added in total income of the appellant. That during the assessment proceedings the appellant has submitted all the ledger of expenses, sale andpurchase details, cash book, journal, bank statements etc at the time of assessment proceedings. Only stock register could not be produced but the books has been duly audited by CA for which copy of Audit report was duly submitted before the assessing authority. Further the expenses which are claimed in Profit and Loss account are of such nature and amount which are duly verifiable and within the scope of business for which expenses ledger are provided at the time of assessment proceedings.

B. Further the assessing authority in his questionnaire has at point no 6 has admitted that the appellant has duly submitted the amount wise monthly charts of sale and purchase on dated 20.12.2019 but only item wise consumption of stock is not maintained whereas in assessment order he has taken the plea that no sale and purchase details was provided before him which is contradictory. It is submitted that the assessing authority has never asked the appellant to produce sale and purchase bill otherwise appellant can produce the same as the same are duly available with him as books of accounts are duly audited and it is in nature of businessman that he always kept sale and purchases bill with himself in ordinary course of business.

C. But if the same is not demanded by assessing authority during assessment proceedings how can appellant produce the same. As the matter is time barring from department end so the assessing authority has no time spam to check and demand documents from the appellant and in order to finalize the case he invoked Sec 145(3) and made the trading addition which is totally against the natural justice.

D. Further in the assessment order at Page No 1 last Para the assessing authority has accepted that the A/R of appellant has submitted the requisite details/documents from time to time which shows that the appellant has furnishedall the papers as required by the assessing

authority and the appellant has cooperated with the assessing authority at all time during the assessment proceedings.

E. It is submitted that regarding the downfall in GP and NP rate the appellant at the time of assessment proceedings has told that sale has been increased as compared to last year and the appellant drop his margin to increase the sales. Further the appellant is dealing in such commodities for which he has to depend on market rate for sale and purchase of commodity.

F. It is further submitted that appellant was registered under the VAT Act, and duly filed his returns consisting of the details of all sales and purchases during the year and appellant was an audited appellant. So, the purchase and sales of the appellant can be verified from the VAT Returns and audited financial statements.

G. In case of M/s Bajrang Trading Company, Gangapur City Vs. ITO, Sawai Madhopur (Tax World, Vol XLV Part-1 Jan 2011), it was held by ITAT, Jaipur Branch that the AO cannot reject the books of accounts and apply provisions of Section 145(3) unless no material record has been brought on record to hold that book results are not reliable. Also it was held that the AO cannot made an addition on ill-founded assumption and presumption and without understanding and appreciating the books of accounts. So in the appellant case the AO has only made assumption and no defect has been found by him in the books of accounts.

H. It is submitted in regard to the disallowance u/s 43B of 42,345/-during the course of assessment proceedings, that the addition of Rs 42,345/- on account of disallowance of duties and taxes was done but since he has invoked sec 145(3) so the addition in, total income was not done. Sir in this context we would like to mention that same has been duly deposited by the appellant through banking channel for which bank statement was duly submitted before the assessing authority but the Challan copy cannot be traced as same was lost in Diwali safai.Further the CA in his audit report has verified that no payment was outstanding us 43B before the date of filing of ITR otherwise he would mention the same in his Audit report.

I. It is submitted in regard to the disallowance u/s 40A (3) of 42,345/- that during the course of assessment proceedings, addition of Rs 1,01,311 in violation of provision of Sec 40(3) was done but since he has invoked sec 145(3) so the addition in total income was not done. In this regard we would like to mention that the assessing authority has disallowed electricity expenses which is against the law as Rule 6DD allows the cash payment to Govt department if it is in legal tender and since the Electricity department is Govt oriented unit and disallowance under Sec 40A(3) is not applicable if the payment is made in cash.

J. Similarly, the freight expenses which are paid in cash of Rs 37,000/- (2 times) on dated 24.10.2017 is out of exception as per Rule 6DD as in Rule 6DD at point no K it is mentioned that where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person than such payment should

not be disallowed. In the instant case also the appellant has made payment to driver for freight charges of transporter and same should be allowed to the appellant.

K. Thus, the addition of Rs. 3,50,150 just by rejecting the books of accounts is bad in law and liable to be set aside.

L. In the instant case, the learned AO rejected u/s 145(3), the audited books of accounts of the appellant on the ground that he failed to file evidences in support of his return of income. The books of account of the appellant were duly audited and audited financial statement with audit report was already submitted within due date, this is enough evidence to prove the correctness if books of accounts and the it is absolutely vague to reject audited financial statement.

M. As per order dated 27.11.2019, it is mentioned while rejecting books of accounts that AO is not satisfied with the correctness of final account of appellant, then AO himself considered the declared turnover as correct and calculate the profit @1.5% i.e. higher than current year and previous year. This clearly shows the ill and biased opinion and pre-determined mind set of AO towards appellant, as one part of books of accounts is accepted and another is rejected.

N. If Turnover was duly accepted by AO, then there is no reason of doubt the profit as both were part of audited books of accounts.

O. The appellant had been following the same method of accounting and the same had been accepted in earlier years by the Department. Therefore, there is no justification for rejecting the books of account and estimating the profit @1.5 % under section 145 of the Act.

P. Reliance can be placed on the case of CIT v. Margadarshi Chit Funds (P.) Ltd. [1985] 155 ITR 442/[1984] 19 Taxman 73 (AP), it was held that before rejection of books of account, the Assessing Officer must record a clear finding that system of accounting followed by an appellant cannot deduce correct profit or income. Where the accounts are consistently maintained on a basis that has been accepted in the past and there is no material to indicate how it was defective the Assessing Officer cannot reject the books of account.

Q. Reliance can be placed on the case of ACIT, CIRCLE-11 (2) , KOLKATA VERSUS M/S. MACKINTOSH BURN LTD (VICE-VERSA) I.T.A. No.2139/KOL/2018, 1940/KOL/2018 held that : Audited books cannot be rejected in such a casual manner. Ad hoc disallowances are arbitrary and cannot be upheld.

R. Reliance can be placed on the case of M/S. Samwon Precision Mould Mfg India Pvt Ltd vs Ito, 2016(4) TMI 1094 –ITAT Delhi, It was held that the Assessing Officer rejected the books of account of the assesse Under Section 145 of the Act on the ground that the appellant had failed to produce any bills or vouchers in respect of various cash payments made by the appellant and there were mistakes and discrepancies in the books of account. The Assessing Officer applied the net profit @ 3% and computed the income. The Commissioner (Appeals) confirmed the order of Assessing Officer. The Tribunal held that the books of account were duly audited and no effects had been

pointed out regarding the sales, purchase or profit. The purported defects were confined to cash book which had no nexus with the trading results. Instances of irregularities in cash payment could not warrant ipso facto rejecting books of account.

S. As per above facts and judicial decision, it can be inferred that the Assessing Officer, before rejecting the books of account, has to bring on record material on the basis of which he has arrived at the conclusion with regard to correctness or completeness of the accounts of the appellant or the method of accounting employed by it. The Assessing Officer may resort to best assessment, the power of which shall be exercised judicially and not violating the principles of natural justice.

T. Thus, the addition of Rs. 3,50,150 just by rejecting the books of accounts is bad in law and liable to be set aside.

5) Ground No. 5

The Learned CIT(A) has erred in law and on facts in concluding the Appeal and passed the order u/s 250 of the Act on 28.02.2024 without giving the reasonable opportunity of being heard and without taking into consideration the submissions and by violating the principle of natural justice.

A. VIOLATION OF PRINCIPLE 'NEMO JUDIX IN CAUSA SUA'

i) The learned assessing authority is not justified in playing the role of prosecutor as well as judge in instant case and thus the order passed by him sans jurisdiction and void ab initio, where prosecutor become judge in his own case, it become the gross violation of principle of Natural Justice. In the instant case, learned assessing authority had initiated the scrutiny by issuing the notice u/s 143(2) & 142(1) of IT Act himself and then he himself has passed the order dated 27.12.2019. Thus the order passed by the learned assessing authority is illegal, unjust and arbitrary.

ii) In the instant case learned assessing authority has conducted the scrutiny, wherein learned assessing authority in his own motion raised demand on 27.12.2019 which is biased or prejudicially affected the right of appellant and violation of Natural Justice.

iii) It is pertinent to note that principles of natural justice or fundamental rules of procedure for administrative action are fixed or prescribed in code. The administrative justice is to be freed from narrow and restrictive considerations which are usually associated with a formulated law involving linguistic technicalities. It is the substance of justice which has to determine from its. It is trite law that if the order passed by the original authority is in violation of the fundamental rights guaranteed under the Constitution of India; violation of the principles of natural justice; ultra-vires the provisions of the relevant law; grave error in the order and miscarriage of justice, then such order is illegal, unjust and arbitrary.

iv) The entire action of the learned assessing authority has been violated the principal of natural justice where prosecutor himself cannot judge in his own case (Nemo Judex in causa sua) i.e. the tax authorities has not to be judged in the background of the nature

of order passed against the appellant for passing the order of demand of tax, interest and penalty which is grossly prejudice the rights of appellant. The principle is of great importance, and it ensures that the decision given by the administrative authority is to be unbiased or impartial.

v) The appellant has relied on the judgment of Ashok kumar Yadav Vs. State of Haryana (1985 SCR Supl (1) 657) which is held by Apex Court that "It is one of the fundamental principles of jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is 'in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of the Supreme Court.

vi) It is noteworthy the rules of Natural Justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power. The court presumes that the requirements are implied power or in the circumstances in which the act is to be applied. The petitioner has relied on the judgment of "BCL Industries Limited Vs. Union of India & others (Civil Writ Petition No. 320 of 2019) held the legal settled position & following board principles emerges-

Question of rights depend upon the facts and circumstances of each and every case. It cannot be imaginary one or come into existence by an individual's perception based on figment of imagination.

Justice should be done and be manifestly seen to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of Justice.

To adjudge the attractability of plea of bias, a court is required to adopt a deliberative and logical thinking based on the acceptable touchstone and parameters for testing such a plea and not to be guided or moved by emotions or for that matter by one's individual perception or misguided intuition.

vii) The entire action of the learned assessing authority is arbitrary and unreasoned as violating most important principle of natural justice, due to which interest of the appellant has been highly prejudiced. Thus, the order is totally illegal and is liable to be set aside.

B. VIOLATION OF PRINIPLE OF 'AUDI ALTERAM PARTEM'

i) The learned assessing authority confirmed the demand by passing the order without giving the opportunity of being heard.

ii) Bare perusal of the whole proceedings reveals that the learned assessing authority has passed the order in great hurry and even no sufficient time was given to the appellant to file the response to notice u/s 142(1). The notice u/s 142(1) required a lot of details, which was a time-consuming process. SCN was not even served

and after giving a very short duration to submit details u/s 142(1), order was passed with preconceived mind set.

iii) The learned authority passed the order mentioning the reason of addition that the appellant did not submit many details as asked for in notice u/s 142(1) and did not produce the person from whom unsecured loans were taken by appellant. It is submitted that the learned authority was in rush and did not provided the suffitient time for submitting the details or information as the notice u/s 142(1) was issued asking a lot of information and documents to be submitted in a short span of time of 5 days out of which 2 days were holidays in a hurry. Even then the appellant had duly submitted the information and documents asked for in notice u/s 142(1), which were in his possession, and which can be arranged and mentioning that few details to be submitted later. Then again notice u/s 142(2) was again issued to appellant asking for more information and documents to be submitted in a short span of time of 2 days. This is clear violation of principle of natural justice as no proper opportunity was provided to the appellant.

iv) That it is submitted that the notice u/s 142(1) was issued on 06.12.2019 to submit information and document by 11.12.2019 i.e. less than 7 days. Then again notice u/s 142(1) was issued on 22.12.2019 to reply by 24.12.2019 i.e. less than 7 days. As per many judgements of Hon'ble Supreme Court and various High Court, issue of notice of less than 7 days is clear violation of principle of natural justice. It is submitted that the appellant being the law abiding citizen, had tried in all his capacity to abide by the notices and submit all the information and documents which is possible in such short span of time given. But the reverting of notice by appellant in good faith doesn't relieve the learned assessing authority from the violation of Principle of Natural Justice.

v) The Hon'ble Delhi High court in case of Pratyaksh Apparels (P.) Ltd. v. Deputy Commissioner of Income-tax dated 19.05.2023 has held that Assessee was issued six separate notices under section 153C, wherein leave was given to assessee to file its return of income within 30 days - Said notices were followed by another set of notices, issued under section 142(1), wherein assessee was required to file relevant documents/information within two days - In view of fact that period accorded to assessee was extremely short, assessee had asked for 30 days to respond to said notice - However, Assessing Officer passed impugned assessment orders under section 153C, read with section 144, without granting additional time sought for by assessee - Whether since Assessing Officer expected assessee to gather information for six assessment years within two days, which by any yardstick was not a practical timeframe, especially so, as Assessing Officer, while issuing notice under section 153C, had granted 30 days to assessee to file return of income concerning six assessment years in issue, impugned assessment orderswere to be set aside

vi) The Hon'ble apex court in case of CB Gautam Vs. Union of India and Ors.[(1993)1 SCC 78(SC)]has held that party must have an opportunity to show cause and rebut the presumption. The relevant para giving said observation reads as under:

"even though it was not statutorily required, yet the authority was liable to give notice to the affected parties while purchasing their properties under Section 269-UD of the Income Tax Act, namely, the compulsory purchase of the property. It was observed that though the time frame within which an order for compulsory purchase has to be made is fairly tight one but urgency is not such that it would preclude a reasonable opportunity of being heard. A presumption of an attempt to evade tax may be raised in case of significant under- valuation of the property but it would be rebuttable presumption, which necessarily implies that a party must have an opportunity to show cause and rebut the presumption."

vii) The ratio of the above dictum is applicable on the appellant as no opportunity has been provided by the learned assessing authority before confirming the demand by passing the order as no draft assessment order and SCN was issued to the appellant.

viii) The entire action of the learned assessing authority is arbitrary and unreasoned as violating most important principle of natural justice, due to which interest of the appellant has been highly prejudiced. Thus, the order is totally illegal and is liable to be set aside.

C. That as per Section 250(2), the appellant, either in person or by an authorized representative have the right to be heard at the hearing of the appeal. But in the instant case, right of the appellant is infringed by not providing the personal hearing, which is bad in law.

D. That Section 250(2) of the Act expressly incorporates the following words –

"shall have the right to be heard at the hearing of the appeal" by conferring such a right on the appellant, either in person or an authorized representative including on the Assessing Officer, either in person or by a representative. Similarly, Section 251(2) of the Act also expressly provides for a reasonable opportunity of showing cause against any enhancement or reduction of penalty etc. after a show cause notice is issued by the appellate authority. The phrase - "shall have the right to be heard at the hearing of the appeal" conveys oral/personal hearing along with written submissions at the instance of the appellant.

E. That the right of hearing, one of the facets of principles of natural justice, under the scheme has been subjected to the discretion of the appellate authorities after a request in that behalf is made by the appellant.

F. That the fundamental principle of natural justice which has various facets and one of them being audi alteram partem i.e., reasonable opportunity of being heard is a great humanizing principle intended to invest law with fairness for securing justice and preventing miscarriage

of justice. It is well settled that where exercise of a power results in civil consequences, unless the statute specifically rules out, the principles of natural justice would apply. Rules of natural justice are not embodied rules and they cannot be imprisoned within the straight jacket rigid formula. The exercise of power whether it be judicial, quasi-judicial or administrative in character involving civil consequences is subject to the observance of principles of natural justice. In the historic case of Maneka Gandhi v. Union of India, Hon'ble Supreme Court observed as under:

> *"It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual the duty to give reasonable opportunity to be heard will be implied from the nature of the functions to be performed by the authority which has the power to take punitive or damaging action."*

G. That the principles of natural justice have been raised to the status of fundamental rights by an interpretative process being a part of the guarantee contained in article 14 of the Constitution because of the new and dynamic interpretation given by the Supreme Court to the concept of equality. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination: where discrimination is the result of State action, it is a violation of article 14; therefore, a violation of principles of natural justice by a State action is a violation of article 14.Equally true it is that there cannot be a waiver of a fundamental right.12 Thus, the right of hearing is made subservient to discretion of an authority deciding the appeal would make such an exercise of power questionable on the alter of Article 14 of the Constitution of India.

H. That the issue still further needs to be looked from another angle. It has been emphasized by the Hon'ble Supreme Court in the case of Automotive Tyre Mfgrs.' Association v. Designated Authority, that even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to clear up his doubts during the course of arguments. Even where statutory provisions do not provide for personal hearing, such hearing has to be afforded by the authority if complicated and difficult questions are involved in the matter or technical problems are raised.

I. That the said principle stands affirmed by the Supreme Court in Travancore Rayons v. Union of India, held as under:

> *"It is true that rules do not require that personal hearing shall be given, but if in appropriate cases where complex and difficult questions requiring familiarity with technical problems are raised, personal hearing is given, it would conduce to better administration and more satisfactory disposal of the grievances of citizens"*

J. That the Supreme Court in the case of State of U.P. v. Maharaja Dharmander Prasad Singh, observed that in important matters, "where

stakes are very heavy" and "where number of grounds require the determination of factual matters of some complexity", the statutory authority should also afford personal hearing to the party likely to be affected. Thus, personal/oral hearing cannot be sacrificed under any circumstances at least in cases decided by the appellate authorities under the fiscal statutes like Income-tax Act, 1961, in a society governed by rule of law.

PRAYER

It is therefore most humbly prayed that the appeal may kindly be accepted and allowed and

1. The order passed by CIT(A) u/s 250 of the Act on 28.02.2024 upholding assessment Order passed u/s 143(3) r.w.s. 153C of the Act passed by the Assessing Officer, ACIT, Circle 1, Alwar dated 27.12.2019, may the both order be quashed/set aside.
2. Any other relief in favour of the appellant may be allowed.

8. In support of the contention so raised in the written submission the ld. AR of the assessee also filed a paper book containing following evidences / decisions:

Sr. No.	Particulars	Page No.
1.	Audit Report with Financial Statements	1-15
2.	Bank Statement for relevant period of AY 2018-19	16-17
3.	Assessment order dated 31.03.2018 in case of Sh. Siya Ram Mahajan	18-30
4.	Appellate Order dated 22.08.2019 in case of Sh. Siya Ram Mahajan	31-43
5.	Deputy Commissioner of Income-tax v. Suraj Ltd., dated 14.08.2024 (ITAT Ahmedabad)	44-55
6.	Super Malls (P.) Ltd. v. Pr. CIT, dated 05.03.2020 (Supreme Court)	56-60
7.	Sahara India (Firm) vs. CIT and another, dated 11.04.2008 (Supreme Court)	61-70
8.	Manjit Kaur Vs ITO, dated 24.03.2023 (ITAT	71-74

	Chandigarh)	
9.	ITO Vs Mohammed arif Ibrahim bhai Shaikh, dated 31.05.2022 (ITAT Ahmedabad)	75-99
10.	Metal forgings Limited V. Union of India, dated 22.11.2002 (Supreme Court)	100-106
11.	Assistant Commissioner of Income-tax v. Hotel Blue Moon, dated 02.02.2010 (Supreme Court)	107-112
12.	Gordhan, Delhi Vs Appellant, dated 19.10.2015 (ITAT Delhi)	113-116
13.	R K Dave Vs Income Tax Officer, dated 09.08.2004 (ITAT Jodhpur)	117-120
14.	Commissioner Of Income Tax vs M/S. Mark Hospitals (P) Ltd, dated 03.12.2014 (High Court of Madras)	121-124
15.	CIT v. Margadarshi Chit Funds (P.) Ltd., dated 13.06.1984 (High Court of Andhra)	125-128
16.	ACIT, Circle 11(2), Kolkata vs M/S. Mackintosh Burn Ltd, dated 03.03.2021 (ITAT Kolkatta)	129-135
17.	M/S. Samwon Precision Mould Mfg India Pvt Ltd vs Ito, dated 30.04.2020 (ITAT Delhi)	136-141
18.	Pratyaksh Apparels (P.) Ltd. v. Deputy Commissioner of Income-tax dated 19.05.2023 (High Court of Delhi)	142-145

9. The ld. AR of the assessee in addition to what has been submitted in writing vehemently argued that the assessee has given the money to his cousin, the source of money is reflected in the books. Both these facts being not disputed the addition sustained is merely based on surmises and conjectures. The assessee doing business for which cotton is the raw-material and for making purchase of cotton the cash was given to Shri Siya

Ram Mahajan. Revenue has added that cash in the hands of the Shri Siya Ram Mahajan but the ld. CIT(A) deleted that addition. The assessee has given all the details regarding the unsecured loans accepted by for an amount of Rs. 3,60,000/- merely the assessee could not file the PAN and ITR no addition can be made. To drive home to this contention reliance was placed on the decision of CIT Vs. Mark Hospitals P Ltd. (Supra). As regards the non-maintenance of quantity wise stock register the books cannot be rejected and once the books are rejected the assessment is required to be made in accordance with the provision of section 144 of the Act.

10. Per contra, ld. relied upon the findings recorded in the orders of the lower authority. The ld. DR also submitted that the cash was seized from Shri Siya Ram and was not substantiate the reasons with the corroborative evidence and the cash found since belonging to him same was required to be sustained and even the assessee could not justify the source of having found the cash from Shri Siya Ram. As regards the unsecured loans merely filling the identity proof it does not absolve the assessee from proving the identity, genuineness and credit worthiness of the persons from the money is taken as unsecured loans. As regards the addition to the

trading results the profit offered was less then with the past year the assessee has booked the expenses in cash without proper justification of the same.

11. In the rejoinder the ld. AR of the assessee and Shri Siya Ram was consistent about the purpose and the source and therefore, the reasons advanced for sustaining the addition are not correct. The assessee by filling the identity proof proved the unsecured loans obtained from the small parties who may not be filling the ITR and it was for the short term only. As regards the rejection of the books results no separate show cause notice was given by the ld. AO and that too without providing the criteria for rejection of book results and procedure to be followed in that section was also not followed up.

12. We have heard both the parties and perused the materials available on record. Vide ground no. 3 the assessee challenges the finding of the lower authority sustaining the addition of Rs. 10,82,000/-. The brief facts related to the issue are that the cash worth Rs. 10,82,000/- was seized from the possession of Shri Siya Ram Mahajan by SHO, GRP Thana, Ajmer, on 09.10.2017. Enquiries were conducted, under commission u/s 131(1)(d), by the

Deputy Commissioner of Income Tax (Inv.), Alwar, to ascertain the sources of cash seized by SHO, GRP Thana, Ajmer, & statement of Shri Siya Ram Mahajan were recorded, on oath u/s 131, by the Deputy Commissioner of Income Tax (Inv.), Alwar. In that statement he stated that his cousin, namely Shri Yogesh Chand Gupta Prop. M/s. Yogesh Ginning Mill i.e. the assessee had given him cash of Rs. 10.85 lakhs for purchase of cotton from farmers. But due to increase in rates the deal was not finalized and upon his return journey on 09.10.2017 GRP at Ajmer Railway Station he was caught with cash in his possession. Further he stated the place he stated to have visited had no knowledge of and with whom he had contacted. On being asked he submitted that at Ajmer Railway Station he met some Roshan Gurjar & he had visited Merta, Ajmer & its nearby places, with Roshan Gurjar. However, the assessee couldn't provide address or contact No. of Roshan Gurjar. As Shri Siya Ram Mahajan has stated that the cash seized from his possession belonged to his Cousin Shri Yogesh Chand Gupta, i.e. the assessee, the statement of assessee were also recorded, on oath u/s 131, by the Deputy Commissioner of Income Tax (Inv.) Alwar. However, the assessee could not provide contract details, i.e. address & contact No. of

Roshan Gurjar. The ld. AO noted that Shri Siya Ram Mahajan was neither employee of the assessee nor working on commission basis. It was also noted that the assessee never purchased any goods from Ajmer or its nearby places earlier and Shri Siya Ram Mahajan was also not sent for purchase in past. The assessee admitted that the cash seized by GRP from the possession of Shri Siya Ram Mahajan belonged to him but failed to explain the source of cash seized except stating that he has made withdrawal of cash on 26.09.2017 and the cash was seized on 09.10.2017. As there was gap of 13 days and the assessee could not provide the details of parties from the cash purchase was to made, the cash found was considered as unexplained and accordingly addition of Rs. 10,82,000/- was made in the hands of the assessee. The bench noted that the same addition was made in the hands of Shri Siya Ram but the same was deleted by the ld. CIT(A) in that case.

13. When the matter of addition made in the hands of the assessee carried to ld. CIT(A) the addition was confirmed by the addition because the assessee could not provide the contact details of Roshan Gurjar. In view of the statement of the appellant that he made cash purchases in his Mill only and never sent his

cousin to Ajmer for making purchases earlier and also the fact that the appellant could not establish the direct link between the cash withdrawn from the bank on 26.09.2017 and the amount stated to have been given to his cousin on 08.10.2017, the AO did not accept the appellant's version and treated the cash of Rs. 10.82 lac as unexplained and added the same to appellant's income by invoking Sec. 68. The ld. CIT(A) also noted that assessee's cousin is stated to have met Shri Roshan Gurjar at Ajmer for purchase of cotton, which statement stands confirmed by the appellant also, then nothing prevented the appellant from giving his complete details and information about the persons contacted at Ajmer for purchase of cotton. This could have helped the AO to ascertain the correct facts and substantiate the claim of the appellant that he had sent his cousin with money to purchase cotton through Shri Roshan Gurjar. The appellant, for reasons best known him, failed to furnish the complete details of Shri Roshan Gurjar. The appellant himself had asserted that he never made any purchases from Ajmer and cash purchases were only made at his Mill at Alwar. In such a situation, the plea of sending his cousin with money for purchase of cotton from Ajmer through Shri Roshan Gurjar, whose contact details and whereabouts were not furnished

despite specific requirement made, appears to be a concocted one, without any supporting material. When viewed from this angle, the claim of the appellant of having given the money of Rs. 10.82 lacs on 8.10.2017 out of withdrawals of Rs. 15 lacs on 26.09.2017 appears to be an after-thought to explain the seized cash from his cousin. As alleged that Shri Siya Ram and Shri Roshan Gurjar, went to Merta & 3-4 other villages but name of villages were not remembered by them. On being asked that at where he went at Merta with Roshan Gurjar, he couldn't provide any detail. It was also stated that the Shri Mahajan is neither partner of appellant Shri Yogesh's concern nor working on commission/salary for him. It was also noted that cash purchases were made at his Mill premises only. He is having a License issued by Krishi Upaj Mandi Samiti, . Baroda. Thus, at Ajmer Railway Station Shri Siya Ram met Shri Roshan Gurjar & Shri Siya Ram went with Roshan Gurjar but Roshan Gurjar was fraud. Therefore, Sh. Siya Ram was returning with cash but GRP caught him at Ajmer Railway Station with cash of Rs.10.82 lakh was not considered by ld. CIT(A) and taken a view that the assessee-appellant failed to furnish any documentary evidence in respect of sources with respect to the cash seized by the GRP except

submitting that he had withdrawn cash on 26.09.2017. It is pertinent to mention here that the cash was seized on 09.10.2017 & there is a gap of 13 days from the cash withdrawn from Bank & the cash was seized and when cash is withdrawn, the same is withdrawn for the immediate and identified purpose. The appellant has given a justification explanation telling the purpose for which the cash was withdrawn and how the transaction did not take place. The cash withdrawn from Bank were kept with him in wait of supply of goods but the goods were not supplied. On 08.10.2017, he handed over cash of Rs. 10.85 lakh to his cousin. However, the appellant failed to explain details of Zamidars who agreed to sale goods & didn't supplied later on. Further, no explanation in respect of difference amount of Rs 4.15 lakh (15.00 lakh 10.85 lakh) was given. The ld. CIT(A) further went to observe that assessee-appellant didn't produce his Books of Accounts, together with Purchase Register, therefore, it is not known that as to how much amount of cotton was purchased by the assessee at from 26.09.2017 to 08.10.2017. Further as per monthly figures submitted by the appellant during assessment proceedings, the appellant had made purchases worth Rs. 2,07,35,288/- during September & worth Rs. 2,68,26,175/- during October. The source

of the same remains unverified as to how much of the cash withdrawn was utilized in making such purchases. Based on these observation the addition made by the ld.AO was sustained.

14. Before, as argued and noted from the records and observations of the ld.AO at page 10 that except quantity wise stock register all records were produced. The ld.AO did not established that the source of the case given which was alleged to have been used for other purpose and the cash was not available with the assessee. The reasons advanced to reject the explanation are supported by the evidence. Even the statement given on oath were not found false [by bringing any contrary on record] merely the purchase of cotton story might have been cooked but the fact remain same that cash belong to the assessee and the addition made in the hands of the Shri Siya Ram Mahajan was deleted as the assessee claimed to have owner of the money found. The observation of the ld. CIT(A) that the assessee has never made purchase near by Ajmer region were merely surmises and conjectures. Here what is important to note that the source of the cash holding was very well from the withdrawal made before 13 days only. Since the source of cash found was duly supported by

the books no addition can be made in the hands of the assessee and the same is directed to be deleted. Based on these observations ground no. 3(a) raised by the assessee is allowed.

15. Ground no. 3(b) raised by the assessee deals with the addition of Rs. 3,60,000/- being the unsecured loan amount taken below Rs. 20,000/- in cash from the different 25 parties. The assessee submitted the copy of the Aadhar card in support of having been taken the cash loan. The ld. AO asked the assessee to produce all those parties but in fact the assessee could not and therefore, the addition was made in the hands of the assessee. When the matter carried before the ld.CIT(A) he also confirmed that addition by observing that the assessee-appellant could not discharged its burden to prove the identity of the creditors and the capacity of the creditors and the genuineness of the transactions. As the assessee merely furnished the Aadhar but no confirmation were submitted so he sustained the addition. While doing so he relied upon the decision of apex court in the case of Kale Khan Mohammed Hanif Vs CIT(Supra) stating the as held in that case the onus of proving the source of a sum of money found to have been credited lies with the assessee. Even when the book results

rejected and thereby the relaying on the various decisions, he confirmed the addition. Before us it was argued that the action of the lower authority was **unjustified, unwarranted and excessive.** The lower authority could not appreciate that the assessee runs into the third year of operation and bank finance was not readily available hence the appellant-assessee has taken these pretty loans from his known person. Some of the loans are old ones as they have been carried forwards from last year. Further the appellant at the time of assessment proceedings has produced Identity of all creditors and proved the genuineness of transaction. As regards the contention that the same were not produced to confirm the genuineness and capacity of the person notice u/s 142(1) dated 22.12.2019 for producing all the creditors in person till 24.12.2019 only, it was done in hurry as last date to complete assessment was 31.12.2019 and giving such a short notice is clear violation principle of natural justice. Further appellant vide letter dated 11.12.2019 has already intimated to the assessing authority that his wife is going medical treatment in Pune and he need time to collect papers which is demanded in notice but inspite of that the appellant has produced all the documents which was needed by assessing authority as and when demanded by him. But since the

matter was time barring the assessing authority has given short span of time and he himself told the appellant to submit the identity of creditors which we have submitted before him. The assessee-appellant has by providing the Aadhar has placed on record the identity of creditors and capacity of creditors to advance money. The appellant had duly satisfied all the above conditions as the identity of all creditors was duly submitted by him before assessing authority. Regarding the capacity of creditors to advance money, all amounts are below Rs 20,000/- and all creditors are agriculturists/traders which have capacity to lend such small amount of money to appellant. It was also submitted that since all the agriculturists/traders have income below exemption limit hence PAN card cannot be furnished before which was intimated to assessing authority also in the reply submitted to AO. In the case Commissioner Of Income Tax vs M/S.Mark Hospitals (P) Ltd on 3 December, 2014 Madras High court it was held that mere non-producing of PAN and ITR of creditors does not prove that the creditors are not genuine. If the appellant has furnished the identity and genuineness of transaction than AO cannot made the addition. It was not provided that the identity proof given were wrong and false. No efforts were made to verify even one by the AO, though

the assessee was given the short time but the same was available with the AO. As submitted once the books are rejected no other addition from the same set of books can be made in the hands of the assessee-appellant. The bench also noted that the revenue could not controvert the fact that some of the money has been carried out from the earlier year and the same cannot be added as income of the assessee-appellant. Considering the fact that the assessee placed on record identity of all 25 creditors placing on record the Aadhar card and no further any adverse material placed on record merely non producing the creditor cannot be made basis when the ld. AO has vide power to enforce the attendance of the person required before him. Based on these observation ground no. 3(b) raised by the assessee is allowed.

16. Now we deal with the ground no 4 raised by the assessee where in the books of the assessee were rejected and the profit was estimated whereby the addition for Rs. 3,50,150/- was made in the hands of the assessee. The ld. AO in the assessment proceeding noted that the book results show gross profit and net profit declined in the instant year in comparison to immediately preceding year. The assessee was called upon to explain the

reason thereof. The assessee-appellant submitted that there is down fall in GP and NP as the sale have been increased to 1.73 times as compared to last year and while doing so it was possible because of reducing the margin. The ld. AO considered the submission of the assessee and found the same to some extent only. [page 9 of AO]. The ld. AO directed the assessee to produce the books of account which the assessee do so. The ld. AO noted that the assessee could not provide the stock record for quantity wise and the assessee could not produce bills and vouchers for expenses and the same found to have been incurred in cash. Based on these observation the ld. AO invoked the provision of section 145(3) of the Act and estimated the income @ 1 % as income and thereby the addition of Rs. 3,50,150/- was made in the hands of the assessee. When the matter carried to ld. CIT(A) he sustained the rejection of the book results and confirmed the addition on the same ground as that of the ld. AO and he has considered the submission made by the assessee-appellant and made addition of Rs. 3,50,150 by invoking section 145(3), which was made in the assessment order dated 27.12.2019 passed u/s 143(3) r.w.s. 153C of the Act without appreciating the facts and submissions made while assessment proceedings.

17. As the assessee has challenged the invocation of provision of section 145(3) of the Act. Thus, before we deal with these grounds of the assessee, we would like to deal with the provision of section 145(3) of the Act, as the same was made basis for making the addition. The provision of section 145(3) reads as under :

> **Method of accounting.**
>
> **145.** (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.
>
> (2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income.
>
> *(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) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.*

18. Thus, as it is clear from the above provision of the act that the ld. AO or that of the ld. CIT(A) may proceed under Section 145(3) under any of the following circumstances :

- Where he is not satisfied about the correctness or completeness of the accounts; or
- Where method of accounting cash or mercantile has not been regularly followed by the assessee; or
- Accounting Standards as notified by the Central Government have not been regularly followed by the assessee.

As it is not case of the revenue for the second and third reason but is of on the first reason that the ld. AO is not satisfied about the correctness of completeness of the accounts. But the same is not the situation when the assessee has produced all the records that is required by the AO. The bench noted that before the ld. CIT(A) the assessee made a detailed submission to support as to why the provision of section 145(3) cannot be invoked in the case of the assessee. The assessee submitted before the lower authority that AO cannot reject the books of accounts and apply the provisions of section 145(3) of the Act unless no material record has been brought on record to hold that book results are not reliable, when that are maintained and audited by independent Chartered Accountant. In the audit report no adverse observation were observed by the lower authority. Even the ld.AO has not given required notice for rejection of book results as required under law. Even the ld. CIT(A) has simply supported finding of the ld. AO without dealing with the contention of the assessee.

19. The bench noted that ld. CIT(A) has justified the action of the ld. AO without dealing with the submission of the assessee. The ld. CIT(A) choose to remain silent so far as to the contention for rejection of the books of account based on the submission of the

assessee. Thus, considering the provision of section 145(3) and the fact that as such while examining the books no defects as such was observed in the books of accounts. Thus, the ld. AO or that of the ld. CIT(A) cannot reject books of accounts based on conjectures and surmises as such there is no comments on the books of accounts so maintained and produced. The assessee's books of account are regularly maintained, audited and no discrepancies whatsoever have been indicated by the ld. CIT(A). This is an utter disregard of the fact that all the books of account were maintained and regularly audited were simply not relied and rejected based on one simple reason that the quantity wise stock not maintained. Thus, the rejection of books is purely based on surmises and conjectures. As we note that during the assessment proceedings the appellant has submitted all the ledger of expenses, sale and purchase details, cash book, journal, bank statements etc., at the time of assessment proceedings. Only stock register could not be produced but the books has been duly audited by CA for which copy of Audit report was duly submitted before the assessing authority. Further the expenses which are claimed in Profit and Loss account are of such nature and amount which are duly verifiable and within the scope of business for which expenses

books were presented at the time of assessment proceedings. Ld. AO in his questionnaire has at point no 6 has admitted that the assessee-appellant has duly submitted the amount wise monthly charts of sale and purchase on dated 20.12.2019 but only item wise consumption of stock is not maintained whereas in assessment order he has taken the plea that no sale and purchase details was provided before him which is contradictory. It is submitted that the assessing authority has never asked the appellant to produce sale and purchase bill otherwise appellant can produce the same as the same are duly available with him as books of accounts are duly audited and it is in nature of businessman that he always kept sale and purchases bill with himself in ordinary course of business. At the time of hearing the ld. DR did not dispute the arguments raised by the ld. AR of the assessee before us. Thus, when the records were produced but were not verified during assessment proceedings how appellant should suffer. Further in the assessment order at Page No 1 last Para the assessing authority has accepted that the A/R of appellant has submitted the requisite details/documents from time to time which shows that the appellant has furnished all the papers as required by the assessing officer and assessee-appellant has

cooperated with the assessing authority at all time during the assessment proceedings. So far as regards the decrease in profit margin the assessee-appellant at the time of assessment proceedings has contended that sale has been increased as compared to last year and the appellant drop his margin to increase the sales and stay in market. Further the assessee-appellant is dealing in such commodities for which he has to depend on market rate for sale and purchase of commodity. The assessee is already subjected to indirect tax and duly filed his returns consisting of the details of all sales and purchases during the year and appellant was an audited entity. So, the purchase and sales of the appellant can be verified from the VAT Returns and audited financial statements. The relied upon in the written submission the assessee – appellant has relied upon the decision in case of M/s Bajrang Trading Company, Gangapur City Vs. ITO, Sawai Madhopur (Tax World, Vol XLV Part-1 Jan 2011), it was held by ITAT, Jaipur Branch that the AO cannot reject the books of accounts and apply provisions of Section 145(3) unless no material record has been brought on record to hold that book results are not reliable. Also it was held that the AO cannot made an addition on ill-founded assumption and presumption and without understanding

and appreciating the books of accounts. Therefore, in such circumstances and facts of the case, the Assessing Officer is not justified in rejecting the books of account by invoking the provisions of section 145(3) of the Act and the additions made by the Assessing Officer are liable to deleted. To drive home to this contention we get support from the decision of our jurisdictional high court rendered in the case of Commissioner of Income Tax v. Ceramic Industries [88 taxmann.com 520 (Rajasthan)] wherein our Hon'ble court has held that ;

> **7.** Taking into consideration the tribunal has observed as under:—
>
> We have perused the facts of the case. The ld. AR Mr. H.M. Singhvi argued that assessee has produced all the books of account, vouchers and the assessee's accounts are audited and all the production is subject to Excise Duty and not even a single unit of production can go out of the factory without recording the same in the Excise Registers which are regularly and continuously verified by the excise Department and are under their control. The AO has not pointed out any defect in the purchases, sales, opening stock and closing stock and as explained before the AO and the ld. CIT(A) that M/s. Bharat Potteries Ltd. i.e. a sister concern is manufacturing more of maximum stoneware crockery and the assessee is manufacturing more of bone china crockery and the difference in yield and the wastage and the gross profit had been explained vide our letter dated 26.03.2004 before the AO and similarly the output/input ratio has also been explained before the AO through the same letter and the AO has not commented upon the same and has not found out any difect in our explanation. The assessee has also filed before the AO following documents/publications to support the wastage declared by the assessee is reasonable and according to the standard practice adopted in the country as under:-

1.		C.G.C.R.I., Khurja (PB No.13 to 1)
2.		Publication of Articles in while wares (P.B. No.18)
3.		Photocopy of Hand book of Ceramics-Volume 2 (Editor S. Kumar) showing typical composition of

		Bone china.
4.		Photocopy of the Chapter 5 of stoneware in the books published by the Institute of Materials (P.B. No.21 to 22).

In the report of CGCRI, Khurja, (refer P.B. No.17), the waste worked out to 28.31% to 38.7% interest he bone china crockery and in the case of stoneware crockery it worked out to 24% to 34.8%

We agree with the arguments of the ld. AR that the main objection raised by the AO was that input/output ratio in various months has the inconsistency which has been duly explained by the assessee vide letter dated 26.03.2004 and the second objection by the AO was that the sister concern M/s. Bharat Potteries Ltd. has declared more yield and more gross profit, has also been explained by the assessee vide the same letter dated 26.03.2004. Therefore, the inconsistency in the input/out ratio in various months the reasons for which has been explained by the assessee, cannot be the basis for rejection of books of account. The yield and gross profit rate declared by the assessee can also not be the basis for rejection of books of account since M/s. Bharat Potteries Ltd. is manufacturing maximum of stoneware crockery and for many other reasons which were explained by the assessee vide its letter dated 26.03.04 which was ignored by the AO and the AO has not pointed out any specific defects in the purchases, sales, opening stock and closing stock of the assessee and the AO has not brought on record any cogent material to prove that the assessee has sold the under-production out of the books of account. Therefore, in such circumstances and facts of the case, the AO is not justified in rejecting the books of account by invoking Provisions of Section 145(3) of the Act and the additions made by the AO are liable to the deleted. The objection of the ld. DR that the ld. CIT(A) has not relied upon the CGCRI Report, Calcutta, the ld. AR has pointed out that the in the same report it has been mentioned that the said organization is not involved production practice and the are not sure to what extent their opinion will be useful for the purpose of the assessee and in such circumstances and facts of the case, the report of CGCRI, Calcutta alone cannot be the basis for rejection of books of account and making an estimation of wastage and the ld. CIT(A) was not justified in ignoring other material which was placed before him as mentioned hereinbefore. Therefore, the ld. CIT9A) was not justified in sustaining the applicability of Section 145(3) of the Act and addition of Rs. 11,15,087/-. Thus Ground No.1 of the assessee is allowed and the solitary ground of the Revenue is dismissed.

8. In our considered opinion the argument which has been canvassed by Mr. Mathur that the stone average loss as 29.4 should not be 30.1 as per Khurja is also 23.1.

9. Taking into consideration that the bones china crockery of the delicate nature, the report of Khurja for the specific industry has been accepted by the tribunal, no error is committed in doing so.

10. Both the issues are answered in favour of assessee and against the Department.

10.1 It is made clear that we have only decided the matter which is pending before this court but for the next year, it will be open for AO or the Department to look into improvement of industries, machinery and assesss the same every year loss.

11. All the appeals are dismissed.

In terms of this observation ground no. 4 raised by the assessee is allowed.

20. Thus, we have considered the appeal of the assessee on merits wherein ground no. 3(a), 3 (b) and ground no. 4 are allowed whereas ground no 1, 2 and 5 challenges the finding on technical ground. Since the merits of the case are considered the technical ground raised by the assessee becomes academic in nature. Ground no. 6 being general does not require our adjudication.

21. In the result the appeal of the assessee in ITA no. 540/JP/2024 for Assessment year 2018-19 is allowed.

22. The assessee vide ITA no. 1045/JP/2024 for assessment year 2017-2018 challenged the order of the ld. CIT(A)-4, Jaipur on the following grounds:

“1) The Learned Commissioner of Income Tax (Appeals) -4, Jaipur (Herein referred to as "Learned CIT(A)") has erred in law and on facts in upholding the assessment Order passed u/s 143(3) r.w.s. 153C of the Act with creating a demand of Rs 561565 and returned income of Rs 532951 was enhanced to Rs 844531, passed by the Assessing Officer, ACIT, Circle 1. Alwar (Herein referred to as AO) and dismissing the appeal.

2) The Learned CIT(A) has erred in law and on facts in upholding the addition without giving the reasonable opportunity of being heard and without taking into consideration the submissions and by violating the principle of natural justice.

3) The Learned CIT(A) has erred in law and on facts in not considering notice issued u/s 143(2) was time barred and the order passed without following the mandatory procedures of the act and by not providing the proper opportunity of being heard.

4) The Learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 4,41,000 u/s 68 on account of unexplained cash credits, which was made in the assessment order dated 27.12.2019 passed u/s 143(3) r.w.s. 153C of the Act without appreciating the facts and submissions made and documents submitted during the course of assessment proceedings, which is unjustified, unwarranted and excessive.

5) That the Learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 4,03,531 by rejecting books of accounts and by invoking section 145(3) without finding out any defects in books of accounts in the assessment order dated 27.12.2019 passed u/s 143(3) r.w.s. 153C of the Act without appreciating the facts and submissions made during the course of assessment proceedings. which is unjustified, unwarranted and excessive.

6) That Learned CIT(A) has erred in law and on facts in upholding the invocation of the provisions of section 145(3) and rejecting the books of accounts regularly maintained and duly audited and holding that the books of accounts were not absolutely reliable.

7) The Learned CIT(A) has erred in law and on facts in wrongly upholding the penalty proceeding under section 271AAC(1), which is unjustified, unwarranted and bad in law.

8) The Learned CIT(A) has erred in law and on facts in upholding the charge of interest u/s 234A, 2348 & 234C

9) Your appellant craves leave to add to, alter, amend or delete any of the foregoing grounds of appeal."

23. The bench noted that the ground no. 4 raised by the assessee in this appeal are similar to that of the ground no 3(b) raised by the assessee in ITA no. 540/JP/2024, whereas ground no. 5 & 6 raised by the assessee are similar to the ground of appeal no. 4 raised by the assessee in ITA no. 540/JP/2024. In the light of this facts we do not find it fit to repeat the facts and arguments as advanced in this appeal and the decision taken by us shall apply mutatis mutandis to the grounds no. 4, 5 & 6 raised by the assessee in this appeal as held in ITA no. 540/JP/2024. Ground no. 1, 2, & 3 being technical and since we have considered the grounds of appeal on merits, we do not adjudicated these technical grounds. Ground no. 7 deals with the penalty proceeding initiated which is premature at this stage. Ground no. 8 consequential in nature does not require any findings. Ground no. 9 raised by the assessee is general no adjudication is required.

In terms of this observations the appeal of the assessee in ITA no. 1045/JP/2024 for assessment year 2017-18 stands allowed.

24. The assessee vide ITA no. 1044/JP/2024 for assessment year 2016-2017 challenged the order of the ld. CIT(A)-4, Jaipur on the following grounds:

> "1) The Learned Commissioner of Income Tax (Appeals) -4, Jaipur (Herein referred to as "Learned CIT(A)") has erred in law and on facts in upholding the assessment Order passed u/s 143(3) r.w.s. 153C of the Act with creating a demand of Rs. 489302 and returned income of Rs. 443946 was enhanced to Rs. 1588039, passed by the Assessing Officer, ACIT, Circle 1. Alwar (Herein referred to as AO) and dismissing the appeal.
>
> 2) The Learned CIT(A) has erred in law and on facts in upholding the addition without giving the reasonable opportunity of being heard and without taking into consideration the submissions and by violating the principle of natural justice.
>
> 3) The Learned CIT(A) has erred in law and on facts in not considering notice issued u/s 143(2) was time barred and the order passed without following the mandatory procedures of the act and by not providing the proper opportunity of being heard
>
> 4) The Learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 10,22.940 u/s 68 on account of unexplained cash credits, which was made in the assessment order dated 27 12 2019 passed u/s 143(3) rw.s 153C of the Act without appreciating the facts and submissions made and documents submitted during the course of assessment proceedings, which is unjustified, unwarranted and excessive.
>
> 5) That the Learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 1,21,153 by rejecting books of accounts and by invoking section 145(3) without finding out any defects in books of accounts in the assessment order dated 27.12.2019 passed u/s 143(3)

r.wis. 153C of the Act without appreciating the facts and submissions made during the course of assessment proceedings, which is unjustified, unwarranted and excessive.

6) That Learned CIT(A) has erred in law and on facts in upholding the invocation of the provisions of section 145(3) and rejecting the books of accounts regularly maintained and duly audited and holding that the books of accounts were not absolutely reliable.

7) The Learned CIT(A) has erred in law and on facts in wrongly upholding the penalty proceeding under section 271(1)(c), which is unjustified, unwarranted and bad in law.

8) The Learned CIT(A) has erred in law and on facts in upholding the charge of interest u/s 234A, 234B & 2340

9) Your appellant craves leave to add to, alter, amend or delete any of the foregoing grounds of appeal."

25. Considering the above grounds of appeal so raised the bench noted that the ground no. 4 raised by the assessee in this appeal is similar to that of the ground no 3(b) raised by the assessee in ITA no. 540/JP/2024, whereas ground no. 5 & 6 raised by the assessee are similar to the ground of appeal no. 4 raised by the assessee in ITA no. 540/JP/2024. In the light of this facts we do not find it fit to repeat the facts and arguments as advanced in this appeal and the decision taken by us shall apply mutatis mutandis to the grounds no. 4, 5 & 6 raised by the assessee in this appeal as held in ITA no. 540/JP/2024. Ground no. 1, 2, & 3 being technical and since we have considered the grounds of appeal on

merits, we do not adjudicate these technical grounds. Ground no. 7 deals with the penalty proceeding initiated which is premature at this stage. Ground no. 8 consequential in nature does not require any findings. Ground no. 9 raised by the assessee is general no adjudication is required.

In terms of this observations the appeal of the assessee in ITA no. 1044/JP/2024 for assessment year 2016-17 stands allowed.

In the result, the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 12/12/2024.

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

जयपुर/Jaipur
दिनांक/Dated:- 12/12/2024
*Ganesh Kumar, Sr. PS
आदेश की प्रतिलिपि अग्रेशित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Yogesh Ginning Mill, Alwar.
2. प्रत्यर्थी/ The Respondent- ACIT, Circle-1, Alwar.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File { ITA No. 540, 1044 & 1045/JPR/2024}

आदेशानुसार/ By order

सहायक पंजीकार/Asst. Registrar