

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA Nos: 158, 159 & 160/RPR/2024
(निर्धारण वर्ष Assessment Year: 2015-16, 2016-17 & 2017-18)

Pradeep Kumar Agrawal, H. No. 19, Ramjanki Mandir, Sadar Bazar, Dhamtari-493773	v	Income Tax Officer, Ward- Dhamtari s Shankardan Road, Vill- Haraftra,
PAN: ACHPA6856B		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Sunil Kumar Agrawal, CA
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	23.12.2024
घोषणा की तारीख /Date of Pronouncement	:	16.01.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeals are filed by the assessee against the separate orders of Commissioner of Income Tax (Appeals), NFAC, Delhi, [in short "Ld. CIT(A)"], u/s 250 of the Income Tax Act, (in short "the Act"), for the AY 2015-16, 2016-17 & 2017-18, all passed on 19.02.2024, which in turn arises from the separate orders u/s 147 r.w.s. 144 r.w.s. 144B of the Act, passed by Income Tax Officers, National Faceless Assessment Centre, Delhi, all dated 26.03.2022.

2. In order to deliberate upon and to decide the common issues involved in the present appeals, ITA No.159/RPR/2024 for the AY 2016-17 has been taken up for adjudication as the lead case, wherein our findings / observations / decision shall have a direct bearing on the issues in the other cases, therefore, the outcome of the lead case shall apply *mutatis mutandis* to the remaining other matters.

3. The grounds of appeal along with additional ground of appeal raised by the assessee, assailing the impugned orders in all the aforesaid appeals are extracted as under:

Ground of appeal in ITA no. 158/RPR/2024 (2015-16)

1. On the facts and circumstances of the case and in law, reopening u/s 148/147 is invalid as based on borrowed satisfaction of escaped income of Rs.3,59,78,500 on 'cash withdrawal from bank', which is related to receipts from debtors against accounted sales; it is only 'reason to suspect', merely verifying the 'cash withdrawal'; there is live link/ nexus between the 'information of cash withdrawal' & 'formation of believe' for alleged escaped income of Rs.3,59,78,500; in absence of pre-requisite condition for assuming jurisdiction u/s147, reopening u/s 148/147 would be invalid; liable to be quashed; relied on Lakhmani Mewaldas (1976) (SC); Shodiman Investments (P) Ltd (2018) (Born); Meenakshi Overseas (P) Ltd (2017) (Del HC); Smt Sudesh Rani (2023) (Chd-Trib); Jai Prakash Gupta (2021) (Kol-Trib);

2. On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.3,59,78,500 on 'unexplained investment u/s69'; when cash withdrawal from bank are fully recorded in the books of account audited u/s44AB; in absence of any evidence/material brought on record by the AO/ CIT(A) for any investment made by the assessee which is not recorded or not satisfactorily explained; when nature & source of cash withdrawal is from receipts from debtors against accounted/ disclosed sales of Rs.10,14,26,743 u/s44AB; impugned addition made u/s69 is not sustainable in the eyes of law; is liable to be deleted.

3. , On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.3,59,78,500 on 'cash withdrawal from bank', treating it 'unexplained investment u/s69 which is related to receipts from debtors against accounted/ disclosed sales of Rs.10,14,26,743 u/s44AB; addition of Rs.3,59,78,500 made merely on presumption & surmises, would lead to GP of 38.38% from GP of 3.38% shown, which is impossible in the business of the assessee & is unjustified; is liable to be deleted.

4. The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing.

Additional Ground of appeal ITA no. 158/RPR/2024

"1. On the facts and circumstances of the case and in law, assessment made u/s147 rws.144B dt.26-3-22 is invalid as Id AO has not issued notice u/s 143(2) after filing letter dt.8-3-22 enclosing original ROI filed on 25-3-16 showing income of Rs.4,59,680 by mentioning that in response to notice issued u/s148; in absence of a notice u/s143(2), assessment made u/s147 rws.144B would be invalid and is liable to be quashed."

Ground of appeal in ITA no. 159/RPR/2024 (2016-17)

1. On the facts and circumstances of the case and in law, reopening of concluded assessment u/s 143(3) dt.8-12-18 wherein audited sales of Rs.8,37,26,439 u/s 44AB has been examined/ accepted by the AO which ultimately includes alleged 'deposits / RTGS credits into bank' of Rs.8,31,02,597; in absence of any fresh/ new material possessed by the AO, impugned reopening be treated merely 'change of opinion' on the same material facts, is not permissible in the eyes of law, is liable to be quashed.

2. On the facts and circumstances of the case and in law, reassessment made u/s 147 is invalid as there is addition made of Rs.41,55,130 on count of undisclosed business income (i.e., u/s28) which is not the issue of the 'reasons recorded'; the 'very basis' of reopening was 'unverifiable/ unexplained deposits/ credits into bank' (i.e., u/s 69A/68) and no addition made on the 'very issue'; addition made on an 'independent issue' of 'business income', which is not the part of the 'reasons recorded' earlier, is not permissible in the eyes of law; reassessment made u/s 147 would be invalid & is liable to be quashed; relied on Shri Ram Singh (2008) (Raj); Prosperous Buildcon (P) Ltd (2023) (Del HC).

3. On the facts and circumstances of the case and in law, reopening u/s 148/147 is invalid as based on borrowed satisfaction of escaped income of Rs.8,31,02,597 on

the count of 'deposits/ RTGS credits into bank', which is related to receipts from debtors against accounted sales; it is only 'reason to suspect' merely for verifying the 'deposits/ RTGS credits into bank'; there is no live link/ nexus between the 'information of deposits into bank' & 'formation of believe' for alleged escaped income of Rs.8,31,02,597; in absence of pre-requisite condition for assuming jurisdiction u/s147, reopening u/s148/147 would be invalid; liable to be quashed; relied on Lakhmani Mewaldas (1976) (SC); Shodiman Investments (P) Ltd (2018) (Born); Meenakshi Overseas (P) Ltd (2017) (Del HC); Smt Sudesh Rani (2023) (Chd-Trib); Jai Prakash Gupta (2021) (Kol-Trib);

4. On the facts and circumstances of the case and in law, approval granted u/s 151(2) by JCIT is invalid; JCIT has not cared that there is only 'change of opinion' on same material facts when it had assessed u/s143(3) & there is no fresh/ new material brought on record; JCIT has also not cared/ not pointed out the mistake of the AO in proposal form u/s151(2) i.e., incorrect amount of Rs.4,67,78,900 which is 'cash withdrawal from bank'; while as per annexure to the proposal form, escaped income is Rs.8,31,02,597 on the different issue of 'deposits/ credits into bank'; approval granted u/s 151(2) without application of mind in a mechanical manner without verifying the facts/issue involved; in absence of a valid approval granted u/s151(2) by JCIT as mandated by law u/s151; impugned reopening u/s148/147 would be invalid; is liable to be quashed; relied on Kalpana Shantilal Haria (2017) (Bom); Kartik Sureshchandra Gandhi (2023) (Born HC); Ram Nebhnani Huf(2023) (Born).

5. On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.41,55,130 which is on adhoc basis of 5% of deposits/ RTGS credits into bank' of Rs.8,31,02,597 which is related to receipts from debtors against accounted/disclosed sales in the books of account u/s44AB, more so, it had earlier assessed u/s 143(3) dt.8-12-18; addition of Rs.41,55,130 on the same count is not permissible in the eyes of law; addition made merely on presumption & surmises, is not justified and is liable to be deleted.

6. On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.41,55,130 is unjustified and is liable to be deleted.

7. The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing.

Additional Ground of appeal in ITA no. 159/RPR/2024

"1. On the facts and circumstances of the case and in law, assessment made u/s147 rws. 144B dt.26-3-22 is invalid as Id AO has not issued notice u/s143(2) after filing letter dt.8-3-22 enclosing original ROI filed on 9-3-18 showing income of Rs.49,810 by mentioning that in response to notice issued u/s148; in absence of a notice u/s143(2), assessment made u/s147 rws.144B would be invalid and is liable to be quashed."

Grounds of appeal in ITA no. 160/RPR/2024 (2017-18)

1. On the facts and circumstances of the case and in law, approval granted u/s151(2) by JCIT is invalid; JCIT has not cared/ not pointed out the mistake of the AO in proposal form u/s151(2) i.e., incorrect amount of Rs.1,88,67,200 which is 'cash withdrawal from bank'; while as per annexure to the proposal form, escaped income is 'Rs.5,95,39,179 on the different issue of 'deposits/ credits into bank'; approval granted u/s 151(2) without application of mind in a mechanical manner without verifying the facts/issue involved; in absence of a valid approval granted u/s 151(2) by JCIT as mandated by law u/s 151; impugned reopening u/s 148/147 would be invalid; is liable to be quashed; relied on Kalpana Shantilal Haria (2017) (Born); Kartik Sureshchandra Gandhi (2023) (Born HC); Ram Nebhnani Huf(2023) (Born).

2. On the facts and circumstances of the case and in law, reassessment made u/s 147 is invalid as there is addition made of Rs.29,76,959 on count of undisclosed business income (i.e., u/s28) which is not the issue of the 'reasons recorded'; the 'very basis' of reopening was 'unverifiable/ unexplained deposits/ credits into bank' (i.e., u/s69A/68) and no addition made on the 'very issue'; addition made on an 'independent issue' of 'business income', which is not the part of the 'reasons recorded' earlier, is not permissible in the eyes of law; reassessment made u/s147 would be invalid & is liable to be quashed; relied on Shri Ram Singh (2008) (Raj); Prosperous Buildcon (P) Ltd (2023) (Del HC).

3. On the facts and circumstances of the case and in law, reopening u/s 148/147 is invalid as based on borrowed satisfaction of escaped income of Rs.5,95,39,179 on the count of 'deposits/ RTGS credits into bank', which is related to receipts from debtors against accounted sales; it is only "reason to suspect" merely for verifying the 'deposits/ RTGS credits into bank'; there is no live link/ nexus between the 'information of deposits into bank' & 'formation of believe' for alleged escaped income of Rs.5,95,39,179; in absence of pre-requisite condition for assuming jurisdiction u/s147, reopening u/s148/147 would be invalid; liable to be quashed; relied on Lakhmani Mewaldas (1976) (SC); Shodiman Investments (P) Ltd (2018) (Born); Meenakshi Overseas (P) Ltd (2017)

(Del HC); Smt Sudesh Rani (2023) (Chd-Trib); Jai Prakash Gupta (2021) (Kol-Trib);

4. On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.29,76,959 which is on adhoc basis of 5% of 'deposits/ RTGS credits into bank' of Rs.5,95,39,179 which is related to receipts from debtors against accounted/disclosed sales in the books of account u/s44AB; addition of Rs.29,76,959 as 'undisclosed business income' merely on presumption & surmises, is unjustified, and is liable to be deleted.

5. On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.29,76,959 is unjustified and is liable to be deleted.

6. The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing.

Additional ground of appeal in ITA no. 160/RPR/2024

"I. On the facts and circumstances of the case and in law, assessment made u/s 147 rws.144B dt.26-3-22 is invalid as Id AO has not issued notice u/s143(2) after filing letter dt.8-3-22 enclosing original ROI filed on 24-3-18 showing income of Rs.1,18,690 by mentioning that in response to notice issued u/s148; in absence of a notice u/s 143(2), assessment made u/s147 rws.144B would be invalid and is liable to be quashed."

4. Brief facts of the lead case are that the assessee has filed his Return of Income for the A.Y. 2016-17 on 09.03.2018, admitting total income at Rs.49,810/-. The assessee is engaged in trading business of paddy, rice, other bi-product and transport work. The return was processed u/s. 143(1) on 02.06.2015. There was credible information shared by the Income Tax Officer (Inv.), Raipur that the assessee's bank account were credited through RTGS, which subsequently, has been followed by cash withdrawals and the total credit made in bank account of the assessee

during the AY 2016-17 was Rs.8,31,02,597/- out of which total cash withdrawals were for Rs. 4,67,78,900/-. In this respect, the notices issued by investigation wing are not complied with by the assessee. Accordingly, the case of assessee was reopened u/s.147 of the I. T. Act for the A.Y. 2016-17 by issue of Notice u/s.148 dated 30.03.2021 after recording of the reasons and obtaining the approval of the Competent Authority.

5. The assessee failed to file the ROI within 30 days from the date of service of notice, however, a notice u/s 142(1) was issued on 26.11.2021 requesting assessee to furnish ITR in response to notice u/s 148 and to explain the source of credit in bank accounts. The assessee again remain non-compliant. Ld. AO again attempted with notices u/s 142(1) on 16.12.2021, 05.01.2022 and 18.01.2022, however, there was no response by the assessee towards all these notices.

6. As the assessee was non-responsive during the assessment proceedings, a show cause notice along with a copy of earlier notices u/s 148 and u/s 142(1) of the I T Act was served upon the appellant through verification unit through insight portal for manual service of the show cause notice, accordingly, the communication was sent through speed post and delivered on the assessee on 10.02.2022. However, there was no

response from the assessee. Again, a show cause notice u/s 144 of the Act was issued on 07.03.2022, requiring the assessee to respond on or before 14.03.2022. In turn on 08.03.2022, assessee reverted with financial statements, statement of computation, Form 26AS etc. A copy of ITR is also filed, stating that copy of return of income filed in response to notice u/s 148 along with computation and financial statements. In this context, Ld. AO observed that, assessee has not filed return of income in response to notice u/s 148 of the Act and also have not mentioned that the return already filed may be treated as return filed in response to notice u/s 148 of the Act. Further, the assessee requested for 7 days' time to furnish remaining information, which was duly considered by the AO, allowing the assessee to submit the remaining information on or before of 15th of March, 2022 following the principle of natural justice. However, the assessee did not submit the details called for till the date of completion of assessment. As the assessee was non-responsive, the case was completed u/s 147 r.w.s. 144 r.w.s. 144B of the I T Act on 26/03/2022, the final conclusion by the Ld. AO was that the credits in bank account of the assessee remained unexplained, the assessee is engaged in the business of trading in Paddy, Rice, other by products and transport, thus, the credits are in the nature of business receipts of the assessee, thus, towards total credits of Rs.8,31,02,597/- an estimated addition of 5% has been held as

business income of the assessee, which works out to Rs. 41,55,130/-, and the same is added back to the income of assessee.

7. Aggrieved with the aforesaid additions, assessee preferred an appeal before the Ld. CIT(A), however, with no success the appeal of the assessee has been dismissed by the Ld. CIT(A), with the following observations:

Findings and Decisions:

Revised Ground No.1, 2, 3 & 4

The appellant in his revised ground of appeal, has challenged the reopening of the assessment, stating that the reason was recorded without having tangible material for escaped assessment of Rs.8,31,02,597/- merely on presumption and surmise only based on information received from ITO(lnv), Raipur. The appellant further claimed that granting of approval on the same day (i.e.30/03/2021) in most mechanical and routine manner without application of mind, without recording any subjective satisfaction.

The above said claim of the appellant is not acceptable as the credible information in respect of mainly RTGS credits in the appellant's bank account and subsequently followed by cash withdrawals, was received from ITO(lnv), Raipur which was duly verified by the AO from the information available on record. The total credits was reported at Rs. 8,31,02,597/- during the financial year under concerned in the bank account of the appellant's, out of which total cash withdrawal were Rs.4,67,78,900/-

The information with regard to credits and cash withdrawals in the appellant's bank account was reported in every rupee, which probably could have not been possible, if the information was unverified merely on the basis of presumption. There were the tangible materials in the form of information, was available with the AO, which was verified from the accessibility with the AO in due course, on the basis of which reason was recorded for reopening of assessment. The case was reopened only after approval of the competent / approving authority after being satisfied on the reason so recorded by the AO.

The process of reopening of the assessment was done as per provision laid down for reopening of the case under I T Act. In the appellant's case reason was recorded on basis of information and on the basis of inquiry made by AO. After being satisfied by the reason so recorded by the AO, granting of approval by the competent/ approving authority for issuance of notice u/s 148 of the I T Act is done after following the procedure as laid down u/s 151 of the I T Act.

The above said process is as per under Income Tax Act, 1961, therefore, it cannot be claimed that recording of reason and approving the same for issuance of notice u/s 148 of the I T Act was as a most mechanical & routine work.

The appellant has alleged that the AO recorded the reason without application of mind only to verify the credits/deposits into bank account on a fallacious assumption and the credit which was found in the appellant's bank account need not necessarily be income of the appellant.

It is pertinent to mention that the case was taken up for verification by reopening the case on the basis of information received and outcome of enquiry conducted by the AO. It is appellant's duty to prove himself free from allegation for which the case was taken up for scrutiny by reopening of the case, by furnishing substantial details/documents, which the appellant failed to do during the course of assessment

proceedings as well as during the course of appellate proceedings. Simply saying that the reason recorded without application of mind on fallacious assumption, could not prove the genuineness of the trade/business of the appellant. The genuineness of the trade made by the appellant could only be proved by furnishing substantial valid documents. As the appellant had huge credit and subsequent cash withdrawals in the bank account during the year under concerned, notices u/s 142(1) of the IT Act were issued, calling for details during the course of assessment proceedings. However, the appellant instead of submitting the same, was non-responsive. And when a final call was made by the AO by issue of a show cause notice, the appellant became responsive with insufficient details. Further, the appellant was given opportunity to furnish remaining details called for vide notices u/s 142(1) of the IT Act in respect of huge credits in the bank account and subsequent cash withdrawals, in the form of a show cause notice, but unfortunately, the appellant failed to furnish. In fact the appellant did not have any details & document in his possession which could be furnished as a substantial proof for consideration either before the AO or before the appellate authority, because the being aggrieved by the order of the AO, the appellant the filed the present appeal with only written submissions with respect to revised grounds of appeal with various case law, as submission, followed by original grounds of appeal claimed under Form -35.

The appellant's intention is only to hide the findings for which the case was reopened, by simply questioning/challenging the reopening of the assessment. There is a provision u/s 147 incorporated in the Income Tax Act, that if any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or re-compute the loss or the depreciation allowance or any other allowance or deduction for such assessment year.

In the appellant case there was information that the appellant's bank accounts were mainly credited through RTGS and subsequently followed by cash withdrawals, and

thus, made high value transaction and accordingly, as per provision of the Income Tax Act, the case was reopened for verification after following the due procedure.

After reopening of the case, a notice u/s 148 of the I T Act, dated: 30/03/2021 was issued and served upon the appellant, requiring the appellant to file a return of income within 30 days, for which the appellant was non-complaint during the course of the assessment proceedings. Subsequently, notice u/s 142(1) of the I T Act was also issued in various dates by the AO under principle of natural justice, requesting the appellant to furnish the ITR filed in response to the notice u/s 148 of the I T Act and to explain the sources of the credits in the bank account, but the appellant denied for the submission just by being non-complaint to the notices issued. The appellant become responsive only when show cause notice was issued by the AO, with insufficient submission. The appellant was further given time to submit remaining information which were called for, vide notices u/s 142(1) of the I T Act including show cause notice by the AO during the course of the assessment proceedings. However, the appellant failed to submit the same.

The AO, decided the case by keeping in mind the nature of business of the appellant. As the appellant was engaged in the business of trading of paddy, rice, other bi-product and transport, having credits of Rs. 8,31,02,597/- in the bank account, 5% of total credits, which arrived at Rs.41,55,130/-, was considered as reasonable income earned during the year by the appellant in absence of sufficient submission of the appellant and added back to income of the appellant by the AO.

The AO, had no option but to pass the order u/s 147 r.w.s 144 r.w.s 1448 of the I T Act on the basis of insufficient submission of the appellant and other material available on record.

The appellant has not submitted any substantial details/documents with respect to the subject matters on huge credits and subsequent followed by cash withdrawals,

except written submission with regard to reopening of assessment which was raised under revised grounds of appeal, during the course of appellate proceedings. Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer. Hence the appeal of the appellant is dismissed.

*In the result, the appeal is **dismissed**.*

8. Dissatisfied with the aforesaid decision by the Ld. CIT(A), assessee preferred to carry the matter before the Tribunal, hence the present appeal, which is under consideration before us.

9. At first, we shall be adverting to the additional ground of the appeal raised by the Ld. AR on behalf of the assessee, assailing the issue regarding illegality in framing of assessee u/s 147 r.w.s. 144B in absence of notice u/s 143(2), raising the contention that *dehors* a notice u/s 143(2) the impugned assessment made becomes invalid and liable to be quashed.

10. On this issue, in rebuttal Ld. Sr. DR, have furnished a report from Ld. AO, stating that the issue raised by the Ld. AR that in absence of notice u/s 143(2) the order passed is invalid has been duly acclaimed by the Ld. AO during the assessment stage itself that the assessee has not filed any return in response to notice u/s 148, whereas while submitting the letter

along with copy of original return filed on 09.03.2018, assessee mentioned that *“the copy of return of income filed in response to notice u/s 148 along with computation and financial statement are enclosed herewith”*, however, there was no mention that the copy of return of income filed may be treated as return filed in response to notice u/s 148. Under such circumstances, since there was no return filed in response to notice u/s 148, therefore the Ld. AO was not obliged to issue notice u/s 143(2) of the Act, hence, the assessment made u/s 147 r.w.s. 144B dated 26.03.2022 was a valid assessment. In view of such facts, it is requested that the additional ground raised by the assessee, should not be considered, the same shall be rejected. The copy of report submitted by the Ld. Sr. DR is extracted hereunder for the sake of completeness of facts:



Govt. of India

Ministry of Finance :Deptt. Of Revenue

OFFICE OF THE JT. COMMISSIONER OF INCOME TAX, ITAT**B & C Wing, 5th floor, Central Secretariat Building Sector-24, Atal Nagar, Naya Raipur (CG)****e-mail:raipur.addlctit.itat@incometax.gov.in**

F.No. JCIT (ITAT)/PKA/RPR/2023-24/

Date 17.05.2024

To

The Hon'ble Members,
DB Bench, ITAT, Raipur

Sirs,

Sub: Submission of report of AO in the below mentioned case -reg.

Appellate No.	Name of the assessee	PAN	AY	Listed on
ITA-159/RPR/2024	Pradeep Kumar Agrawal	ACHPA6856B	2016-17	20.05.2024

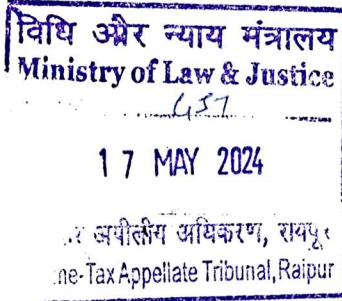
Kindly refer to the above.

2. As per the directions, I am submitting herewith the report of AO in the above mentioned case for kind consideration.

Encl: As Above

Yours Sincerely

(S.P. Sharma)

Joint Commissioner of Income Tax,
ITAT, Raipur



भारत सरकार वित्त मंत्रालय : राजस्व विभाग कार्यालय आयकर अधिकारी, धमतरी आयकर भवन, शंकरदाह मार्ग, हरफतराई, धमतरी (छ.ग.)	Government of India Ministry of Finance: Department of Revenue Office of the Income Tax Officer, Dhamtari Aayakar Bhawan, Shankardah Road, Haraftarai, Dhamtari (C.G.)
Email: dhamtari.ito@incometax.gov.in	

F.No. ITO/DMT/ITAT/PKA/2024-25 / 89

Dated: 16.05.2024

To,

✓ The Joint Commissioner of Income Tax (ITAT)
Atal Nagar, Nawa Raipur

Sir,

Sub.: Providing of case records including submission of report on additional grounds of appeal raised by the assessee before Hon'ble ITAT - Reg.

Kindly refer to the letter in F.No. JCIT(ITAT)/PKA/RPR/2023-24 dated 15.05.2024 on the subject cited above.

2. In this connection, it is submitted that the assessee i.e. Shri Pradeep Kumar Agrawal, PAN: ACHPA6856B for A.Y. 2016-17 has raised following additional ground of appeal before Hon'ble ITAT:-

"1. On the facts and circumstances of the case and in law, assessment made u/s 147 rws 144B dt. 26-03-22 is invalid as ld AO has not issued notice u/s 143(2) after filing letter dt. 8-3-22 enclosing original ROI filed on 9-3-18 showing income of Rs. 49,810 by mentioning that it is in response to the notice issued u/s 148; in absence of a notice u/s 143(2), assessment made u/s 147 rws 144B would be invalid and is liable to be quashed"

As above the assessee stated that the assessment made u/s 147 rws 144B dated 26.03.2022 is invalid as the AO has not issued notice u/s 143(2) after filing letter dated 08.03.2022 enclosing original ROI filed on 09.03.2018 by mentioning that it is in response to the notice issued u/s 148. In this regard, it is submitted that the assessee in his letter dated 08.03.2022 only mentioned that *"The copy of Return of Income filed in response to Notice u/s 148 along with computation and financial statements are enclosed herewith."* The assessee not mentioned that the original return filed on 09.03.2018 may be treated as return against notice u/s 148, he only mentioned that the copy of return of income filed in response to notice u/s 148 is enclosed but actually no any return has been filed by the assessee in response to notice u/s 148.

For the sake of convenience the screenshot of letter dated 08.03.2022 of the assessee is pasted as under:-

To, Dated – 08.03/2022
The Income tax Officer,
Additional/ Joint Deputy/Assistant Commissioner of Income Tax,
National Faceless Assessment Centre
Delhi
Reg.- Pradeep Kumar Agrawal, Ram Janki Mandir, Sadar Bazar, Dhamtari (C.G.) PAN-ACHPA6856B.
Ref.- Notice under sub section (1) of section 142 of the Income Tax Act,
1961.ITBA/AST/F/144(SCN)(F)/2021-22/1040410417(1) for A.Y.2016-17.
R. Sir,

With reference to above, we have been asked to submit before your honour as under:-

1. The assessee is engaged in trading business of paddy, rice, other bi- product and Transporting work.
2. The copy of Return of Income filed in response to Notice u/s 148 along with computation and financial statements are enclosed herewith.
3. The Form 26AS is enclosed herewith.
4. The remaining points are under preparation shall be furnished in next 07 days.

Thanking You.

Yours Faithfully

Pradeep Kumar Agrawal

Sd/-

3. The assessee was issued notice u/s 148 on 30.03.2021 requiring him to deliver within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year but the assessee has not filed return of income against notice u/s 148.

4. The above issue has elaborately been discussed in the assessment order by the AO at para 6 of the assessment order dated 26.03.2022. The para 6 is reproduced as under:-

"6. The assessee filed response on 08.03.2022 and filed Financial statements, statement of computation, Form 26AS. The assessee in his letter dated 08.03.2022 stated that copy of Return of Income filed in response to Notice u/s.148 along with computation and financial statements are enclosed herewith. In this connection, it is clarified that the assessee has not filed Return of

Income in response to Notice u/s.148 of the Act. He never stated the Return already filed may be treated as Return filed in response to Notice u/s.148 of the I.T. Act."

As per the above, the AO clearly mentioned in the order that it is clarified that the assessee has not filed Return of Income in response to notice u/s.148 and he never stated the return already filed may be treated as return filed in response to notice u/s 148. Accordingly, the AO has not issued notice u/s 143(2) of the Act and passed the order u/s 147 rws 144 of the Act.

5. In view of the above, it is clear that the assessee has not filed return of income in the prescribed form for the said Assessment Year in response to notice u/s 148 and therefore the AO has not issued notice u/s 143(2) of the Act. Hence, the assessment made u/s 147 rws 144B dated 26.03.2022 is valid.

6. Further, as evident from the assessment order and order of Id. CIT(A), it is clear that the assessee was allowed sufficient opportunities during assessment/appellate proceeding for submission of documents/evidences relating to transactions made by the assessee during the year under consideration. But the assessee has not tried to submit the relevant information/document/evidences before the AO as well as Id. CIT(A). Further, the assessee has turned up before the Hon'ble ITAT and raised additional ground of appeal which should not be considered.

Therefore, it is kindly requested to not consider the additional ground of appeal raised by the assessee. The case record which extracted from the system is enclosed in 1 vol.

Yours faithfully,

Encl.: As above.


(R.K. Satpute)
Income Tax Officer, Dhamtari

Copy to:

1. The Pr. Commissioner of Income Tax-1, Raipur for kind information.
2. The Joint Commissioner of Income Tax, Range-1, Raipur for kind information.

Income Tax Officer, Dhamtari

11. We have considered the rival submissions, perused the material available on record and the contentions raised by the concerned parties. On perusal of the facts on record, we observed that the assessee was non-responsive at various stages during the assessment proceedings, as well as before the Ld. CIT(A). The first response was submitted by the assessee after almost one year i.e., on 08.03.2022, after the issuance of notice u/s 148 on 30.03.2021. On perusal of letter of assessee dated 08.03.2022, it is apparent that the assessee has mentioned at point no. 2 of the said letter, *“the copy of return of income filed in response to notice u/s 148 along with computation and financial statement are enclosed herewith”*. However, admittedly, there was no return filed by the assessee in response to notice u/s 148. The copy of return enclosed with the letter was the original return u/s 139 dated 09.03.2018 declaring total income of Rs. 49,810/-, but there was no averment by the assessee that such return should be treated as return in response to notice u/s 148. Under such circumstances, as there was no return in response to notice u/s 148 filed by the assessee, it was not obligatory upon the Ld. AO to issue the notice u/s 143(2). In backdrop of such facts and circumstances, we find substance in the assertions of the revenue, accordingly, we reject the additional ground raised by the Ld. AR in the present case. In result, **additional ground no. 1** of the assessee stands **dismissed**.

12. Ground No. 1 & 4: Challenging the validity of reopening assessment of the concluded assessment and the approval granted u/s 151, based on change of opinion.

12.1 At the outset, Ld. AR submitted that the assessment for the AY 2016-17 was completed in the case of assessee and reopening was done based on same material, without any new or fresh information, accordingly, the basis of reopening was 'change of opinion', which is not permissible under the settled principle of law. Ld. AR placed his reliance on various judgments, listed as under:

reopening of concluded assessment made u/s143(3) wherein sales of Rs.8,37,26,439 u/s 44AB has been examined/ accepted by the AO which ultimately includes alleged deposits/ credits into bank of Rs.8,31,02,597; there is no new/ fresh material possessed by the AO; it is merely 'change of opinion' on the self-same material available on record;

1. *Cognizant Technology Solutions India P Ltd (2023) (SC)- SLP dismissed 146 taxmann.com 197*

Cognizant Technology Solutions India P Ltd (2021) (Mad HC)131 taxmann.com 346

16. *Thus, in the absence of new facts coming to the knowledge of the Assessing Officer subsequent to the original assessment proceedings, the reopening could not have been done on the same materials. In fact, when we perused the reasons for reopening, it is evidently clear that all the materials have been culled out from the return of income filed by the assessee and the Annexure thereto. Thus, the impugned reassessment proceedings, having been*

done with the same set of facts which were available during the regular assessment, is to be held to be a clear case of change of opinion.

2. *Atul Ltd (2020) (SC)- SLP dismissed (2020) 119 taxmann.com 287
Atul Ltd (2020) (Guj HC) (2020) 119 taxmann.com 286*
3. *Dell India (P) Ltd (2021) (Kar HC) (FB)(2021) 123 taxmann.com 468/ 432 ITR 212*
4. *Anil Raj Tuli (2022) (Ori HC) (2023) 146 taxmann.com 314*
5. *Shourya Infrastructure (P) Ltd (2023) (Del HC) (2023) 157 taxmann.com 730*
6. *Parmanand Gupta (2023) (Raipur-Trib) (2023) 156 taxmann.com 551*
7. *Murarilal R Mittal (2021) 214 TTJ 665 (Mum-Trib) (TM)
ITANo.7039/Mum/2017*

Jt. CIT has not cared that reopening based on self same material available on record & there is no fresh/ new information or material brought on record after concluding assessment made u/s143(3) dt.8-12-18; Jt. CIT has also not cared/ not pointed out the mistake of the AO in Proposal Form u/s151(2) i.e., incorrect issue of cash withdrawal of Rs.4,67,78,900; while in the reasons recorded, it is Rs.8,31,02,597 on the different issue of 'deposits/ credits into bank'; he has not even cared that the case comes to cls.(c) of Expl.2 to sect47 which requires certain conditions under (i), (ii), (iii) & (iv) which has to be fulfilled before granting such statutory sanction by such high ranking officer, it is judicial exercise,- rather, he has granted on presumption of cls.(b) which is applicable for where no assessment has been made, which is not applicable to the assessee; approval granted u/s151(2) is without application of mind by the Jt.CIT in a mechanical manner without verifying the facts/ issue involved in the case; in absence of a valid approval granted u/s151(2) by Jt. CIT, which is sine qua non for a valid reopening of the case, reopening u/s148/147 would be invalid.

18. Kalpana Shantilal Haria (2017) (Born HC) (2017) WPNo.3063 of 2017

19. Kartik Sureshchandra Gandhi (2023) (Born HC) (2023) 154 taxmann.com 193

20. Ram Nebhnani Huf (2023) (Born HC) (2023) 7 NYPCTR 1660

21. Shourya Infrastructure (P) Ltd (2023) (Del HC) (2023) 157 taxmann.com 730

12.2 On this issue, Ld. Sr. DR furnished a report from Ld. AO dated 27.09.2024, the same is culled out as under:

DOH = 30/09/24



Government of India
Ministry of Finance: Department of Revenue
CENTRAL BOARD OF DIRECT TAXES
OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX (ITAT), Raipur (C.G.)
F.No. JCIT (ITAT)/RPR/Clarification-PKA/2024-25/ Date: 27.09.2024

To

Hon'ble Members,
ITAT, Raipur.

Respected Sir(s),

Subject: Clarification sought by Hon'ble Member, ITAT in the case Shri Pradeep Kumar Agrawal of PAN: ACHPA6856B, ITA 157 & 159/RPR/2024 for AY-2014-15 & 2016-17- reg-

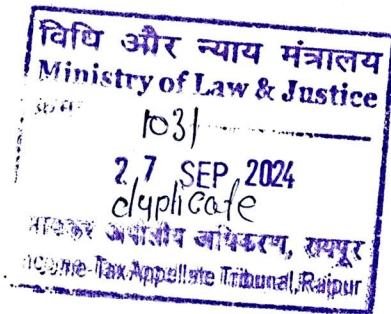
Kindly refer to the above.

2. As directed I am submitting the clarification received from AO for your kind perusal and kind consideration.

Yours sincerely,

(Priyanka Patel)
Joint Commissioner of Income Tax,
ITAT, Raipur

Encl: as above.





भारत सरकार वित्त मंत्रालय : राजस्व विभाग कार्यालय आयकर अधिकारी, धमतरी आयकर भवन, भांकरदाह मार्ग, हरफतराई, धमतरी (छ.ग.)	Government of India Ministry of Finance: Department of Revenue Office of the Income Tax Officer, Dhamtari Aayakar Bhawan, Shankardah Road, Haraftarai, Dhamtari (C.G.)
Email: dhamtari.ito@incometax.gov.in	

F.No./ITO/Dhamtari/ITAT-PKA/2024-25/

Dated: 27.09.2024

To

The Joint Commissioner of Income Tax
ITAT, Raipur.

Madam,

Sub.: Production of case records in case of Shri Pradeep Kumar Agrawal for A.Y. 2014-15 & 2016-17 - Regarding.

Kindly refer to your email dated 24.09.2024 on the above subject.

2. In this connection, the required details/documents are as under:-
- (i) The information received from the ITO Investigation, Raipur based upon which reassessment was carried out for AY 2013-14 to 2017-18 is enclosed herewith.
 - (ii) The assessment u/s 143(3) of the Act completed only for A.Y. 2014-15 & 2016-17 and the case record as per details tabulated below are enclosed herewith:-

Sl. No.	Name of the assessee and PAN	A.Y.	No. of pages
1.	Pradeep Kumar Agrawal, PAN-ACHPA6856B	2014-15	Note-sheet Page 1 to 4 Correspondence – Page 1 to 144
2.	Pradeep Kumar Agrawal, PAN-ACHPA6856B	2016-17	Note-sheet Page 1 to 2 Correspondence – Page 1 to 113

Encl.: As above.

Yours faithfully,

(Alok Ranjan)

Income Tax Officer, Dhamtari

Copy to the Joint Commissioner of Income Tax, Range-1, Raipur

Income Tax Officer, Dhamtari



Office of the
Income Tax Officer (Investigation)
Central Revenue Building, Civil Lines, Raipur (C.G.)

F.No.ITO(Inv.)/RPR/STR/10039600/2020-21/

Date: 10.03.2021

To

The Jurisdictional Assessing Officer

Sir,

Sub: Suspicious Transaction Report in the case of M/s Narayan Industries, Prop. Shri Pradeep Kumar Agrawal, H. No. 19, Ram Janki Mandir, Sadar Bazar, Dhamtari- PAN: ACHPA6856B- Regarding-

Kindly refer to the above.

Information provided about the subject that during the period from February 2013 to July 2013, he received total credits aggregating to Rs.3.50 crores which mainly includes RTGS in his bank account maintained at HDFC Bank, having account number 07882560001154. The credits were followed by cash withdrawal.

The bank statement of the subject maintained at HDFC Bank, having account number 07882560001154 obtained. The subject maintains other accounts. These bank statements have also been obtained. The deposits found in the bank accounts of the subject for different financial years and gross receipts declared by the subject in his Income tax returns for various years are tabulated below:-

F.Y.	2012-13	2013-14	2014-15	2015-16	2016-17
A.Y.	2013-14	2014-15	2015-16	2016-17	2017-18
HDFC Bank A/c No. 07882560001154	3,97,21,906	2,35,10,254	---	---	---
Dena Bank A/c No.27213031547	---	5,62,27,698	8,03,84,491	2,84,06,761	4,81,40,257
Bank of Baroda A/c 762001011001721	---	6,47,000	3,71,500	3,39,000	2,20,000

Bank of India A/c No. 936020110000178	---	---	---	3,43,83,979	9,35,000
United Bank of India A/c 1549050000116 (Rama Associates)	3,00,000	81,26,150	---	1,58,12,716	25,78,000
Bank of India A/c No. 936010310000051	8,98,170	16,07,000	1,01,95,682	41,60,141	76,65,922
Total receipts	4,09,20,076	9,01,18,102	9,19,51,673	8,31,02,597	5,95,39,179
Gross receipts as per the ITR	9,79,61,190	10,02,02,884	10,15,80,027	8,37,26,439	9,62,66,624

The cash withdrawal made from the above accounts and cash balance declared by the subject in his returns of income for different assessment years are tabulated below:-

F.Y.	2012-13	2013-14	2014-15	2015-16	2016-17
A.Y.	2013-14	2014-15	2015-16	2016-17	2017-18
HDFC Bank A/c No. 07882560001154	3,96,41,400	2,33,36,840	---	---	---
Dena Bank A/c No. 27213031547	---	1,52,65,000	3,59,78,500	1,30,18,000	1,79,27,200
Bank of Baroda A/c 762001011001721	---	---	---	2,65,000	6,000
Bank of India A/c No. 936020110000178	---	---	---	1,87,55,900	50,000
United Bank of India A/c 1549050000116 (Rama Associates)	3,05,000	37,29,000	---	1,47,40,000	8,84,000
Bank of India A/c No. 936010310000051	2,49,000	8,90,000	---	---	---
Total Cash withdrawal	4,01,95,400	4,32,20,840	3,59,78,500	4,67,78,900	1,88,67,200

A.Y.	2012-13	2013-14	2014-15	2015-16	2016-17
cash in hand as per return of income	1,21,775	12,58,369	8,23,256	6,12,475	13,93,626

Shri Pradeep Kumar Agrawal is a rice Miller. He is proprietor of M/s Narayan Industries and M/s Rama Associates. Summons issued to the subject to produce cash book, bank book in view of the huge cash withdrawal found to be made from the above bank accounts but the subject failed to produce the same. Again summons issued on 17.01.2020 and 03.11.2020 but the same remain unattended.

Since the subject failed to produce cash book and other information sought vide summons issued on different dates, the cash withdrawal made by the subject from his bank accounts in the above assessment years remain unexplained. Moreover, the cash in hand declared by the subject in his returns of income, from A.Y.2012-13 to A.Y.2016-17 does not commensurate with the cash withdrawal made by him during the A.Y.2013-14 to A.Y.2017-18. Therefore, you are requested to take suitable action u/s 148 of the Income Tax Act, 1961 for the unexplained expenditure made by the subject as tabulated below:-

A.Y.	2013-14	2014-15	2015-16	2016-17	2017-18
Unexplained expenditure	4,01,95,400	4,32,20,840	3,59,78,500	4,67,78,900	1,88,67,200

Yours faithfully



(N. Ravi Shankar)
Income Tax Officer (Inv.), Raipur

12.3 We have considered the rival submissions, perused the material available on record and judicial pronouncements relied upon.

12.4 In the present case, the original assessment u/s 143(3) had come to be completed on 08.12.2018 and a brief assessment order was passed by the Ld. AO by accepting the return income of the assessee. We further have looked into the notice u/s 142(1) issued by the Ld. AO and replies of the assessee before the Ld. AO during the original assessment proceedings, from where it is not transpired that the issue regarding large cash deposits and withdrawals are being enquired into. As certain information is brought to the knowledge of the Ld. AO by the investigation

wing by their reported on 10.03.2021 (extracted supra), wherein certain suspicious transactions were reported during the AY 2013-14 up to 2017-18. As such this new information came to the knowledge of Assessing Officer much after completion of the assessment u/s 143(3) dated 08.12.2018, such information constitutes fresh material, on which the Ld. AO needs to be acted in accordance with the mandate of law, therefore, the reopening was done on the basis of new material brought on record by the Investigation Wing of the department. Further, in absence of any investigation, examination or inference by the Ld. AO in the original assessment *qua* the basis of reopening, the action of Ld. AO cannot be held illegal as merely on the basis of 'change of opinion'. As it is held that the formation of reasons to believe by the Ld. AO are correct and in accordance with the mandate of law, the approval granted u/s 151(2) cannot be held as invalid for the reason that there was no the application of mind by the sanctioning authority. We, thus, unable to persuade and concur with the contention raised by the Ld. AR, **consequently, ground no. 1 & 4 of the present appeal of the assessee has been rendered as dismissed.**

13. Ground no. 2 & 3: Addition on an independent issue which is not part of the reasons recorded or there is no live length/ nexus between the information of deposits into bank and the formation of belief. Therefore, the jurisdiction assumed u/s 147 would be invalid.

13.1 Ld. AR on the aforesaid issue submitted that the reopening was done based on the issue of “unverifiable/ unexplained deposits / credit into bank”, whereas the additions are made on the issue of undisclosed business income. It was the submission that there was no addition on the very issue, which was the basis for reopening, the addition was made on an independent issue of business income which is not the part of reasons recorded, therefore, the same is not permissible in the eyes of law. Ld. AR placed his reliance on the judgment in the Rajasthan High Court in the case of Ramsingh (2008) (Raj), Prosperous Buildcon Pvt. Ltd. (2023) (Delhi HC).

13.2 Ld. AR further submitted that there is no live link / nexus between the information of deposit into bank and formation of belief alleging escaped income of Rs.8,31,02,597/-. It is the submission that the receipt in bank are from debtors against accounted sales, it is only reason to suspect merely to verify the deposit / RTGS credit into bank, therefore,

there is no live link between the information and the formation of belief which is precondition, *sine qua non* for assuming jurisdiction u/s 147. Ld. AR further argued that the Ld. AO has only referred to the information but there was clear absence of formation of Bonafide belief on his part that the income had escaped assessment, there was no application of mind by the Ld. AO *qua* the information before arriving at the conclusion that income has escaped assessment. Ld. AR placed his reliance on following judgments:

deposits/ RTGS credits into bank, which is related to receipts from debtors against accounted sales; it is 'reason to suspect' merely for verifying the deposits/ RTGS credits into bank' & 'formation of believe' for alleged escaped income of Rs.8,31,02,597; in absence of pre-requisite/ pre-condition which is sine qua non for assuming jurisdiction u/s147; it is for mere verification in absence of any tangible material in his possession; he made conclusion that it is unexplained, based on no material; on his possession; an AO at the stage of reopening of a concluded assessment u/s147 is not required to conclusively prove escapement of income, but the statutory obligation so cast upon him i.e., formation of bona-fide belief on the basis of material available before him that the income chargeable to tax had escaped assessment cannot be lost sight of;

8. *Well Trans Logistics India (P) Ltd (2024) (Del HC) (2024) 166 taxmann.com 72 Lakhmani Mewal Das (1976) (SC)-relied on Meenakshi Overseas (P) Ltd (2017) (Del HC)-relied on Rajesh Jhaveri Stockbrokers (2007) (SC)-relied on Raymond Woolen Mills (1999) (SC)- distinguished*

20. *There are large number of cases explaining the legal requirement that is to be satisfied by the Assessing Officer for valid assumption of jurisdiction under Section 147 of the Act to reopen the assessment. The power to reopen the assessment under Section 147 is a potent power and cannot be exercised lightly. Said power cannot be invoked casually or mechanically. Formation of belief by the Assessing Officer that income has escaped assessment is the heart of the provision. The reasons recorded must be based*

on some tangible material and the same should be evident from the reading of the reasons and this constitutes the mandatory requirement of Section 147 of the Act.

24. *We may note that the Assessing Officer after reproducing the information received from DDIT, (Investigation) Unit, drew the conclusion of escapement of income. In the case of Asst. CIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 291 IR 500 (SC), the Supreme Court had explained that expression "reason to believe" would mean justification to know or suppose that income had escaped assessment. While, it is correct that it is not necessary for the Assessing Officer to finally ascertain whether income had escaped assessment, nonetheless, the Assessing Officer must have sufficient cause to believe that it has.*
 25. *In the present case, as may be seen, there is no "close nexus" or "live link" between tangible material and the reason to believe that income has escaped assessment. The information received from the Investigating Unit of the Revenue cannot be the sole basis for forming a belief that income of the assessee has escaped assessment. Having received information from the Investigating Wing, it was incumbent upon the Assessing Officer to take further steps, make further enquiries and garner further material and if such material indicate that the income of the assessee has escaped assessment and then form a belief that the income of the assessee has escaped assessment.*
 26. *Clearly, in this case, the Assessing Officer has not acquired any material to form such belief. There is not even a line of reason which may justify the formation of the belief. Consequently, we are satisfied that reopening of assessment for the assessment year in question by the Assessing Officer does not satisfy the requirement of law in terms of Section 147 & 148 of the Act.*
9. *Modern Living Solutions (P) Ltd (2024) (Born HC) (2024) 164 taxmann.com 763
Raymond Woolen Mills (1999) (SC)-distinguished*
 10. *Shri Dnyaneshwar Maharaj Sansthan (2024) (Born HC)2024) 8 NYPCTR 317*
 11. *Pasari Casting and Rolling Mills PL (2024) (Jharkh HC) (2024) 159 taxmann.com 675*
 12. *Digi I Electronics (P) Ltd (2023) (Born HC)*

(2023) 148 taxmann.com 184

13. *Parmanand Gupta (2023) (Raipur-Trib) (2023) 156 taxmann.com 551*
14. *Paresh Babubhai Bahalani (2023) (Guj HC) (2023) 156 taxmann.com 517 I
Raymond Woolen Mills (19fi9) (SWC)-distinguished*
15. *Rajhans Processors (2023) (Raj HC)(2023) 149 taxmann.com 29;
Raymond Woolen Mills (19) (SC)-distinguished
Touchstone Holdings (P) Ltd (2022) (Del HC)-distinguished*
16. *Touchstone Holdings (P) Ltd (2022) (Del HC) (2022) 142 taxmann.com 336
Raymond Woolen Mills.(J 99) (SC)- relied*
17. *Jugal Kishore Paliwal (2022) (CG HC) (2022) 140 taxmann.com 336
Raymond Woolen Mills (1999) (SC)- relied*

13.3 Per contra, Ld. Sr. DR submitted that the addition was made on the basis of huge transactions of deposits and cash withdrawals in the bank account of the assessee, which are the basis forming the reason to believe for reopening of assessment therefore, it cannot be said that the addition was made on a new issue as the estimation of income was on the basis of such credit entries in the bank of assessee only. Ld. Sr. DR further submitted that during the assessment proceedings and also before the investigation wing of the department, the assessee was non-compliant therefore, there was a on failure on the part of assessee to explain such transactions, Ld. AO had rightly made the addition by estimating the income of assessee at 5% of such credits.

13.4 We have considered the aforesaid contentions of both the parties, perused the material available on record and the case laws relied upon by the assessee. As the addition was made based on credit entries in the bank account of the assessee, which are the suspicious transactions reported by the Income Tax Officer (Inv.), Raipur. The Ld. AO had requested the assessee time and again to furnish necessary information and explanation *qua* these transactions, however, the assessee failed to substantiate the same under such circumstances, a plausible view considering the assessee's nature of business was taken by the LD. AO by estimating the income of the assessee, therefore, it cannot be held that the addition was made on an independent issue alien to the very basis for formation of belief or there was no live link between the information and the formation of belief, while recording the reasons for reopening. In such circumstances, we do not find any substance in the contention raised by the Ld. AR, thus, **Ground No. 2 & 3 of the appeal of the assessee are rejected.**

14. Ground No. 5: Regarding sustaining the addition of Rs. 41,55,130/- on adhoc basis on 5% of deposits / RTGS credit into bank account, which relates to receipt from debtors against accounted / disclosed sale in the books of assessee.

14.1 On merits, Ld. AR submitted that the assessment u/s 147 r.w.s. 144 r.w.s. 144B was completed by estimating the income of the assessee at 5% of deposits / RTGS credits in the bank account of the assessee to the tune of Rs.8,31,02,597/- without any reasonable basis. It was the submission that in assessee's own case for AY 2014-15 which was assessed u/s 143(3) on 29.11.2016 the GP was estimated of 3% of the total turnover of Rs.10,02,02,884/- against the GP rate of Rs. 2.64% shown by the assessee. It was the alternate submission by Ld. AR that if the reopening is held to be validly opened then also the addition cannot be made on that count because the average GP of the assessee as per history in assessee's own case was less than the GP already declared by the assessee in the relevant year. To substantiate such facts Ld. AR furnished before us a chart showing financial information of the assessee for AYs 2013-14 to 2017-18, the same is culled out as under:

Pradeep Kumar Agrawal
16-171.4. the information received from ITO(Inv.), Raipur dt.10-3-21, is as under

	AY13-14	AY14-15	AY15-16	AY16-17	AY17-18
Gross receipts as per ITR -as per information of ITO (Inv.)	9,79,61,190	10,02,02,884	10,15,80,027	8,37,26,439	9,62,66,624
Total credits/ deposits -as per information of ITO (Inv.)	4,09,20,076	9,01,18,102	9,19,51,673	8,31,02,597	5,95,39,179
Total cash withdrawals -as per information of ITO (Inv.)	4,01,95,400	4,32,20,840	3,59,78,500	4,67,78,900	1,88,67,200
alleged unexplained expenditure -as per information of ITO (Inv.) (it is cash withdrawals)	4,01,95,400	4,32,20,840	3,59,78,500	4,67,78,900	1,88,67,200
Reasons recorded escaped income	4,09,20,076	9,01,18,102	3,59,78,500	8,31,02,597	5,95,39,179
Approval granted escaped income	4,01,95,400 (mistake of amount & issue)	9,01,18,102	3,59,78,500	4,67,78,900 (mistake of amount & issue; and also clause (b) of Expl.- 2 to sec147 in place of clause (c) of Expl.-2 to sec147	1,88,67,200 (mistake of amount & issue)
Approval granted u/s151 on	30-3-21	30-3-21	30-3-21	30-3-21	30-3-21
Notice issued u/s148 on	30-3-21	30-3-21	30-3-21	30-3-21	30-3-21
Sales/ turnover (as per audited books of account)	9,44,37,564 (+) 34,09,626 (+) 1,14,000 = 9,79,61,190 (tallied)	10,01,85,974 (+) 16,910 = 10,02,02,884 (tallied)	10,14,26,743 (+) 1,53,284 = 10,15,80,027 (tallied)	7,49,20,509 (+) 88,05,930 = 8,37,26,439 (tallied)	6,64,33,017 (+) 2,98,33,606 = 9,62,66,624 (tallied)
Total credits/ deposits (as per audited books)	4,39,85,026	8,97,79,218	9,03,93,190	8,47,04,749	6,32,63,989
Total cash withdrawals (as per audited books)	4,16,61,400	4,34,08,840	4,06,55,020	4,91,78,100	2,05,51,722
GP shown (Rs.)	12,58,569	26,46,645	34,29,996	25,63,351	28,90,292
GP shown (%)	1.33%	2.64%	3.38%	3.42%	4.35%
Assessment made earlier	not assessed earlier	u/s143(3) dt.29-11-16; GP estimated at 3% of the turnover; against the	not assessed earlier	u/s143(3) dt.8-12-18; GP at 3.42% accepted by the revenue;	not assessed earlier

14.2 Ld. AR submitted that, even if the GP is estimated at 5%, the same needs to be reduced to the extent, the same has been declared by the assessee in its return of income. For AY 2016-17 such GP shown by the assessee was Rs.25,63,351/- and the GP worked out by Ld. AO was Rs. Rs. 41,55,130/-, therefore, the addition was to be made only for the difference i.e., for Rs. 15,91,779/-

14.3 Based on financial information extracted (supra), it was the submission that the addition of 5% made by the Ld. AO, cannot exceed past 3 years average Gross Profit % (GP%) of the assessee, which was also accepted by the revenue in scrutiny assessment, wherever applicable. Such contention is raised by the Ld. AR based on various judgments by the Hon'ble High Courts and the coordinate benches Tribunals including the jurisdictional bench of Tribunal at Raipur. Ld. AR placed his reliance on the following case laws:

on merits- addition cannot be made/sustained, since GP rate shown is better than the income shown/ assessed by the revenue in scrutiny assessment made u/s143(3) in past years in assessee's own case

22. *Gupta KN construction Co (2015) (Raj HC) (2015) 371 ITR 325*

23. *Jaimal Ram Kasturi (2013) (Raj HC) (2013) 33 taxmann.com 15 / 2016 Taxmann 226*

9. *After having heard the learned counsel for the appellant and having perused the material placed on record, we are unable to find any infirmity in the order passed by the Tribunal so as to call for interference in appeal; and we are of the view that the questions as formulated deserve to be answered against the Revenue.*

10. *In the present case, the AO while passing the assessment order under Section 143(3) read with Section 254 of the Act came to the conclusion that though all the purchases of country liquor were from Ganganagar Sugar Mills Limited, a Government undertaking, and the same were fully vouched but, in the absence of a primary record like sale vouchers, the assessee had shown sales in the manner suitable to it; and, while holding that the books of account maintained by the assessee were not reliable, applied provisions of Section 145(2) of the Act and rejected the same. The AO then held that the profit of the country liquor business of the assessee had to be determined in comparison with other analogous assessee engaged in the same line of business because considering the stiff competition for acquiring monopoly rights, it could be reasonably presumed that the assesseees were likely to have profit comparable with each other. The AO then compared the case of the assessee with a contractor of the adjoining area, M/s Malu Khan & Party, Bikaner, who had shown the net profit at 22.70% for the period in question; and assessed the assessee by taking 20.5% net profit instead of 19.13% as declared by him.*

11. *The CIT(A), after taking into consideration the figures relating to assessee's own case and considering the submissions of the assessee that the case of M/s Malu Khan & Party, Bikaner was not comparable or identical as the said M/s Malu Khan & Party operated in an area which was 250 kms. away from that of the operational area of the appellant, came to the conclusion that the AO was not justified in making addition by comparing the results of the assessee with those of M/s Malu Khan & Party, Bikaner, as the facts of the two case were altogether different. The CIT(A) thus, held that the addition made by the AO was excessive and unreasonable; and the*

profit declared by the appellant was quite fair and reasonable; and hence, reduced the addition by Rs.17,00,000/-.

12. In Ram Prakash v. CIT [1983] 15 Taxman 533, the Hon'ble Allahabad High Court, while considering a similar issue, upheld the finding of the Tribunal that the applicant's profits could properly be worked out in the light of its assessment in earlier years; and held thus:

"3. The learned counsel for the assessee contends that the Tribunal committed a mistake of law in ignoring the exemplars of country liquor dealers of Lucknow, cited by him and in taking irrelevant material into consideration by relying upon the exemplar of a country liquor dealer of Allahabad district. This, according to him, vitiates the finding recorded by the Tribunal.

4. We find no merit in the aforementioned submission made by the learned counsel. A perusal of the order of the Tribunal shows that what it in effect finds is that neither the exemplars pertaining to the country liquor dealer of Allahabad nor those which concerned other country liquor dealers of Lucknow, could, in the circumstances of the case, provide a proper basis for assessing the profits earned by the petitioner. Account to it, applicant's profits could properly be worked out in the light of its assessment in earlier years. In this view of the matter, no question of the Tribunal either ignoring any relevant material or its relying upon an irrelevant material arises. The findings recorded by the Tribunal in this regard are findings of fact based on appraisal of material on record and they do not appear to be vitiated by any error of law."

13. In CIT v. Saddruddin Hussain [2003] 263 ITR 677/[2002]120 Taxman 798, this Court while considering a case of another liquor contractor upheld the order passed by the Tribunal which relied on the assessee's own case in the immediate preceding year and the appeal filed by the Revenue was dismissed.

14. The findings of the Tribunal reproduced herein-above make it clear that the Tribunal has examined the issue involved in its correct prospective and has assigned cogent reasons for not approving the order passed by the AO. The AO was obviously in error in taking the case of M/s Malu Khan & Party as a comparable one for the

reasons given by CIT(A) and in the face of assessee's available and consistent past history.

15. In our view, ultimately, the matter had been of putting a estimate on the profit of the assessee while recording the findings on facts. The CIT(A) has given cogent reason for not endorsing the approach of the AO in making assessment with reference to the case of another assessee after finding it to be not a directly comparable case and hence, not a safe guide more particularly, when assessee's past history was available and there was no material difference in the facts pertaining to the relevant assessment year and the past history year. The CIT(A), even while accepting past history as the relevant basis for assessment, proceeded to retain a part of the addition to the tune of Rs.10,65,928/- without cogent and sufficient reason therefor. The Tribunal, therefore, while endorsing the basis adopted by the CIT(A), has found no reason to sustain any addition and hence, deleted the addition altogether.

16. In the totality of circumstances, the Tribunal cannot be faulted in accepting the profit rate as declared by the assessee while not approving the rate as applied by the AO. The order as passed by the Tribunal does not appear suffering from any perversity or from the application of any wrong principle so as to call for interference.

- 24. DM Brothers (2010) (All HC) (2010) 44 DTR 13*
- 25. Pawan Kumar (2009) (P & H HC) (2009) 316 ITR 324*
- 26. Inani Marbles (P) Ltd (2008) (Raj HC) (2008) 175 Taxman 56/316 ITR 125*
- 27. Bhawan V A Path Nirman (Bohra) & Co (2002) (Raj HC) (2003) 126 Taxman 210*
- 28. Gotan Lime Khanij Udhyog (2001) (Raj HC) (2002) Taxman 779/256 ITR 243*
- 29. Poornachand Agarwal (2021) (Raipur Trib) (2021) ITA No. 182/RPR/2017*
- 30. Mohan Sukumaran (2020) (Raipur-Trib) (2020) 34 NYPTTJ 942; ITA no. 62/RPR/2013*

31. *NH Construction (P) Ltd (2022) (Chd-Trib) (2022) 36 YPTTJ 863; ITA No. 164/Chd/2020*
32. *JSR Construction (P) Ltd (2016) (Agra-Trib) (2012) 1 NYPTTJ 126*
33. *Udyaveer Singh Bhadoria (2016) (Agra- Trib) (2012) 1 NYPTTJ 126*
34. *Id Mohd Nizamuddin (2014) (Jai- Trib) (2014) 49 taxmann.com 60;*
35. *Vishnu Prasad Maharam (2014) (Jai- Trib) (2014) 50 taxmann.com 90; ITA No. 867/Jp/2013*

14.3.1 Ld. AR further place his specific reliance on the following decisions of the ITAT Raipur in ***ITA 30/RPR/2020 for AY 2013-14, Vivek Nathani vs ACIT, Circle 4(1), Raipur (2024) 168 taxmann.com 79, dated 17.10.2022***

8. *Although, we find substance in the observations of the A.O that had prompted him to reject the trading results of the assessee, but are accept the manner in which he had determined the gross profit addition on the basis of an unsubstantiated; or in fact an ad-hoc application of gross profit rate of 1.98% of cigarette and tobacco products and 3.96% of other FMCG products. In our considered view, as stated by the Ld. AR and, rightly so, there was no justification on the part of the A.O to have adopted the aforesaid basis which as the same was not supported by any concrete basis. On the contrary, in our considered view the estimation of the assessee's income for the year under consideration could have been safely done by taking cognizance of its disclosed gross profit rates for the immediately three preceding years [out of which two years had been subjected to scrutiny assessment u/s. 143(3) of the Act], as well as that of the immediately succeeding year which too have been subjected to a scrutiny assessment u/s.143(3) of the Act, as under:-*

	31-3-10 AY10-11	31-3-11 AY11-12	31-03-12 A.Y.12-13	31-03-13 AY13-14	31-3-14 AY14-15
Sales of cigarette & tobacco	3,12,33,449	32,57,36,624	46,88,63,846	52,95,15,913	59,28,42,427
Sales of other products	6,64,57,045	6,43,70,340	8,27,54,937	9,97,38,393	1,08,8,16,426
-Discount	(4,09,223)	7,01,740	12,40,700	13,47,913	19,49,102
Total sales	37,83,81,271	38,94,05,225	55,03,78,083	62,79,06,393	69,97,09,751
Gross profit	58,97,879	60,02,818	83,43,446	96,11,100	1,06,75,021
GP rate %	1.56%	1.54%	1.52%	1.53%	1.53%
	Accepted by revenue in scrutiny assessment u/s.143(3) dt.19-12-12	Accepted by revenue	Accepted by revenue in scrutiny assessment u/s.143(3) dt.20-2-15	Under consideration	Accepted by revenue in scrutiny assessment u/s.143(3) dt.15-11-16

We, thus, on the basis of the aforesaid facts are of the considered view that the gross profit rate of the assessee could have safely been taken by the A.O at 1.54% i.e. average gross profit rate of the last three years i.e. A.Y. 2010-11 to 2012-13. Accordingly, in terms of our aforesaid observations the A.O is herein directed to restrict the addition by adopting the overall gross profit rate of the assessee @1.54% of its total sales of Rs.62,79,06,393/-. Thus, the ground of appeal No.1 is partly allowed in terms of our aforesaid observations.

14.4 Ld. Sr. DR on the other hand vehemently supported the orders of revenue authorities and have requested to uphold the same.

14.5 After a thoughtful consideration, to the contentions raised by the petitioner and the respondent, perusal of the material available on

record and case laws relied upon by the Ld. AR. We find substance in the contention raised by the Ld. AR, referring to various judgments that the best ratio for estimation of profit / income of an assessee would be the rate of GP of assessee's own case to adopt the average GP rate from the preceding 3 years, which is not disputed by the revenue while completing the assessment of the assessee for the years which are picked up for scrutiny assessment, whereas in present case the rate of 5% adopted by the Ld. AO was without any basis. Under such factual matrix of the present case, as the credits in the bank account of the assessee, without any iota of doubt are treated as business receipts of the assessee, which are less than the turnover shown by the assessee in the respective assessment years, therefore, the contention of assessee that the receipts pertain to regular and accounted sales of the assessee as well as from the debtors cannot be distrusted without any cogent material contradicting the same, found to be acceptable. However, the assessee failed to furnish any explanation *qua* the credit entries in his bank accounts, that whether such bank doubtful transactions are duly accounted for in the books of the assessee and all such entries reflects assessee's explained / accounted turnover / sales or not. Although the bank accounts are available with the Ld. AO during the reopening assessment, but Ld. AO was unable to decide the nature of transactions in absence of any explanation by the assessee,

therefore, the impugned transactions are subject matter of verification. Before us, Ld. AR has furnished copies of bank statements maintained with various banks having large entries of transactions and as observed all such transactions are subject to verification with the audited accounts of the assessee, therefore, in all fairness, this issue needs to be restored to the files of Ld. AO for examination, verification and re-adjudication based on material on record and if Ld. AO found it correct that the credit entries in the bank account are duly incorporated in the books of assessee as recorded / accounted transactions and profit generated from such transactions is offered for taxation than there was no reason for estimation, however, in case in a different situation, if the estimation has to be adopted the same should be in the range of average profits of the assessee in preceding 3 years to the relevant AY, but in any case it should not be less than the returned income declared by the assessee.

14.6 Regarding, computational errors as pointed out by the Ld. AR, since the same are consequential in nature, and the matter is restored back to the file of Ld. AO, the same is directed to be considered while framing the consequential assessment order and computing the assessable income, therein.

14.7 Needless to say, reasonable opportunity of being heard shall be provided to the assessee in the set aside assessment proceedings.

14.8 In result, **ITA No. 159/RPR/2024** for the AY 2016-17 is **partly allowed** for statistical purposes.

ITA No. 158/RPR/2024 For AY 2015-16:

15. ITA No. **158/RPR/2024** For AY **2015-16** having identical issues, except the addition in this year was made for entire deposits of Rs.3,59,78,500/-, whereas in other years the addition was made at 5% of the total credits in the bank account, it is to be mention that there should be consistency in the approach of Ld. AO while dealing with the transactions of similar nature undertaken by the assessee may be in different years, thus, the credit entries representing bank deposit in AY 2015-16, should also been treated at par, as they are considered for the AY 2016-17 and 2017-18. Further, for AY 2015-16 also the entries in bank account are subject to verification to examine that the same represents accounted sales of the assessee and the same needs to be added *qua* the

estimated income of the assessee as has been directed by us for AY 2016-17 and 2017-18, by adopting the rate of GP in terms of various judgments relied upon, on a fair basis i.e., the average GP rate of the assessee in preceding 3 years, however, if the income so computed falls below the declared income of the assessee, then returned / declared income of the assessee shall be the assessed income of the assessee.

15.1 The issues, therefore, in ITA No. **158/RPR/2024** for AY **2015-16**, shall be disposed of in terms of our aforesaid observations in conjoint reading with the observations and decision in ITA no. **159/RPR/2024 for the AY 2016-17**, wherein our findings shall apply *mutatis mutandis* to the grounds of appeal in ITA No. **158/RPR/2024**. Resultantly, ITA No. **158/RPR/2024** is **partly allowed** for statistical purposes.

16. ITA No. **160/RPR/2024** for **AY 2017-18**, having identical issues, which are disposed of in terms of our observations and decision in ITA no. **159/RPR/2024** for the **AY 2016-17**, wherein our findings shall apply *mutatis mutandis* to the grounds of appeal in ITA No. **160/RPR/2024**. Resultantly, the same is **partly allowed** for statistical purposes.

17. In combined result, **ITA No. 158, 159 & 160/RPR/2024** of the assessee for the AY 2015-16, 2016-17 & 2017-18 respectively, are **partly allowed** for statistical purposes.

Order pronounced in the open court on 16/01/2025.

Sd/-
(RAVISH SOOD)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 16/01/2025
Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- Pradeep Kumar Agrawal, Dhamtari
2. प्रत्यर्थी / The Respondent- ITO, Ward- Dhamtari
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur