

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 No: 430/RPR/2024

(निर्धारण वर्ष Assessment Year: 2015-16)

Deputy Commissioner of Income Tax, Aayakar Bhawan, Vyapar Vihar, Bilaspur, 495001	v s	M/s Mayura Saria Pvt. Ltd., Ambikapur, Surguja-497001, C.G.
PAN: AAFCM0700P		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri G. S. Agrawal, CA
राजस्व की ओर से /Revenue by	:	Shri S. L. Anuragi, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	30.01.2025
घोषणा की तारीख/Date of Pronouncement	:	07.02.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the revenue against the order of Commissioner of Income Tax (Appeal), NFAC [in short "Ld. CIT(A)"], dated 05.08.2024, u/s 250 of the Income Tax Act, 1961 for the Assessment Year 2015-16, which in turn arises from the order of Faceless Assessment Unit, Income Tax Department (in short "Ld. AO"), u/s 147 r.w.s. 144B of the Act, dated 30.03.2023.

2. The grounds of appeal raised by the revenue are reads as under:
 1. *"Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in deleting the addition of Rs.3,81,04,820/- made by the AO on account of business income outside the books of accounts?"*
 2. *"Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in holding the decision in favour of assessee and against the revenue, though there is no nexus between the conclusion of the fact and primary fact upon which that conclusion is based ?"*
 3. *"Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in drawing a conclusion which can't be drawn by any reasonable person or authority, on the material and facts placed before it?"*
 4. *The order of the CIT(A) is erroneous both in law and on facts.*
 5. *Any other ground which may be adduced at the time of hearing.*
3. The brief facts of the case extracted from the order of Ld. CIT(A) are as under:

1. *The Appellant is a Private Limited company. Proper books of accounts have been kept and maintained which are audited and there are no adverse comments by the auditors. The Turnover amounted to Rs.4,53,26,397/- for the A.Y. 2015-16, the Return of Income was filed originally on 07/09/2015 showing income at Rs.36,58, 430/-. Thereafter the Ld. AO on the basis of information received from DDIT /ADIT(lvy)-1 Raipur through Insight Portal that search & seizure*

operation u/s 132 of Income Tax Act has taken place in case of M/s. Sky Alloys & Power Pvt. Ltd , Raipur during F.Y. 2014-15 & were found & seized from the residential premises of Shri Ranjeet Kumar Barman, ex accountant of M/s Sky Alloys and Power Pvt. ltd , Shri Chandrasen Mali (Cashier of Sky Alloys and Power Pvt. Ltd) & Shri Siyaram Sahu (Accountant of M/S Sky Alloys and Power Pvt. Ltd) & also some pen drives were found from residential premises of Shri Vikas Agrawal (Director of M/s Sky Alloys and Power Pvt. ltd). The DDIT/ADIT investigation found that M/s Mayura Sariya Pvt. Ltd i.e. appellant had also some out of books transactions with M/S Sky Alloys and Power Pvt. Ltd, wherein the amount mentioned is cash given by appellant to M/S Sky Alloys and Power Pvt. Ltd Rs.3,37,04,820/- and cash received by appellant from MIS Sky Alloys and Power Pvt. Ltd Rs.47,00,000/-. Along with the notice u/s 148A(b) the Ld.AO also enclosed a compilation chart wherein the total of Debit was Rs.43,00,000/- as against the Rs.47,00,000/- mentioned in the above letter and the amount given by the appellant to M/S Sky Alloys and Power Pvt. Ltd was shown at Rs.3,38,04,820/- as against the Rs.3,37,04,820/- in the information received from the Ld. AO. On that basis the proceedings u/s 148A was carried out & without considering the reply submitted by the appellant, Order u/s 148A(d) was passed on 30.03.2022 & also the notice u/s 148 dated 30.03.2022 was issued to the Appellant.

- 2. In response to the notice u/s 148 the appellant filed Return of Income on 21.04.2022 declaring income at Rs.36,58,430/- & u/s 115JB at Rs.28,83,499/-.*
- 3. In reply to notices u/s142(1), the appellant reiterated the submissions made during proceedings u/s 148A(b) and also relied on the supporting filed. It was categorically submitted that in the above referred information received by the AO from DDIT/ADIT, does not give the name of the appellant anywhere but it*

mentions the name Mayura Yogesh therefore the transactions in the pen drive which was not seized from the appellant but from the third party does not pertain, to the appellant. It was also explained that nowhere there is signature of the appellant to show that it pertained to the appellant. The appellant also made specific prayer to provide copy of the statement of the parties on whom the Ld. AO was relying upon and also to give opportunity to examine them but such a prayer was not acceded too. It was also submitted that no inquiry was made by the Ld. AO during proceedings u/s 148A and he has acted upon borrowed opinion. Video Conferencing prayed by the Appellant was also not allowed. It was also explained by the Appellant that very short notice of 1 day was allowed and during which period it was difficult to file the explanation and voluminous supporting on the issues involving collection of various data. The submissions made by the Appellant did not find favor & the Ld. AO arbitrarily & on the basis of the borrowed opinion without having formed his own satisfaction held that Rs.3,81,04,820/- i.e. total of Debit & Credit i.e. Rs.3,38,04,820/- plus Rs.43,00,000/- so called amount paid to Sky Alloys and Power Pvt. Ltd. and so called amount received by Sky Alloys and Power Pvt. Ltd. was business income of the Appellant outside the books of a/c & added to the income.

4. On the basis of aforesaid facts emanating from the order of the Ld. CIT(A), since the addition of Rs.3,81,04,820/- was made by the Ld. AO on account of alleged dubious and out of books transactions carried out by the assessee with M/s Sky Alloys & Power Pvt. Ltd. (SAPPL), which was subjected to Search & Seizure operation u/s 132 on 22.12.2021 and certain information *qua* such transactions are unearthed during the said Search operation. Aggrieved with the aforesaid additions by the Ld. AO assessee

preferred an appeal before the Ld. CIT(A), wherein contentions raised by the assessee against the additions made by the Ld. AO are discussed / deliberated upon and thereby the appeal of assessee is partly allowed with the following observations:

6. Decision:

The appellant in its grounds of appeal assailed the AO in reassessing income u/s 147 r.w.s. 1448 of the Act and assailed that the notice issued u/s 148 of the Act was arbitrary without following the due procedure established by law and Act making it void ab-initio, further the notice was issued under borrowed satisfaction. The appellant further submitted that the reassessment has been made on the basis of statement of one Sri Vikash Agarwal the Director of Sky Alloys and Power Ltd and the material found at his place without providing the opportunity to cross examine him violating the basic principle of natural justice. The appellant further submitted that the AO presumed that some Mayura Yogesh mentioned in the pen drive seized from third party pertains to the appellant Mayura Saria Pvt. Ltd. and further erred in treating 3,81,04,820/- as income of the appellant. The appellant further submitted that the addition was made on the basis of the statement of Shri Vikas Agrawal, whereas Shri Vikas Agrawal nowhere in the statement so provided as part of the Assessment order mentioned the name of the appellant. The appellant further submitted that the AO erred in treating both the debit and credit items in the impugned pen drive i.e. 3,38,04,820/- and 43,00,000/- at par as income of the appellant. The AO had not made any enquiry and established that the name mentioned Mayura Yogesh is related to the assessee Mayura Sariya Pvt. Ltd. The appellant further assailed the

AO in charging interest u/s 234B/C of the Act and initiating the penalty u/s 271(1) (c) of the Act. The appellant further in its submission submitted that information received by the AO from DDIT/ADIT, does not have the name of the appellant rather it mentions the name Mayura Yogesh therefore the transactions in the pen drive which was not seized from the appellant but from the third party does not pertain to the appellant. The appellant further submitted that specific prayer was made to provide copy of the statement of the parties on which was relying and request was also made to give opportunity to examine which was not accorded. Further a Video Conferencing facility was prayed by the appellant which was also not allowed and that very short notice of 1 day was allowed and during which period it was difficult to file the explanation and voluminous supporting on the issues involving collection of various data.

- 6.1** *The AO in the assessment order noted that a search u/s 142 of the Act was conducted in case of Sky Group and certain incriminating documents and a pen drive was found from the residence of the Director of Sky Alloys & Power Pvt. Ltd} in which the consolidated data related to the assessee company's out of books cash transaction were found in form of the excel sheets wherein the cash transaction is purported to have been carried out through one Mayura Yogesh. In his statement Sh. Vikash Aggarwal admitted to the transaction with the assessee company through Mayura Yogesh. The AO in Para 6 of the assessment order has reproduced the data of the excel sheet showing a credit transaction of Rs. 33804820/- and debit transaction of Rs. 4300000/- with one Mayura Yogesh. The AO therefore issued notice u/s 142(1) of the Act wherein the assessee had questioned the veracity of the statement and how Mayura Yogesh can be linked with the assessee company i.e., Mayura Saria Pvt. Ltd. The AO not satisfied with the explanation of the*

assessee rejected the submission of the assessee and proceeded to add the cash transaction as the income of the assessee. The assessee before the AO stated that there was no mention of its name in the statement and that the assessee company had transaction of Rs. 7808442/- with the Sky Alloy and Power Pvt. Ltd. and it had no connection with the cash transaction as pointed out in the statement and on the basis of a name Mayura Yogesh. The assessee stated that mere mention of similar sounding name cannot be the basis of a conclusion that the assessee company had entered into the cash transactions.

6.2 *The appellant in the course of the appellate proceedings filed detailed submissions and sought the personal hearing. The appellant filed the submissions it had filed before the AO in the assessment proceedings. The submission of the appellant was forwarded to the AO for providing his comments under rule 46A of the Rules. The remand report was not received therefore a reminder for the remand report was issued vide DIN ITBA/NFAC/F/17/2024-25/1066828615(1) for furnishing of the same. However, the remand report has not been received till date. Therefore, the additional evidence filed by the appellant are admitted and the appeal is decided on the basis of the material available on record.*

6.3 *The appellant in its Ground of Appeal No. 1 to 4 assailed the issuance of notice u/s 148 of the Act and not providing the personnel hearing and the opportunity to cross examine Sh. Vikash Agarwal. The submission of the appellant is examined. With regard to the challenge to the issuance of notice u/s 148 of the Act. In Aishwarya Dying Mills Pvt Ltd Vs DCIT, [2018] 94 taxmann.com 430 (Gujarat), 2018-TIOL-857-HC-AHM-IT, it was held that AO's fishing inquiry is valid if he receives certain information from the Investigation Wing and forms an opinion before issuance of reassessment*

notice. The appellant stressed that its submissions against the reopening of the assessment u/s 48A(d) of the Act was not considered and a due enquiry was not made and was summarily rejected. The submission of the appellant is examined. The Hon'ble high Court of Orrisa in 143 taxmann.com 120 in case of Auroglobal Comtrade (P.) Ltd. v. Chairman, Central Board of Direct Taxes held that where assessee challenged reopening notice on ground that there was absence of reasons with material particulars for proposed reassessment, since assessee filed revised return in compliance of terms of reopening notice, it would be construed that assessee participated in reassessment proceedings and surrendered to jurisdiction of AO and was conscious about material based on which reassessment proceedings were initiated. In view of the above judicial rulings the appellants challenge to the validity of issuing notice u/s 148 of the Act is dismissed. The ground of appeal is dismissed.

- 6.3.1** *The appellant further in its submission assailed the AO in not providing adequate opportunity and also that no hearing through video conference facility was provided. The AO in Para 17 and 18 of the assessment order noted that 'It is a fact that very short duration of 24 hours was given to the assessee for replying to the show cause notice and that it had sought VC on the penultimate day which is unnecessarily attempt of procrastination while still aware that the assessment would be barred by limitation in a day'.*
- 6.3.2** *The submission of the appellant in this regard is examined. The Hon'ble High Court of Delhi in 130 taxmann.com 54 in case of Interglobe Enterprises (P.) Ltd. v. National Faceless Assessment Centre Delhi held that section 1448 (7) of the Act mandatorily provides for issuance of a show cause notice and draft assessment order before issuing assessment order and provides for an*

opportunity of personal hearing, if requested by assessee. The fact remains that the assessee was not provided the opportunity of a hearing by the AO in the assessment proceedings, however the CIT-Appeal is the extension of the Assessing Officer therefore the appellant is provided an opportunity to present its case. Therefore, hearing through video conference was scheduled and a notice for the same was issued vide DIN ITBA/NFAC/FNC_APL/2024-25/1066483343(1) dated 08.07.2024. However, the appellant did not respond to the notice of the above notice. It is presumed that the appellant is not interested in the VC and therefore the opportunity of the VC is withdrawn as if not requested. Therefore, in the light of the above discussion the grievance of the assessee in form of its round of appeal is dismissed.

6.3.3 *The Ground of Appeal 1 to 4 are accordingly dismissed.*

6.4 *The appellant in its Ground of Appeal No. 5 to 12 has assailed the AO in making addition of Rs. 38104820/- being (credit Rs. 33804820/- and debit Rs. 4300000/-) as income which is outside the books of account. The appellant stated that it was not provided the opportunity to cross examine Shri Vikas Agarwal on the basis of whose statement the purported addition of Rs. 38104820/- has been made by the AO. And that the AO erred in presuming that the name mentioned in the pen drive of Myura Yogesh pertains to the appellant. The appellant further assailed that the AO added both the debit and credit entries which is against the basic principle of law as well as accounting. The appellant further stated that the AO himself was not sure of the information because there was difference in the amount added from the amount as contained in the information.*

- 6.4.1** *The appellant in the assessment proceedings objected to the addition on the basis of the statement of Sh. Vikash Agarwal and the purported cash transaction by one Mayura Yogesh. The AO in Para 6 of the assessment order had reproduced the whole of the cash transaction. The perusal of the same shows that the same is the reiteration the order passed u/s 148A(d) of the Act dated 30.03.2022. The AO subsequently in the assessment order noted that the submission of the assessee is not holistic and are illogical to be acceptable. The appellant in Para 11 of the assessment order has reproduced the submission of the appellant in the assessment order. The assessee in its reply to the AO has stated that it had business transaction with the searched party valued at Rs. 7808442/- for the purchase of Ingots which is recorded its books of account and nothing to do with the out of books transactions of Sh. Vikash Agarwal of Mis Sky Ally & Power Pvt. Ltd.*
- 6.4.2** *The AO has proceeded to add the amount i.e., Rs. 38104820/- being (credit Rs. 33804820/- and debit Rs. 4300000/-) on the basis of the report of the Investigation Wing and has not made any independent enquiry to substantiate that the submission of the assessee is not acceptable and that rejection of the submission is backed by cogent enquiry/ investigation and not on the basis of the statement. The AO has to establish that the Mayura Yogesh is none but the assessee M/s Mayura Saria Pvt. ltd. There has to be concrete evidence to arrive at this conclusion. Further the appellant requested for the cross examination which was not provided. Therefore, the AO started on the basis of the investigation report and ended with the same without establishing that Mayura Yogesh is none but the assessee before fastening with the tax liability.*

6.4.3 *The Hon'ble High Court of Punjab & Haryana in 161 taxmann.com 586 in case of Pr. CIT vs. DSG Papers Ltd. held that where pursuant to a search conducted at business premises of assessee, department made additions on account of suppressed turnover through under-invoicing based on third party statements, since said statements were recorded at back of assessee and without giving proper opportunity for cross-examination the addition cannot be sustained. Further the Hon'ble High Court of Rajasthan in case of A.L. Lalpuria Construction Pvt. Ltd. in 32 taxmann.com 384 held that addition on account of accommodation entry cannot be made on basis of uncontroverted oral statement of third party.*

6.4.4 *The submission of the appellant is examined, and the assessment order is perused in the light of the above discussion and the decisions of the Hon'ble Courts and respectfully following the ratio laid down by the Hon'ble Courts the addition of Rs. Rs. 38104820/- being (credit Rs. 33804820/- and debit Rs. 4300000/-) is deleted. The Ground of Appeal No. 5 to 12 are allowed.*

6.5 *The Ground of Appeal No. 13 is consequential, and the Ground of Appeal No. 14 is general, and the Ground of Appeal No. 15 is premature hence dismissed.*

5. As the addition made by the Ld. AO are entirely vacated by the Ld. CIT(A) in terms of his aforesaid observations, the department being aggrieved with such decisions of Ld. CIT(A) had preferred to carry the matter by way of an appeal before the Income Tax Appellate Tribunal, therefore, the present appeal is filed by the revenue, which is under consideration:

6. At the outset, Shri S. L. Anuragi, CIT-DR, reiterated the facts of the case and have submitted that Ld. CIT(A) has not appreciated the facts of the case properly which are at length described by the Ld. AO in the assessment order, therefore, the decision of Ld. CIT(A) in deleting the addition is not acceptable. Ld. CIT-DR further submitted that Ld. CIT(A) had erred in deciding the issue without establishing the nexus in the conclusion drawn by him with the primary fact upon which such conclusion have been drawn. Ld. CIT-DR, to establish that the assessee company had direct connect with “Mayura Yogesh”, with whom certain unexplained transactions are carried out by SAPPL, had submitted a report prepared by the Ld. AO i.e., ACIT-1(1), Bilaspur dated 13.01.2025 along with statements of Shri Ranjeet Kumar Barman(Ex-Accountant of SAPPL), Shri Chandrasen (Cashier of SAPPL) and Shri Vikas Agrawal (Director of SAPPL), the same was furnished before us, which is extracted hereunder for the sake of completeness of facts:

ITA No. 430/RPR/2024
DCIT, Bilaspur Vs. M/s Mayura Saria Pvt. Ltd.

Mayura Saria

Subject: Report sought in the case of Mayura Saria Pvt. Ltd. in ITA No. 430/RPR/2024, A.Y. 2015-16 PAN: AFCM0700P

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Date: 01/13/25 11:50 AM
From: "bilaspur.dclt.1" <bilaspur.dclt.1@incometax.gov.in>

Ranjeet Kumar Barman_compressed.pdf (2.1MB) CHANDRASEN MALL_compressed.pdf (2.2MB)
VIKASH AGRAWAL_compressed.pdf (2.9MB)

To,
The Commissioner of Income Tax(DR)(ITAT)
Raipur

(Through Addl.CIT, Range-1, Bilaspur)

Sir,

Certified copy
Asgh
CIT(DR)

Subject: Report sought in the case of Mayura Saria Pvt. Ltd. in ITA No. 430/RPR/2024, A.Y. 2015-16 PAN: AFCM0700P – reg.

Kindly refer to your office letter in F.No. CIT-ITAT/RPR/REQ/2024-25 dated 17.12.2024 on the above mentioned subject.

2. In this regard, it is submitted that for the A.Y.2015-16 assessment u/s 147 read with section 144B of the Income tax Act by making addition to the tune of Rs. Rs.3,81,04,820/- treating it as business income of the assessee outside of the books and determining the total income of the assessee at Rs. Rs.4,17 63,250/- on 30.03.2023. The assessee being aggrieved by the addition made by the AO preferred appeal before the Ld. CIT(A). The Ld. CIT(A) vide his order dated 05.08.2024 had deleted the addition of Rs. 3,81,04,820/-.

3. In the assessment order, the AO has patently established in the assessment order at para 14 of the assessment order that Mayura Yogesh had transactions on behalf of Mayura Saria Pvt. Ltd. with M/s Sky Alloys & Power Pvt. Ltd. The relevant excerpt of the assessment order is reproduced hereunder.

"14. The assessee in its reply has stated that nowhere in the excel the name of the assessee company is mentioned and only on the basis of figuring of name Mayura Yogesh, one cannot assume that it is assessee company. For this contention, assessee company has already been made aware of the reason which as under:

The approach towards this rebuttal has to be holistic. It remains an undisputable fact that the assessee company had entered into transactions with M/s Sky Alloys & Power Pvt. Ltd. and the information available on record and confirmed by search party that a portion of the transactions have been undertaken outside the books of accounts in cash. Therefore, it becomes the necessary link and such transactions with that of the company only and not that of an individual viz. Mayura Yogesh. Hence, the arguments of the assessee company found to be illogical and summarily rejected. The persons identified would have been wrong if no transactions ever existed between two companies. On the contrary when it is only the company which had business links with the person who is subjected to search action, natural fall out would be that such person Mayura Yogesh has transactions on behalf of Mayura Saria Pvt. Ltd. with M/s Sky Alloys & Power Pvt. Ltd."

4. Further, the assessment order was gone through and it is found that AO has not mentioned anything about accepting or rejecting the appellant request for the cross examination. However, it noticed that the assessee has sought VC and the same was not provided as it was sought on the penultimate day of limitation date to complete the

assessment. The AO found it an attempt of procrastinate while still being aware that the assessment would be barred by limitation in a day. The relevant excerpt of the assessment order is reproduced hereunder.

“18. Though the assessee was aware about the nature of transactions involved, its gravity and the position taken by the department in the order u/s 148A(d) already passed, it had sought VC on the penultimate day, which is necessarily attempt of procrastination while still being aware that the assessment would be barred by limitation in a day. Further, when all the details and documents are made available to the assessee and adequate opportunities through multiple notices u/s 142(1) and show cause notices have been issued and the explanation in the form of written submissions are duly considered, the request for VC could not be entertained. However, the same cannot be treated as breach of Natural justice when, as brought out in the contents of this assessment order that adequate opportunities have been provided and the Principle of Natural Justice have been complied. In short no action has been taken behind the back of the assessee. Therefore, the final order is passed without providing VC to the assessee.”

5. From the above, it is clear that assessee was given ample opportunity at the time of assessment proceedings and all the materials and information with the department was also provided to the assessee. Further, as directed copy of statement of Shri Ranjeet Kumar Barman, Shri Chandrasen and Shri Vikas Agrawal is attached herewith for kind reference.

6. Submitted for favour of kind perusal and consideration.

Regards

(Laiju Jacob)
ACIT-1(1), Bilaspur

7. Based on aforesaid report, it was the submission by Ld. CIT-DR that the assessee was afforded with ample opportunities during the assessment proceedings, also all the materials and information available with the department was shared with the assessee, therefore, the assessee's claim that principle of natural justice was violated by the Ld. AO has no basis and the same shall be rejected at the threshold. Ld. CIT-DR further submitted that copies of statements of Shri Ranjeet Kumar Barman, Shri Chandrasen and Shri Vikash Agrawal are placed on record and as per report of investigation

wing of the department, the Ld. AO has all the reasons to believe that the income of assessee i.e., M/s Mayura Saria Pvt. Ltd., had escaped assessment. Further, the observations of DDIT/ADIT(Inv.)-1 that the name of "Mayura Yogesh" reflecting against the transactions surfaced from the data extracted during the Search & Seizure in the form of excel sheet, pertains to M/s Mayura Saria Pvt. Ltd., who already had certain transactions with SAPPL, which is an admitted fact confirmed by the assessee that it had carried out the transaction of purchase of M S Ingots of Rs.78,08,442/- during the year under consideration with SAPPL. Ld. AO had categorically observed that the denial of assessee company that they do not have any connection with name "Mayura Yogesh", was just for evasion of taxes and that such argument of the assessee company found to be illogical and liable to be rejected, since the assessee company had entered into the transactions with SAPPL, which is further supported from the information available on record and confirmed by search party that a portion of the transactions have been undertaken outside the books of accounts in cash. Based on aforesaid submissions, it was the prayer by Ld. CIT-DR that the contentions raised by the assessee before the First Appellate Authority are bereft of merits and therefore, are liable to be rejected, accordingly the order of Ld. CIT(A) qualifies to be struck down and the additions made by the Ld. AO deserves to be restored.

8. On the contrary, Shri G. S. Agrawal, Authorized Representative (in short "Ld. AR"), on behalf of the assessee submitted that the disputed additions are made by the Ld. AO only on the basis of presumption and surmises. It was the submission that during the Search & Seizure action u/s 132 on 22.12.2021 in the case of Sky Group, Raipur wherein the so-called seized material found from the residential premises of Shri Ranjeet Kumar Barman (Ex-accountant of M/s Sky Alloys & Power Pvt. Ltd.), Shri Chandrasen (cashier of Sky Alloys & Power Pvt. Ltd.) having certain information of some out of books transactions making a reference of name "Mayura Yogesh" and have nexus with the assessee company having similarity in its name as M/s Mayura Saria Pvt. Ltd. Ld. AR further submitted that there was no material found during the search on the basis of which the addition was made, it was only on the basis of a report from the Investigation Wing, who had presumed and inferred that since the assessee company had certain transaction with the M/s Sky Alloys & Power Pvt. Ltd. (SAPPL), therefore, there must be certain out of books transactions in cash. A reference was made to certain loose papers and pen drives from which some data was extracted in the form of excel sheets showing some transactions of cash receipts and payments in the name of "Mayura Yogesh", therefore, it was alleged that the name of "Mayura Yogesh" and transaction against the said name belongs to the assessee. All the aforesaid contentions raised by the Ld.

AO are contradicted by the assessee at the assessment stage itself stating that the assessee is maintaining regular books of accounts, which are duly audited and the transactions with M/s SAPPL are duly recorded in the books of accounts as purchase of the raw material M S Ingots for Rs.78,08,442/-. Ld. AR further argued that, the assessee also controverted the allegation by the revenue that as per statement of Shri Ranjeet Kumar Barman(Ex-accountant of SAPPL), Shri Chandrasen (Cashier of SAPPL), and Shri Vikash Agrawal (Director of SAPPL) the assessee had carried out the impugned cash transactions with M/s SAPPL, in rebuttal it was the submission by assessee that no document regarding the transactions under question are found which contains the signature of assessee, or letter pad or mobile recording. The inference drawn only on the basis of copy of the data extracted from the excel sheets found during the search that the out of books transactions are carried out by the assessee with M/s SAPPL has no substance in the eyes of law. Ld. AR further submitted that only the name "Mayura Yogesh" cannot be assumed to be M/s Mayura Saria Pvt. Ltd. i.e., the assessee, which is categorically denied by the assessee before the Ld. AO. It was the submission that even during the post search investigation, no enquiry was conducted with the assessee company to establish that the data extracted from the excel sheets have any involvement of the assessee company or that what was the purpose for which such transactions are carried out and how the cash has

changed hands between the parties and for what purpose it was utilized. The conclusion was drawn without any cogent basis only on the basis of presumption, assumptions and surmises, which cannot be the basis of additions under the settled position of law . It is further submitted that during the assessment proceedings, the assessee was not provided with adequate opportunity of being heard as the show cause notice proposing variations in the assessment was issued to the assessee on 28.03.2023, to respond on the same on 29.03.2023 i.e., within 1 day, it was a clear violation of principle of natural justice.

9. In backdrop of aforesaid submissions by Ld. AR concluded that in absence of any evidence that “Mayura Yogesh” is connected with the assessee company, *dehors* any inquiry from the so-called “Mayura Yogesh” by the revenue, assessee’s assertion that “Mayura Yogesh” is not known to it, further so-called “Mayura Yogesh” was not identified in the entire proceedings, so as to establish that certain out of books cash transactions are carried out and even if the same is believed, how those transactions pertains to the assessee i.e., M/s Mayura Saria Pvt. Ltd. It was the submissions that statements of Shri Vikas Agrawal, which are part of assessment order, Shri Ranjeet Barman and Shri Chandrasen are on records and even in the reports furnished by the Ld. AO dated 13.01.2025, it could not be brought on record, pointing out the specific question and answer in the

statements from where it is said by the aforesaid persons that the transactions in the name of “Mayura Yogesh”, are transactions carried out or pertains to the assessee. When Ld. AR was confronted during the appellate proceedings before us to make an statement that the assessee company had no connection with “Mayura Yogesh” or they do not have any person associated with them as an employee or in any other capacity, Ld. AR furnished an affidavit duly sworn by the assessee with a categorical admission that the appellant company are not in knowledge of the “Mayura Yogesh”, through whom the alleged transactions of Rs.3,81,04,820/- was made, the affidavit dated 23.12.2024 furnished before us, however on the next hearing dated 13.01.2025, in the present matter, Ld. AR was confronted with the fact mentioned in the affidavit 23.12.2024 and directed to clarify further that whether the assessee company have any employee / associate by the name of Shri Yogesh, for which Ld. AR had sought some time to place on record a supplementary affidavit with specific declaration by the assessee on this aspect. Further, the matter was adjourned fixing the date of next hearing on 30.01.2025, on this date again Ld. AR requested to allow some time to furnished the supplementary affidavit stating that the deponent Shri Abhishek Garg, Director of the assessee company is not available due to his travelling abroad, as soon as he will be back the affidavit will be furnished, the matter therefore, was taken as heard and liberty was granted to furnish the affidavit

afterwards at the earliest. In due course an affidavit duly signed by Shri Abhishek Garg, Director of the assessee company, dated 04.02.2025, is submitted by the Ld. AR on 07.02.2025. Both the affidavits referred herein dated 23.12.2024 and 07.02.2025, are extracted hereunder for the sake of reference and information in support of assessee's declaration:

	
छत्तीसगढ़ CHHATTISGARH	T 728900
<p>AFFIDAVIT BEFORE THE NOTARY PUBLIC</p>	
<p>I, Abhishek Garg son of Shri Premchand Agrawal, Age about 46 years, resident of Seth Basantlal Marg, Ambikapur (C.G.) do hereby declare on solemn affirmation as under.</p>	
<p>That I was Director in Private Limited Company, namely "Mayura Saria Pvt Ltd" during FY 2014-15</p>	
<p>That the learned Assessing Officer, Assessment Unit, Income Tax Department in its Order dated 30.03.2023 for Assessment Year 2015-16 i.e. FY 2014-15 has made an addition of Rs. 3,81,04,820/- to the Returned income of Rs. 36,58,430/- on the basis of some information found from employee and others during search in case of M/s. Shy Alloys & Power Private Limited, rejecting the explanations filed.</p>	
	



directed by Honble Bench
to Review
Asst. 07.25
विधि और न्याय मंत्रालय
Ministry of Law & Justice
क्रमांक
07 FEB 2025
आयकर अपील अधिकरण, रायपुर
Income-Tax Appellate Tribunal, Raipur

**AFFIDAVIT
BEFORE NOTARY PUBLIC**

I, **Abhishek Garg S/o Shri Premchand Agrawal**, aged about 46 years, resident of Seth Basantlal Marg, Ambikapur (C.G) do hereby declare on solemn affirmation as under:-

1. That I was Director in a Private Limited Company namely, Mayura Saria Pvt. Ltd., during FY 2014-15.
2. That the assessee company did not have any employee/associate by the name of Shri Mayura Yogesh.



Place: Ambikapur
Date:

4 FEB 2025

VERIFICATION

Deponent
[Signature]

I, **Abhishek Garg S/o Shri Premchand Agrawal**, aged about 46 years, resident of Seth Basantlal Marg, Ambikapur, do hereby verify & confirm that contents of above paras are true & correct to the best of my knowledge & belief.

Place: Ambikapur
Date:

SOLEMNLY AFFIRMED &
SWORN BEFORE ME BY
THE WITHIN NAMED
Smt Saroj Gupta
Smt Saroj Gupta
Central Notary/Advocate
Ambikapur, Bilaspur (C.G.)

Deponent
[Signature]

पहचानकर्ता

4 FEB 2025

10. In view of aforesaid submissions and contentions, Ld. AR submitted that the impugned additions made in the case of assessee are only based on borrowed opinion from the Investigation Wing, without any independent inquiries by the Ld. AO to arrive at a logical conclusion of satisfaction to prove that the income of assessee escaped assessment within the meaning of section 147 of the Act. It was the submission that there was no corroborative material available with the Ld. AO to initiate the proceedings u/s 147 against the assessee.

11. On the aspect of borrowed opinion, where there was no own satisfaction of Ld. AO, Ld. AR placed his reliance on the following judgments:

- *Rajshree Syntheticss Pvt. Ltd. Vs. CIT (256 ITR 331, 335 Rajasthan)*
- *Hindusthan Tea Trading Com. Ltd. Vs. CIT (263 ITR 289,293 Calcutta)*
- *CIT Vs P Mohankala & Others (291 ITR 0278 SC)*
- *M/s Mehtra Parikh & Co Vs. CIT (30 ITR 181, 189 SC)*

12. On the issue of cross examination not allowed to the assessee, whereas the additions are made based on 3rd party statements or information surfaced during the Search action on a 3rd party, Ld. AR placed his reliance on following judgments:

- *PCIT Vs. Oriental Power Cables Ltd. (143 taxmann.com 371 SC)*
- *Kishinchand Chellaram Vs. CIT (125 ITR 713 SC)*
- *Andaman Timber Industries Vs. CCE (281 ITR 241 SC)*

13. After the aforesaid submissions, it was the prayer by Ld. AR that the issue raised by the assessee before the First Appellate Authority has been elaborately deliberated upon and considering the facts of the case Ld. CIT(A) has decided the issues appreciating the facts of the case in correct perspective, therefore, the arbitrary addition made by Ld. AO on the basis of presumptions, surmises and conjecture under the shadow of borrowed opinion of the Investigation Wing is liable to be quashed and the order of Ld. CIT(A) deserves to be upheld.

14. We have considered the rival submissions, perused the material available on record and case laws relied upon by the Ld. AR. Under the facts of the present case, certain information was surfaced during a Search & Seizure action on M/s SAPPL (3rd party), wherein certain loose papers, pen drives and incriminating material was found by the Search team. From the material found, certain information was unearthed in the form of Excel sheets showing debit and credit transactions aggregating to Rs.43,00,000/- Lacs and Rs.3,38,04,820/- respectively, showing under the detail column "Mayura

Yogesh”. Based on such details, as mentioned by the Ld. AO, that the Search party has confirmed these transactions, are being carried out by M/s Mayura Saria Pvt Ltd.(the assessee), in rebuttal to such allegation by the revenue, in denial assessee furnished its response that the inference of Investigation Wing is baseless, though the assessee had certain purchase transactions with M/s SAPPL (Searched assessee), but the transactions referred in the material impounded during the search has no connection with the assessee nor the assessee have any knowledge of the said “Mayura Yogesh”. Before us, it was the contention of revenue that as per the statements of Mr. Ranjeet Barman (Ex-accountant), Mr. Chandrasen (Cashier) and Mr. Vikas Agrawal (Director of SAPPL) the transactions shown in the name of “Mayura Yogesh” are nothing, but the transactions carried out by the assessee. The inference drawn by the Ld. AO, in the assessment order that the argument denying the nexus with “Mayura Yogesh” by the assessee company are illogical, the person identified would have been wrong if no transactions ever existed between two companies, on the contrary, when it is only the company which has business links with the person who is subjected to search action, natural fall out would be that such person “Mayura Yogesh” has transaction on behalf of Mayura Saria Pvt. Ltd. With M/s SAPPL, such perceptions of the Ld. AO are incomprehensible, since the same are based on information received from Investigation Wing, *dehors* any independent inquiry by the Ld. AO, which

carries no corroborative support or evidence to substantiate the same, therefore, we are unable to persuade and to concur with such unsupported averments. Ld. CIT(A) while deciding the issue, had categorically held that the Ld. AO was supposed to established that the “Mayura Yogesh” is none but the assessee, whereas there was no evidence, which could have been brought on record by the revenue to prove the existence of “Mayura Yogesh”. There was absence of requisite actions on the part of Ld. AO, as no independent inquiries were carried out to establish the allegation made against the assessee. The basis of addition was material found during the search of a 3rd party (SAPPL) and statements of certain persons connected with the said 3rd party without any mention in the said statement about the nexus of “Mayura Yogesh” with the assessee to form the basis so as to saddle the assessee with such additions, even the statement and the material relied upon has no substance to conclusively prove that such transactions are undertaken by the assessee with M/s SAPPL.

15. After a thoughtful consideration to overall facts and circumstances of the present case, we are of the considered view that the addition made on account of unexplained out of books cash transactions allegedly by the assessee on the basis of certain information, though, could not be substantiated by the revenue, in absence of any cogent evidence or plausible reasonings, have no substance to survive in the eyes of law. The addition was

made based borrowed opinion thereby forming a preconceived notion and under the presumptive inferences, surmises and assumptions, which is not permissible under the mandate of law. In view of such observations Ld. CIT(A) had rightly deleted the addition of Rs.3,81,04,820/- made by the Ld. AO. In view of such observations, we do not find any plausible reason, material, contention or decision brought on record by the revenue, to dislodge the decision of Ld. CIT(A), therefore, the same does not call for any interference, accordingly, we uphold the same.

16. Resultantly, the grounds of appeal raised by the revenue being bereft of merits stands dismissed, in absence of (i) any substantial material to establish the nexus of assessee with “Mayura Yogesh” and the assessee company, (ii) any affirmation regarding the transaction being carried out by the assessee in the statement of 3rd parties which are relied upon by the revenue and (iii) any independent enquiries by the Ld. AO to establish the presumption that the “Mayura Yogesh” and the assessee herein are one and same or have any connection between them, which is invalidated by the assessee by filing an affidavits before us, dated 23.12.2024 and 07.02.2025 (extracted supra). Based on aforesaid reasonings, the controversy raised by the revenue in the present appeal, assailing the order of Ld. CIT(A) found to

be devoid of merits and unsubstantiated, therefore, the same cannot be decided in affirmative.

17. In result, appeal of revenue in **ITA No. 430/RPR/2024 stands dismissed**, in terms of observations.

Order pronounced in the open court on 07/02/2025.

Sd/-
(RAVISH SOOD)
न्यायिक सदस्य / JUDICIAL MEMBER
रायपुर/Raipur; दिनांक Dated 07/02/2025
Vaibhav Shrivastav

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

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

1. अपीलार्थी / The Appellant- DCIT, Bilaspur
2. प्रत्यर्थी / The Respondent- M/s Mayura Saria Pvt. Ltd.
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