

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

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

आयकर अपील सं./ITA Nos. 1265 & 1266/JP/2024  
निर्धारण वर्ष / Assessment Year : 2016-17

Trilok Chand Sain Panchyat Samiti Ka Pass, Panchyat Samiti Road, Dausa	बनाम Vs.	ITO, Ward-1(2), Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BPYPS 6036 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. P. C Parwal, FCA  
राजस्व की ओर से / Revenue by : Mrs. Anita Rinesh, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 15/01/2025  
उदघोषणा की तारीख / Date of Pronouncement: 10/03/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

There are two appeals filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [Here in after referred as (NFAC)] both for the assessment year 2016-17 and dated 16.08.2024, which in turn arises from the order passed by the Assessing Officer passed under Section 147 r.w.s 144 r.w.s 144B of the Income tax Act, 1961 (in short 'the Act') dated 16.05.2023 in quantum proceeding and order u/s. 271(1)(c) dated 27.03.2024.

2. In ITA No. 1265/JP/2024, the assessee has taken the following grounds;

“The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.42,50,250/- made by AO on account of unexplained investment in purchase of land by not appreciating that the land under consideration is owned by Sh. Purushottam Bairwa, investment was made by him from his own sources, assessee acted only as broker between the transaction whereby Sh. Mangal Ram, Kanhiya Ram and Raju sold said land to Sh. Purushottam Bairwa, not properly appreciating the statement of Kanhiya Lal, not controverting the affidavit of assessee and by making various incorrect & irrelevant observations.

2. The assessee craves to amend, alter and modify any of the grounds of appeal.
3. The appropriate cost be awarded to the assessee.”

2.2 In ITA No. 1266/JP/2024, the assessee has taken following grounds of appeal:

*“The Ld. CIT(A), NFAC has erred on facts & in law in confirming the levy of penalty of Rs. 13,13,327/- u/s 271(1)(c) of IT Act, 1961.*

2. *The assessee craves to amend, alter and modify any of the grounds of appeal.*
3. *The appropriate cost be awarded to the assessee.”*

3. Since both the appeal is of the same assessee and related to same assessment year and argued on the same day we are deciding these two appeal by common order. First, we take up the appeal of the assessee in ITA No. 1265/JP/2024.

3.1 The fact as culled out from the records is that assessee is an individual had filed his ITR for the relevant year declaring total income of Rs. 7,21,050/- on 18.05.2017. As per information available with the Id. AO that the assessee has purchased immovable property in the name of other persons and made the payment of Rs. 42,50,250/- during the F.Y. 2015-16 relevant to AY 2016-17. Ld. AO noted from the perusal of the ITR that the tax liability on immovable property transaction is not reflected in his return of Income. Therefore, source of purchase of this immovable property remains unexplained which also required to be taxed. Based on that reasons Id. AO believed that income to the extent of Rs. 42,50,250/- chargeable to tax has escaped assessment. Accordingly, notice u/s 148 of the I.T. Act, 1961 was issued on 23-06-2021. In compliance to the decision of Hon'ble Supreme Court dated 04-05-2022 in the case of UOI vs Ashish Agarwal and consequent CBDT instruction No. 01/2022 F.No. 279/ Misc/ M- 21/2022-ITJ dated 11-05-2022, information and material relied upon for initiating reassessment proceedings was provided to the assessee vide letter dated 20-05-2022 and the assessee was requested to submit explanation along with supporting documents on or before 09-06-2022 as to why an order u/s 148A(d) of the I.T. Act, 1961 should not be passed in the case of the assessee and notice u/s 148 should not be issued.

3.2 In response to notice, assessee filed his written submission. The Id. AO noted the reply submitted by the assessee which was perused by him but was not acceptable because the DDIT(Inv.) in his report itself stated that the property has been purchased in some other person's name, so, the question of his purchase is not in existence. In the statement of Shri Kanhaiya recorded on oath on 07-03-2019 it is clearly stated by him (in Q. No. 10) that he had sold that land to Shri Trilok Chand Sain and the amount received against such sale of land was given by Shri Trilok Chand Sain and the amount received against such sale of land was given by Shri Trilok Chand Sain only. Further, on the saying of Trilok Chand Sain he made the registry in the name Shri Purushottam Bairwa, therefore, it is clear that Shri Trilok Chand Sain has made unexplained investment in this land. Further, Shri Trilok Chand Sain has said in his reply that he has purchased the land in his personal capacity and the same transaction is duly recorded in the account of firm owned by him in the name of Panchayat Stationers, whereas no documentary evidence in respect of Panchayat Stationers have been given, no status of income tax paid by such firm namely panchayat stationers has been given. Assessee has merely given the capital A/c which clearly does not suggest the actual capital holdings of the assessee and how such capital accounts has been declared by the

assessee in his return of income. Therefore, the reply in that respect was not accepted. The Capital account submitted by the assessee merely seems an afterthought and made up ledger just to show the availability of funds. Assessee has claimed to run a firm namely Panchayat Stationers whereas no documentary evidence in respect of such firm has been submitted by the assessee. Neither he has submitted any P&L account or trading out, Capital A/c cash book etc nor has he given any details with respect of ITR, total income of such firm. As on careful perusal of all the registries submitted by the assessee Id. AO noticed that all the payments have been made in cash by the assessee. It is a matter of investigation that whether the firm run by the assessee in the name of Panchayat Stationers was having such cash balance with it and why such payments were made in cash by the assessee. Further, as per the report/ information in possession of the department the assessee has been alleged of the benami transactions and hence it is a subject matter of deep investigation. In light of the above facts and on the basis of material available on record, Id. AO noted that the assessee has not been able to give enough evidences and proves his contention with respect to the information in possession of Id. AO. Hence, the assessment was reopened under section 147 of the Act by issuing notice u/s 148 of the Act dated 29.07.2022 The

notice was duly served on the assessee on 29.07.2022 through e-mail. The assessee was requested to furnish his return of income within 30 days of service of the above notice. However, the assessee failed to comply with the above notice. In this connection notice u/s 142(1) dated 05.01.2023 and 07.02.2023 were issued to the assessee to file the Return of Income. However, the assessee failed to respond to the above notice. The assessee was also intimated that failure to file complete reply shall lead to passing of ex-parte assessment order u/s 144 of the Act vide the above letter. The assessee failed to respond to this letter also. Again a Show cause notice dated 06.04.2023 was issued to assessee to show cause as to why the assessment should not be completed under section 144 of the Income-tax Act, 1961. in view of the above facts and circumstances of the case. Ld. AO based on the details available on record, noted that the assessee had purchased property and its value is Rs.42,50,250/- during the year under consideration. However, the assessee has not filed his return of income in response to notice u/s 148 and has not offered any income to tax. In the absence of any response from the assessee, the entire purchase value of Rs.42,50,250/- was treated as the assessee's unexplained investment u/s 69 of the Act and brought to tax u/s 115BBE of

the Act. The purchase value of Rs.42,50,250/- was added to the assessee's total income under the head "Income from Other sources".

4. Aggrieved from the order of the Assessing Officer, the assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

"7. Finding and decision:-

7.1 Ground No. 01 & 02

7.1.1 During the assessment proceedings, the appellant filed submission before AO and stated that

*"Your kind self has stated that the assessee has purchased immovable property in the name of other person and payment of Rs. 42,50,250/- made by the assessee, but it is absolutely incorrect as I have not purchased any property in the name of other person. Affidavit in this regard is enclosed and is being reproduced as under*  
i). a). *I have purchased the following agriculture land "*

SI No	Khasra No.	Date	Amount (in INR)
1	9/1273	17-12-2015	Rs.14,27,000/- (13,68,000+89,000)
2	9/1275	12-01-2016	Rs. 12,71,800/- (11,00,000+50,000+21,800)
3	185	12-01-2016	Rs. 14,92,410/- (14,00,00+ 50,000+42,410)
Total			Rs.41,91,210/-

*The amount of agriculture land purchased is Rs. 41,91,210/- instead of Rs. 42,50,250/-.*

*I have purchased the aforesaid agriculture land in my personal capacity and have duly recorded in my capital account of firm, M/s Panchayat Stationers.*

7.1.2 Submission made by the appellant was not accepted by the AO and accordingly addition of Rs. 42,50,250/- was made on account of unexplained investment u/s 69 of the Act. The relevant extract of the said assessment order is as below-

*The reply submitted by the assessee has been carefully perused and it is noticed that the reply of the assessee is not acceptable on following findings a*

*The DDIT(Inv.) in his report itself says that the property has been purchased in some other person's name, so the question of on his purchase is not in existence In the statemtns of Sh. Kanhaiya recorded on oath on 07-03-2019 it is clearly stated by him (in Q. No. 10) that he had sold that land to Shri Trilok Chand Sain and the amount received against such sale of land was given by Shri Trilok Chand Sain and the amount received against such sale of land was given by Shri Trilok Chand Sain only.*

*Further, on the saying of Trilok Chand Sain he made the registry in the name Shri Purushottam Bairwa, therefore, it is clear that Shri Trilok Chand Sain has made unexplained investment in thsese land.*

*Further, Shri Trilok Chand Sain has said in his reply that he has purchased the land in his personal capacity and the same transaction is duly recorded in the account of firm owned by him in the name of Panchayat Stationers, whereas no documentary evidence in respect of Panchayat Stationers have been given, no status of income tax paid by such firm namely panchayat stationers has been given. Assessee has merely given the capital A/c which clearly does not suggest the actual capital holdings of the assessee and how such capital accounts has been declared by the assessee in his return of income. Therefore, the reply in that respect may not be accepted. The Capital account submitted by the assessee merely seems an afterthought and made up ledger just to show the availability of funds.*

*Assessee has claimed to run a firm namely Panchayat Stationers whereas no documentary evidence in respect of such firm has been submitted by the assessee. Neither he has submitted any P&L account or trading out, Capital A/c cash book etc nor has he given any details with respect of ITR, total income of such firm. Further, as per the reply of the assessee and the details of land purchased by him as under:*

SI No	Khasra No.	Date	Amount (in INR)
1	9/1273	17-12-2015	Rs.14,27,000/- (13,68,000+89,000)
2	9/1275	12-01-2016	Rs. 12,71,800/- (11,00,000+50,000+21,800)
3	185	12-01-2016	Rs. 14,92,410/- (14,00,00+ 50,000+42,410)

Total			Rs.41,91,210/-
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*As on careful perusal of all the registries submitted by the assessee it is noticed that all the payments have been made in cash by the assessee. It is a matter of investigation that whether the firm run by the assessee in the name of Panchayat Stationers was having such cash balance with it and why such payments were made in cash by the assessee.*

*Further, as per the report/ information in possession of the department the assessee has been alleged of the benami transactions and hence it is a subject matter of deep investigation.*

*In light of the above facts and on the basis of material available on record, it is clear that the assessee has not been able to give enough evidences and prove his contention with respect to the information in possession of the undersigned.*

*Hence, the assessment was reopened under section 147 of the Act by issuing notice u/s 148 of the Act dated 29.07.2022. The notice was duly served on the assessee on 29.07.2022 through e-mail. The assessee was requested to furnish his return of income within 30 days of service of the above notice. However, the assessee failed to comply with the above notice.*

*In this connection notice u/s 142(1) dated 05.01.2023 and 07.02.2023 were issued to the assessee to file the Return of Income. However, the assessee failed to respond to the above notice. Thereafter, a letter dated 28.02.2023, 20.03.2023 and 10.04.2023 was issued to the assessee and the assessee was requested to submit his reply within 5 days of receipt of the letter. The assessee was also*

*intimated that failure to file complete reply shall lead to passing of ex-parte assessment order u/s 144 of the Act vide the above letter. The assessee failed to respond to this letter also.*

*Show cause notice dated 06.04.2023 was issued to assessee to show cause why the assessment should not be completed under section 144 of the Income-tax Act, 1961 in view of the above facts and circumstances of the case*

*On perusal of the details available on record, it is seen that the assessee had purchased property and its value is Rs. 42,50,250/- during the year under consideration.*

*However, the assessee has not filed his return of income in response to notice u/s 148 and has not offered any income to tax. In the absence of any response from the assessee, the entire purchase value of Rs. 42,50,250/- is treated as the assessee's unexplained investment u/s 69 of the Act and brought to tax u/s 115BBE of the Act. The purchase value of Rs. 42,50,250/- is added to the assessee's total income under the head "Income from Other sources*

7.1.3 During the appellate proceedings the appellant has filed submission and stated that

1. While completing the assessment, the A.O. has not considered the following facts

*a. The assessee is engaged in two business namely:-*

*1. Trading in stationary in the name of M/S Panchayat Stationers*

*2. Real Estate (Trading of Plots in the name of Trilok Chand Sain).*

*Beside this, the assessee also engaged in the brokerage activity as mediator/facilitator in sale & purchase of land.*

*b. The Income tax return for the A.Y. 2016-17 was filed on 18/05/2017 vide acknowledgment number 776598321180517 declaring total income of Rs. 7,21,050/- from both business and brokerage income under the head income from other sources.*

*c. During the year under consideration, assessee has not purchased land which referred to the assessment order for Rs 42,50,250/-*

*d. During the year under consideration, the assessee was associated as mediator/Broker in sale & purchase of following land transactions-*

SR. no.	Date	Name of Seller	Name of Purchaser	Amount ( Rs.)	Stamp duty (Rs.)
1	21/08/2015	Mangal Ram	Purshottam Berva	1330000/-	86750/-
2	21/08/2015	Kanhiya Ram	Purshottam Berva	1330000/-	86750/-
3	21/08/2015	Raju	Purshottam Berva	1330000/-	86750/-
Total				3990000/-	260250/-
Grand Total (3990000/- + 260250/-)				4250250/-	

*In the above transaction, the role of the assessee was as broker and commission income was received from both (seller and purchaser) which was duly shown in Income tax return. The assessee has also being a witness in all above transactions (as per registered sale deed). The seller of the above lands were 3 persons namely 1. Mangal ram, 2. Kanhiya Ram & 3. Raju and purchaser of these transaction was only one person namely PurshottamBairwa. The above transaction were made through Registered sale deed and sale consideration between both party i.e. purchaser and seller was made in cash in the presence of sub- registrar (Registration authority). The amount of sale consideration was handed over to the seller by the assessee from the purchaser being mediator/broker. The copy of the sale deeds (Three) are being submitted under Rule 46A of Income tax act. The registered sale deed is a legal & authenticated documents in the eye of the law regarding real person of seller and purchaser, sale consideration between both parties and mode of payment. The main page of all three sale deed and the relevant page of sale deed where assessee is witness is reproduced herein under:-*

*2. The assessment of the above assessee for the A.Y. 2016-17 was completed u/s 147 r.w.s. 144 of the Income Tax Act. The notice u/s 147 was issued to the assessee which was sent through registered post having address at Panchayat Samiti ke pass, Panchyatsamiti road, Dausa (Rajasthan). The notice u/s 148A was issued & detailed reply was submitted. Thereafter, case was selected under faceless scrutiny & notices under section 142(1) dated 05.01.2023, 07.02.2023, 28.02.2023, 20.03.2023 & 10.04.2023 was issued to the assessee but could not be replied due to critical illness & hospitalization of the father of the assessee for long period. The assessment of the assessee was completed u/s 147/144 of the income tax act & Rs. 42,50,250/- was added to the income of the assessee as unexplained investment for purchase value of agriculture land u/s 69 of the Income tax act (Taxable u/s 115BBE of the Income tax act), which is unlawful & unjustified. The medical documents for the treatment of assessee's father for justification of non compliance of various notices including show cause notice are being submitted separately under rule 46A of Income tax act and same is reproduced as hereunder*

*3. (i) The assessing officer has referred in assessment order that as per DDIT (Inv) report that property has been purchased by the assessee in the others name. It is also stated that statement of Mr. Kanhaiya, one of the seller of the land out of three Dated: 07-03-2019 stated that the amount received against such sale of land was*

given by the Trilok Chand Sain (assessee only) not by purchaser of land Mr. PurshottamBairwa. Therefore, unexplained investment was made by the Trilok Chand Sain in purchase of land

(ii) The information gathered or statement recorded of Mr. Kanhaiya is fully incomplete and untrue because of

a) Statements wererecorded only one seller ie. Kanhaiya instead of three persons namely Mangal Ram, Kanhaiya and Raju. No any statement was recorded of Mangal Ram and Raju.

b) in the statement, Mr. Kanhaiya has not stated that he has sold the land to the assessee Mr. Trilok Chand Sain. He has only stated that amount was given by Trilok Chand Sain. Since, Trilok Chand Sain, assessee, was representing at the time of the registration of the sale deed in the office of registration authority as broker and as witness. His role was only to collect the money (sale consideration) from the purchaser and hand over to the seller Mr. Kanhaiya in the presence of sub registrar (registration authority). It is a permanent procedure that the exchange/confirmation of sale consideration is made in the presence of the sub registrar (registration authority). It is confirmed by the sub registrar at the time of the registration from the seller that he has received the amount of the sale consideration from the purchaser. Hence, it is very clear from the incomplete statement and the actual evidences available on the record that Mr. Trilok Chand Sain has not purchased the land. His role was only witness and broker for which he has received commission which was duly shown in Income tax return. An affidavit from Trilok Chand Sain is also being submitted to confirm on oath the above transaction under rule 46A separately and are being reproduced herein under

(c). The purchaser of above three land transaction Rs. 42,50,250/- is by Mr. PurshottamBairwa as per registered sale deed, not by Mr. Trilok Chand Sain. The registered sale deed is legal and authentic document and is registered by the registration authority (sub registrar). The seller and purchaser are duly identified by KYC and were present before the registration authority that is sub registrar. The sale consideration were also confirmed by the sub registrar from purchaser and seller and received thereof. Mr. PurshottamBairwa, purchaser is an income tax assessee and is filing income tax return regularly. The land purchased for Rs. 42,50,250/- was duly shown. PurshottamBairwa has shown the investment in land as his purchases in Profit & Loss Account since the business income was shown under Business 44AD so the Profit & Loss Account was not submitted with the Income Tax Return. The copy of income tax return p. Profit & Loss Account and Cash Flow Statement for the A.Y. 2016-17 of PurshottamBairwa is being submitted under rule 46A and same is reproduced herein under

4. The assessee Mr. Trilok Chand Sain has shown his income from the two businesses i.e Trading in Stationery M/s Panchayat Stationers and Real Estate (Trading of Plots in the name of Trilok Chand Sain). The income from brokerage is



(d) Ledger and Profit & Loss Account of Mr. Purshotam Bairwa in which land purchased for Rs. 42,50,250/- was duly showing. Further, cash flow statement of Mr. Prushottam Bairwa was also furnished by the appellant for AY 2016-17. The relevant extract of the same is as below:-

<b>Purchase Land</b>					
Ledger Account					
1-Aug-2015 to 31-Aug-2015					
					Page 1
Date	Particulars	Vch Type	Vch No.	Debit	Credit
21-8-2015	To Raju	Purchase		14,16,750.00	
	To KanhiyaRam	Purchase		14,16,750.00	
	To Mangalram	Purchase		14,16,750.00	
				42,50,250.00	
	By Closing Balance				42,50,250.00
				42,50,250.00	42,50,250.00

  

<b>Purshotam Bairwa S/o Ladu Ram Bairwa</b>					
VP Malpurriya, Dausa Dausa (Rajasthan)					
<b>Profit &amp; Loss A/c</b>					
1-Apr-2015 to 31-Mar-2016					
Particulars		1-Apr-2015 to 31-Mar-2016	Particulars		1-Apr-2015 to 31-Mar-2016
Opening Stock		2,05,31,740.00	<b>Sales Accounts</b>		
Closing Stock	2,05,31,740.00		Closing Stock		2,47,81,990.00
<b>Purchase Accounts</b>		<b>42,50,250.00</b>	Closing Stock	2,47,81,990.00	
Purchase Land	42,50,250.00				
<b>Direct Expenses</b>					
Gross Profit c/o		2,47,81,990.00			2,47,81,990.00
<b>Indirect Expenses</b>		<b>171.75</b>	Gross Profit b/f		
Bank Charge	171.75				
Nett Profit		<b>1,427.25</b>	<b>Indirect Incomes</b>		<b>1,599.00</b>
			Bank Interest	1,599.00	
<b>Total</b>		<b>1,599.00</b>	<b>Total</b>		<b>1,599.00</b>

<u>PURSHOTTAM BAIRWA F.Y. 2015-16</u>				
<u>CASH FLOW STATEMENT F.Y. 2015-16</u>				
To opening Balance		4471355.46	By Pyament to Raju (seller of land)	1416750.00
Cash	4463140		By Pyament to Kanhaiya Ram (seller of land)	1416750.00
Allahabad Bank	1288		By Pyament to Mangal Ram (seller of land)	1416750.00
Sbi	6927.46		By Drawings	320000.00
To Bank Interest Allahabad		88.00	By Bank Charge	171.75
To Bank Interest SBI		1511.00	By Closing Balance	394532.71
To Business receipts		492000.00	Cash	158890
			SBI	234266.71
			Allahabad	1376
		<u>4964954.46</u>		<u>4964954.46</u>

7.1.5 During the appellant proceedings, the appellant has not furnished any details that how much brokerage he has received for the above mentioned transactions. Also the appellant has stated that such income was offered under the head of income from other source but on perusal of the same it is seen that no break-up of furnished by the appellant under the head of income from other source. Further, the appellant has also not furnished any copy of agreement to show how much brokerage was received by the appellant. Further the appellant has also failed to submit the date wise details of cash received from Mr. PurshottamBairwa for purchase of land. Hence, the appellant has not substantiate the above mentioned transaction. Therefore, action taken by the AO on such issue is hereby confirmed and accordingly, grounds of appeal no. 01 & 02 raised by the appellant is hereby dismissed.”

5. As the assessee has not received any relief from the first appellate authority, the assessee prefers the present appeal on the grounds so raised and reiterated herein above. In support of the various grounds so raised the Id. AR appearing on behalf of the assessee has placed their written submission on record which is extracted in below;

1. The assessee is engaged in retail trade of stationery items. He was also a director in M/s Gupteshwar Colonizers Pvt. Ltd. engaged in real estate business. Shri Purshottam Bairwa was also a director in this company till 2010. Assessee filed the return on 18.05.2017 declaring total income of Rs.7,21,050/- (PB 44-55).

2. The AO at page 3 of the assessment order has observed that the DDIT(Inv.), Alwar in its report has stated that Shri Kanahiya Lal in his statement dt. 07.03.2019 stated that he has sold the land to Shri Trilok Chand Sain who meet the payment of sale consideration but on the saying of Trilok Chand Sain, registry is executed in the name of Shri Purshottam Bairwa. Accordingly AO issued notice u/s 148 dt. 29.07.2022 to the assessee proposing to make addition of Rs.42,50,250/- .

3. In course of assessment proceedings the assessee could not respond to notices issued u/s 142(1) and therefore AO passed the order u/s 144 by making addition of Rs.42,50,250/-.

4. Before the Ld. CIT(A) assessee filed profit and loss account, land purchase account and cash flow statement of Purshottam Bairwa to evidence that the land purchased by him is duly recorded by him. The Ld. CIT(A), however, at para 7.1.5 at page 16 observed that assessee has not furnished any details that how much facilitator charges he received for the said transaction and therefore confirmed the addition made by AO.

*Submission:-*

1. The fact that Shri Purshottam Bairwa purchased the land from 3 persons namely Shri Mangal Ram (PB 55-60), Shri Kanahiya Ram (PB 61-69) and Shri Raju (PB 69-75) is evident from the sale deed. In the sale deed the sellers have specifically mentioned that they have received the sale consideration from Shri Purshottam Bairwa. In the statement recorded by DDIT(Inv.) on 07.03.2019, Shri Purshottam Bairwa has stated that he purchased the land out of the sale proceeds of the plot sold and his past savings. There is no reference in this statement that the assessee has provided funds to him to purchase the land. In the statement recorded u/s 131 dt. 03.12.2019 (PB 94-99 and typed copy at PB 113-119 for AY 12-13), Shri Purshottam Bairwa again in reply to Q. No.19, Q. No.23 and Q. No.26 explained the source of purchase of land. In this statement also there is no reference of the assessee. In respect of sale of plot by Shri Purshottam Lal, statement of some buyers was also recorded by the AO (PB 100-111 for AY 12-13) where these buyers of plot accepted that they have purchased land from Purshottam Bairwa. Before CIT(A) assessee has furnished the copy of return, Balance Sheet, Profit & Loss Account and Cash Flow Statement of Purshottam Lal Bairwa (PB 76-82) where the land purchased by him is duly reflected. Infact assessee was only a witness to the sale deed of land purchased by Purshottam Bairwa and the amount of sale consideration was handed over to the sellers by the assessee from the purchaser as assessee was acting only as a broker. Even Sh. Kanahiya Ram in reply to Q. No.12 (copy enclosed) stated that the registry of land was done in the name of Purshottam Bairwa and he does not know Purshottam Bairwa. He further stated that he received the sale proceeds from Trilok Chand, i.e. the assessee. Thus is because assessee acted as broker in this transaction. The statement of other two sellers namely Shri Mangal Ram and Shri Raju, if any,

recorded is not brought on record. Thus when land was purchased by Purshottam Lal Bairwa, addition made by the AO and confirmed by Ld. CIT(A) in the hands of assessee is unwarranted, unjustified and be deleted.

2. It is submitted that assessee has filed the original return for the year under consideration on 28.05.2017 (PB 44-52) declaring total income of Rs.7,21,050/- comprising of salary income of Rs.2,65,000/-, business income of Rs.4,85,286/- and income from other sources of Rs.3,20,760/-. The income from other sources includes the facilitation/ brokerage charges received by the assessee in respect of land purchased by Shri Purshottam Bairwa. Hence only because assessee has not submitted date wise detail of the facilitation/brokerage charges received from Purshottam Bairwa, it was incorrect on part of the Ld. CIT(A) to held that assessee has not substantiated the transaction.

In view of above, addition made by the AO and confirmed by Ld. CIT(A) be directed to be deleted.”

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

S. No.	Particulars	Pg No.	Filed before AO/ CIT(A)
1.	Copy of submission filed before Ld. CIT(A)	1-40	CIT(A)
2.	Copy of application dt. 14.12.2023 filed by assessee to Ld. CIT(A) for admission of additional evidence under Rule 46A of IT Rules	41-43	CIT(A)
3.	Copy of acknowledgment of return along with computation of total income of assessee	44-48	Both
4.	Copy of Balance Sheet and P&L A/c of assessee	49-50	Both
5.	Copy of Balance Sheet and P&L A/c of M/s Panchayat Stationers, proprietary concern of assessee	51-52	Both
6.	Copy of affidavit of assessee	53-54	CIT(A)
7.	Copy of sale deed dt. 21.08.2005 executed between Sh. Mangalram and Sh. Purshottam Bairwa	55-60	Both
8.	Copy of sale deed dt. 21.08.2005 executed between Sh. Kanhaiya Ram and Sh. Purshottam Bairwa	61-68	Both
9.	Copy of sale deed dt. 21.08.2005 executed between Sh. Raju and Sh. Purshottam Bairwa	69-75	Both

10.	Copy of following document in case of Sh. Purshottam Bairwa:-		
	- Acknowledgment of return along with computation of total income	76-78	CIT(A)
	- Balance Sheet and P&L A/c	79-80	
	- Cash Flow Statement	81	
	- Ledger account of Purchase Land	82	

7. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that in para 7.1.5, the Id. CIT(A) has given the adverse finding only on account of the fact that the assessee has not offered any brokerage income but at the same time, he failed to appreciate that the fact that the assessee has already offered other income for an amount of Rs. 3,28,760/-. Though, the lower authorities contended that the assessee failed to give the break-up of income. Even if then brokerage income be separately added but not whole amount of impugned consideration be added in the hands of the assessee. Though the assessee were ex-party before Id. AO but the assessee has as per provisions of rule 46A placed on record. All the submissions related to the issue which Id. CIT(A) as per power vested upon him has already considered and therefore, merely based on the facts that the assessee has not offered any brokerage income, the addition cannot be sustained in the hands of the assessee. The Id. AR of the assessee thus based on the submissions so

already on record stated that the assessee was merely facilitator and therefore, the addition of the consideration not paid and document was executed by two separate parties cannot be added in the hands of the assessee.

8. Per contra, the Id. DR vehemently argued that the assessee remained not compliant before lower authorities. The notice issued u/s 148 of the Act dated 29.07.2022, thereafter, the notice u/s 148 dated 29.07.2022 an order u/s 148A(d) of the Act. The Id. DR relying on the affidavit filed by the assessee when in, assessee acknowledge the fact that notices were issued to him. The assessee is supposed to explain the source of investments or that of the payment made in cash for the purchase of the property. The issue raised by the assessee in ITA No. 1266/JP/2024 is related to the levy of penalty on the amount added in the quantum proceeding.

9. We have heard the rival contentions and perused the material placed on record. The bench noted that the solitary issue raised by the assessee in this appeal is for the addition made by the Id. AO and sustained by the Id. CIT(A) for an amount of Rs.42,50,250/- made by AO on account of unexplained investment in purchase of land by not appreciating that the

land under consideration is owned by Shri Purushottam Bairwa, investment was made by him from his own sources, assessee acted only as broker between the transaction whereby Sh. Mangal Ram, Kanhiya Ram and Raju sold said land to Sh. Purushottam Bairwa, not properly appreciating the statement of Kanhiya Lal, not controverting the affidavit of assessee. The bench noted that the assessee was exparte before the Id. AO. He filed an affidavit before the Id. CIT(A) that his father was ill and therefore, he has sufficient reasons not to respond to the notices so issued by the Id. AO. The assessee thereby filed a prayer for admitting the additional evidence before the Id. CIT(A). Id. CIT(A) after considering the overall facts of the case has held as under:

7.1.5 During the appellant proceedings, the appellant has not furnished any details that how much brokerage he has received for the above mentioned transactions. Also the appellant has stated that such income was offered under the head of income from other source but on perusal of the same it is seen that no break-up of furnished by the appellant under the head of income from other source. Further, the appellant has also not furnished any copy of agreement to show how much brokerage was received by the appellant. Further the appellant has also failed to submit the date wise details of cash received from Mr. PurshottamBairwa for purchase of land. Hence, the appellant has not substantiate the above mentioned transaction. Therefore, action taken by the AO on such issue is hereby confirmed and accordingly, grounds of appeal no. 01 & 02 raised by the appellant is hereby dismissed.”

As is evident from the above finding of the Id. CIT(A) that he has confirmed the addition merely on the reasons that the assessee has not furnished any details as to how much brokerage he has received for the transaction under

question. It is an admitted fact that the assessee is ex-parte before the AO. It was the bounded duty of the assessee to appear before the statutory authorities as and when called for. It is noticed that various opportunities were provided to the assessee for settling the issue. When the matter carried before the Id. CIT(A) he could not demonstrate how much income he has earned as commission / brokerage from the transaction. Thus, we think that issue is required to be decided based on the overall facts argued and details placed on record and the assessee could not suffer the income which he has not earned and thus, we are of the view that lis between the parties has to be decided on merits so that nobody's rights could be scuttled down without providing opportunity of being heard to the assessee. Hence, the matter is required to be restored to the file of the AO to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings and prove that how much brokerage / commission that he has earned accordingly Id. AO will tax that amount. Thus, the appeal of the assessee is allowed for statistical purposes.

10. Before parting, we may make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by AO independently in accordance with law.

11. Apropos ground of appeal of penalty u/s 271(1)(c), it is noticed that the Id. CIT(A) dismissed this appeal of the assessee by observing that since the quantum addition was confirmed by him the penalty levied was also confirmed. The Bench has heard both the parties and perused the materials available on record. As regards the penalty appeal of the assessee relating to Section 271(1)(c) of the Act, the Bench feels that since the quantum appeal of the assessee has been restored to the file of the AO for afresh adjudication, therefore the fate of penalty appeal will be in accordance with the decision of quantum appeal. Hence, the same is restored to the file of AO to act in accordance with law.

12. In the result, the both the appeals of the assessee are allowed for statistical purposes as indicated hereinabove.

Order pronounced in the open court on 10/03/2025.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 10/03/2025

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- Sh. Trilok Chand Sain, Dausa
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(2), Alwar
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 1265 & 1266/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar