

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

(HYBRID COURT)

**BEFORE SH. UDAYAN DASGUPTA, JUDICIAL MEMBER
AND SH. KRINWANT SAHAY, ACCOUNTANT MEMBER**

I.T.A. No. 588/Asr/2024
Assessment Year: 2014-15

Income Tax Officer,
Ward-1, Faridkot

Vs.

M/s Vohra Solvex Pvt. Ltd.,
Sadiq Road, Faridkot, Punjab
151203

[PAN: AABCV 6919K]

(Appellant)

(Respondent)

C. O. No. 3/Asr/2025
Assessment Year: 2014-15

M/s Vohra Solvex Pvt. Ltd.,
Sadiq Road, Faridkot, Punjab
151203

Vs.

Assessment Unit, NFAC, Delhi,
JAO, Income Tax Officer,
Ward 1, Faridkot

[PAN: AABCV 6919K]

(Appellant)

(Respondent)

Appellant by : Sh. Sudhir Sehgal, A.R.
Respondent by : Smt. Vandana Vijay Mohite, CIT-D. R.
Date of Hearing : 20.03.2025
Date of Pronouncement : 29.04.2025

ORDER**Per Udayan Dasgupta, J.M.:**

This appeal is filed by the Revenue against the order of Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 03/09/2024 passed u/s 250(6) of the Income Tax Act, 1961 which has emanated from the order of the Assessing Officer dated 26.03.2022 passed by the AO, NFAC, Delhi.

2. The grounds of appeal taken by the Revenue in form 36 are as follows:

- “1. *The Ld. CIT(A) has erred in limiting the addition only to the extent of 1.2% of bogus purchases as against 100% made by the AO u/s 69C of the Act by not appreciating the judgment of the Hon'ble Hon'ble Supreme Court in the case of N.K. Proteins Ltd. v. DCIT [2017] 84 taxmann.com 195 (SC) in which the Hon'ble Apex Court has dismissed the SLP of the assessee against the decision of the Gujarat High Court [N.K. Industries Ltd. v. DCIT (2016) 72 taxmann.com 289 (Gujarat)] wherein 100% of bogus purchases were added to the total income of the assessee.*
2. *The Ld. CIT(A) has erred in limiting the addition only to the extent of 25% of bogus purchases by arriving at the conclusion that since the corresponding sales have been accepted and so entire alleged purchases cannot be disallowed. It has been clearly established while framing the Assessment Order by the AO that the purchases made by the assessee were bogus in nature. Further, the proprietors of the firms from which purchases were made i.e Sh. Vijay Kumar, Prop. M/s Evergreen Sales Corporation and Sh. Naresh*

Kumar, Prop. M/s Universal Foods Corporation had admitted before the ITO, Ward-2(4) in their statements recorded on 12.12.2016 and 13.12.2016 respectively, that they had not supplied any goods to the assessee company and only invoice bills have been issued.

3. *The appellant craves leave to add, amend, alter, vary any or all the above grounds of appeal.*
4. *It is prayed that the order passed by the Ld. CIT(A) may be set aside and that of the AO may be restored.”*

3. The brief facts emerging from records are that the assessee company is carrying on the business of running a ‘Solvex Plant’ and extracts edible and semi-edible oil etc., from Rice Bran, which is the primary raw material consumed by the assessee in the extraction process. Regular return has been filed along with the copies of audited accounts which were produced and examined in course of assessment proceedings and assessment completed u/s 143(3) on 19.12.2016. Subsequently, the case has been reopened u/s 148 on the basis of information gathered by the department that the purchase of goods made from *M/s Evergreen Sales Corporation (in short, (ESC), Fazilka* amounting to Rs.3,98,40,548/- and *M/s Universal Foods Corporation (in short, (UFC), Fazilka* amounting to Rs.2,45,14,364/- (totaling Rs. 6,43,54,912/-) are bogus purchase entries. As per the information received by the AO, it was noted that Sh. Naresh Kumar, Proprietor of *M/s Universal Food Corporation* and Sh. Vijay Kumar, Proprietor of *M/s Evergreen Sales Corporation*

has admitted on oath before ITO-Ward-2(4), Abohar, that no physical delivery of goods, consisting of rice, phak and nakku were actually delivered and they were only entry providers. It was further admitted that bank accounts were opened with different banks for financial transactions to be recorded without actual delivery of goods.

4. During the course of re-assessment proceedings, the assessee filed various documents and evidences to prove genuineness of the purchase from *M/s ESC* and *UFC* consisting of certified copies of yield chart of goods extracted by the assessee for the assessment years 2013-14 and 2014-15, month-wise summary statements of sales and purchase made by the assessee during the year under appeal, confirmation of copies of accounts of ESC and UFC, copy of bank statements of the assessee with Punjab & Sindh Bank, through which payments has been made by the assessee in respect of such purchases, copies of sample purchase invoices issued by *M/s ESC* and *UFC* which contains the details of transportation along with the vehicle numbers, confirmation of copies of both sellers in the books of the assessee, complete purchase book for the year under appeal, complete stock register, containing full details of inward and outward movement of rice bran, copy of VAT return of the assessee, wherein the details of purchases made from the two parties of ESC and UFC are reflected, and copy of respective VAT return of UFC and ESC where the respective

sales to the assessee company are found recorded, copy of month-wise summary details of consumption of purchase of raw material and copy of yield chart certified by the chartered accountant for the year under appeal has been produced and filed before the AO in course of re-assessment proceedings. However, the AO has refused to give any cognizance to such documentary evidences produced and filed in course of reassessment proceeding due to the absence of any purchase agreements and details of transportation in respect of the said purchases and as such the same has remained unexplained and addition has been made of the entire amount of purchase totaling Rs.6,43,54,912/-, u/s 69C of the Act to the total income of the assessee as bogus purchase.

5. The matter was carried in appeal before the Id. CIT(A) where detail submissions were filed by the assessee and the Id. CIT(A) arrived at a conclusion that the bogus purchase or wrong addition has been made by the AO in respect of the above two parties ESC and UFC, and after examining the ledger accounts, the Id. first appellate authority concluded that the total purchase from ESC will have to be considered at Rs. 2,43,78,214/- (*instead of 3,98,40,548/-*) because the AO has inadvertently missed out the confirmed ledger A/c. Thereafter, the Id. CIT(A) arrived at a conclusion, that there is no material on record to prove that the cash paid by the assessee through bank channel has been received back by the assessee. He also

opined that when the purchase under question is found to be in the books of account of the assessee, and books are not rejected and sales are accepted then the purchase under question cannot be disallowed in full, only profit element embedded in such purchase is to be added to the total income. Thereby, he restricted the addition to 1.2% (one point two percent) of the total purchases of Rs.4,88,92,578/-, resulting in an addition of Rs.5,86,710/-. The relevant portion of the findings of the Id. CIT(A) is reproduced as under:

“6.9 The entire payments being made by banking channels and there is no material on record to prove that cash has been received back by the appellant. Further, it also cannot be denied that when the purchase under question here is being found to be genuine, then profit element embedded in such purchases should be added to income of assessee. From the balance sheets of the appellant of last years, it is observed that the Net profit of the company was 0.61% & 0.57% for the years 2021-22 & 2022-23. Considering the above net profit ratio of the company, the Net Profit ratio for the impugned purchases is taken at 1.20% Thus, under the facts & circumstances of the case and after considering the submissions of the appellant, the profit percentage of 1.2% is hereby applied on the purchases amount of Rs. 4,88,92,578 (i.e. Rs. 2,45,14,364/- from M/s Universal Foods Corporation, Fazilka and Rs 2,43,78,214/- from M/s Evergreen Sales Corporation, Fazilka)

6.10 Accordingly, addition of Rs. 5,86,710/- (i.e. 1.2% of Rs. 4,88,92,578) is upheld out of the total addition of Rs.6,43,54,912/-.”

6. Regarding the issue of reopening of assessment u/s 148 of the Act which has been challenged by the assessee before the Id. first appellate authority, the Id. CIT(A) has dismissed the said grounds by observing as under:

“5.9 As highlighted in the various judgments of higher courts quoted above, the AO has power to reopen a case, provided there is tangible material to come to the conclusion that there is escapement of income of the assessee. The contentions of the appellant that all material facts were disclosed before the AO during the original assessment proceedings is not acceptable because mere production of copies of accounts and bank accounts relevant to the concerned transactions does not make the same as genuine. It is not necessary that every transaction routed through banking channel is a genuine transaction. In fact, it is a case where the assessee has not fully & truly disclosed the facts related to these transactions. The case has been reopened on the basis of reasons which were not available before the AO during the original assessment proceedings.

5.10 Therefore, in my considered view, there is not enough grounds to accept the contention of the appellants, and accordingly, these grounds of appeal are dismissed.”

7. Now, the department is in appeal before the Tribunal on the grounds contained in Form No. 36.

8. The ld. DR argued that the ld. first appellate authority was not justified in limiting or restricting the addition to only Rs.5,86,710/- i.e., (1.2% only) instead of 100% addition which should have been made and confirmed u/s 69C of the Act. In support of his argument, he relied on the judgment of Hon’ble Apex Court in the case of *N.K Proteins Ltd. v. DCIT* [2017] 84 *taxmann.com* 195 (SC) in which the Hon’ble Apex Court has dismissed the SLP of the assessee against the decision of the Hon’ble Gujarat High Court where it has been held 100% of bogus purchase should be added to the total income of the assessee. He further submitted that it has been admitted by

the proprietors of the respective sellers *Mr. Vijay Kumar (proprietor of ESC and Mr. Naresh Kumar, proprietor of UFC)* where they have stated in their recorded statement that they have not supplied any goods to the assessee and only invoices and bills has been raised. As such, the Id. DR prays for restoration of the assessments order.

9. The Id. AR of the assessee in course of hearing filed a paper book consisting of confirmed ledger accounts of both these sellers *ESC and UFC* as appearing in the books of account of the assessee, along with the photocopies of serial number of purchase invoices issued by the sellers which contains vehicle number through which goods has been transported with full details of wages and quantity of bags date-wise, he has also furnished copies of entire stock register, which gives full date wise details of inward and outward movements of stock and the quantitative balance that remains at the end of duty as reflected in the stock register, copies of ledger account of entire purchase made from the above two parties, which also reflects date-wise bills and quantity of goods purchase and also the payments made through through bank channel duly reflected in bank statement. He also filed copies of entire bank statements as supporting evidences to prove the fact that entire payments has been transferred from the bank accounts to the respective sellers.

10. The Id. AR of the assessee submitted that to prove the genuineness of the sales and purchase made by the assessee, documentary evidences has been filed, supported by the regular books of account which has been accepted and no defect has been pointed out by the Assessing Officer and the said books account has not been rejected and there are absolutely no materials on record to prove that the transactions are not genuine. Since, in the instant case the purchases made by the assessee are supported with invoices and all payments are made through bank channel and the sales were also accepted by the AO then the purchase cannot be doubted, and in support of his contention, he relied on the following judgments:

“(i) Judgment in the case of CIT v. Odeon Builders (P.) Ltd. as reported in [2019] 110 taxmann.com 64 (SC).

INCOME TAX: Where assessee had submitted purchase bills, transportation bills, confirmed copy of accounts and VAT Registration of sellers as also their Income-tax Return and payment was made through cheques, impugned purchases could not be disallowed.

(ii) Judgment in the case of PCIT vs. Tejua Rohit Kumar Kapadia reported in [2018] 94 taxmann.com 325 (SC)

Where purchases made by assessee-trader were duly supported by bills and payments were made by account payee cheque, seller also confirmed transaction and there was no evidence to show that amount was recycled back to assessee, Assessing Officer was not justified in treating said purchases as bogus under section 69C: SLP dismissed.

(iii) Judgement in the case of PCIT vs. Nitin Ramdeoji Lohia as reported in ([2022] 145 taxmann.com 546 (Bombay)

INCOME TAX: Where Assessing Officer made addition by disallowing expenses on purchases on ground that an information was received from sales tax department that assessee was beneficiary of accommodation entries on account of bogus purchases, since Assessing Officer had not disputed corresponding sales transactions, purchases also could not be bogus and, thus, impugned addition made on account of bogus purchases to be deleted.

(iv) Also, it is submitted that assessee has filed quantitative stock tally in form stock inventory, yield chart showing consumptions, purchases, goods returned, sales made by the assessee and no defect has been pointed out by the AO as well as CIT(A) during the course of assessment proceedings and appellate proceedings and reliance is being placed on judgment in the case of Piyush Developers Pvt. Ltd V/s ACIT in ITA No.5599/DEL/2010, ITAT, Delhi Bench (on the issue, if no defect have been pointed out, no addition is called for)

"No defects have been found in the stock register nor any defects have been pointed out by the A.O. in the audited books of accounts maintained by the assessee. Despite search and seizure no adverse material was found to substantiate the disallowance made by the A.O. Coming to the identity of the parties we find that all the parties are registered with sales tax department and have charged VAT in each of the bills. All these parties have bank accounts and payments were made through account payee cheques. Evidence of material having been received by the assessee, has been filed."

From perusal of above referred case laws, it is submitted that the assessee has proved the genuineness of the purchases by way of various documentary evidences mentioned above and same cannot be disallowed and treated bogus merely on the basis of statement recorded and the CIT(A) has accepted the fact at para 6.8 page 37 of the appellate order, wherein, it is mentioned that, it sales are accepted and no defect has been pointed out in the stock

inventory and there is no material on record to prove that the transactions were not genuine and even when the books of the assessee are also not rejected then the entire purchases cannot be disallowed only the portion of profit embedded to be added back to the income of the assessee.”

11. He further submitted that in the instant case, addition has been made by the AO solely on the basis of some statements given *Mr. Vijay Kumar* and *Mr. Naresh Kumar*, which were recorded behind the assessee without considering any material evidences or submissions made by the assessee and without offering any opportunities of cross examination of witnesses for rebuttal of the same. In support of his arguments the assessee relied on the following judgments:

“Principal Commissioner of Income-tax, Central-2, Mumbai vs. Nitin Cylinders Ltd. [2024] 159 taxmann.com 649 (Bombay)/[2024] 298 Taxman 33 (Bombay) [31-01-2024]

INCOME TAX: Where Assessing Officer made an addition on account of bogus purchases solely on a statement made by only one party recorded under section 131 without adducing evidence of other necessary parties. Tribunal was justified in deleting impugned addition Section 69C of the Income-tax Act, 1961 Unexplained expenditure (Bogus purchases) Assessee-company was engaged in manufacture of high-pressure seamless cylinders Pursuant to search and seizure operations of group concerns of assessee, Assessing Officer on basis of statement made by a director of assessee opined that assessee-company siphoned off cash by issuing cheques against bogus capital expenses debited in accounts of assessee-company Accordingly, he made an addition on account of bogus purchases which was confirmed by Commissioner (Appeals) However, Tribunal had held that capitalization could not be denied to assessee merely on a statement given by director of assessee, without

adducing evidence of other necessary parties It was found that assessee had produced certain documents including ledger extracts of parties, confirmation from parties, bank statements and certificate from registered valuer showing construction of a building indicating procurement of steel for which said payments were made by cheque - Capitalization was denied solely based on statement made by only party recorded under section 131- No enquiry in this regard was made and no evidence generally was made available by Assessing Officer-Whether since entire order of Assessing Officer was based merely on statement of Director of assessee without summoning or adducing additional/supplementary evidence of any other person corroborating allegation regarding bogus payments made by assessee, Tribunal was justified in deleting impugned addition - Held, yes [Paras 6 to 9] [In favour of assessee]

Deputy Commissioner of Income-tax vs VVD & Sons (P.) Ltd. [2024] 158 taxmann.com 395 (Chennai-Trib.)(13-09-20231

INCOME TAX : Where Assessing Officer, based on sworn statement recorded from one directors of assessee-company. disallowed claim of expenditure made by assessee towards special salary etc. and brought same to tax, since impugned addition was made merely on basis of statement and without any credible evidence. same was to be deleted

Thus, the reopening merely on basis of statement and without any credible evidence same was to be deleted following above case laws.

15. Further, our submission on the ground that, no opportunity of cross-examination was given to the assessee to confront the statements that was recorded at the back of the Assessee and the same cannot be relied upon. Moreover, no opportunity has been afforded to the Assessee for cross examination. The Assessee has specifically stated in the objections as filed in response to reasons recorded u/sec 148 of the Act, that, any statement taken at the back of the Assessee cannot be relied upon unless chance to cross examine is given to the Assessee and the same has been reproduced by the Ld. CIT(A) at pages 10, 25 to 26 and Reliance in this regard is being placed upon the following Judgments wherein it has been

held that the statements taken at the back of the Assessee cannot be used for making additions unless a chance to cross examine has been given to the Assessee. It has also been held that the Assessing Officer cannot make such additions only on the basis of surmises and conjectures:

[2024] 162 taxmann.com 5 (SC) Principal Commissioner of Income-tax v. Kishore Kumar Mohapatra".

(Judgment Set-1, pages 139 140)

"INCOME TAX: SLP dismissed against order of High Court that where Assessing Officer denied exemption claimed by assessee under section 10(38) on long-term capital gain on sale of shares on basis of statement of entry operators recorded on various dates in some other proceedings not connected with assessee and no opportunity to cross-examine so-called entry providers was given to assessee thereby violating principles of natural Justice, Tribunal was Justified in deleting addition made by Assessing Officer"

[2023] 157 taxmann.com 193 (SC) SUPREME COURT OF INDIA Principal commissioner of Income-tax v. Hadoti Punj Vikas Ltd

INCOME TAX: SLP dismissed against impugned High Court's order that where AO made addition under section 68 solely on basis of information received from Investigation Wing that lenders from whom assessee-company acquired loans were indulged in bogus accommodation entries, since assessee was not granted an opportunity to cross-examine persons whose statements were recorded during Investigation, Impugned addition made on basis of such investigation which was not privy to assessee were to be deleted

[2015] 281 CTR 0241 (SC) Andaman Timber Industries Vs. Commissioner of Central Excise.

[2024] 161 taxmann.com 586 (Punjab & Haryana) Principal Commissioner of Income-tax (Central) v. DSG Papers (P.) Ltd."

INCOME TAX: 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, Tribunal rightly deleted said addition. From perusal of above referred case laws, it is submitted that, wherein the opportunity of cross examination has not been provided to assessee then the assessment framed will be considered as invalid assessment, thereby violating the principal of natural justice, therefore, needs to be quashed.

16. Even otherwise, it is submitted, Books of accounts of the assessee have been not rejected by the AO and the findings have been given by the CIT(A) at para 6.5 at page 36 of the order of CIT(A) and, reliance is being placed on judgments of different courts, on the issue, no addition could be made without rejecting the books of accounts as per following case laws:

Judgment of Hon'ble Punjab & Haryana High Court in the case of Rajeev Aggarwal in ITA No. 35/2020 (O&M) wherein, it has been held as under:

"Against the same, the Revenue as such was in appeal. The Tribunal, vide its order dated 22.05.2019 (Annexure-A-III), has also examined the record and it was noticed that the assessee had produced stock statement where no negative stock had been shown and, therefore, it was concluded that how the AO had noted that the negative stock was not clear. The record produced showed that evidence was part of the account books furnished in support of the assessee's contention and the evidence had also been filed before the first Appellate Authority. Accordingly, it was held that it was not justified for rejecting the accounts simply because the names of the buyers were not mentioned in the bills of cash sales and it would not go to disbelieve the books of accounts since the assessee was trading in gold bullion. The day to day rates would have also been ascertainable from the rates declared by National market, Sarrafa Bazzars etc. Resultantly, a finding was recorded that the AO was not justified in rejecting the book version of the assessee and to apply the profit rate of 0.54% without any good reason and no comparable instance had been given and

there was no valid reason to doubt the record of the assessee and the assessee had maintained quantitative tally of the stock. The Revenue had not been, thus, able to make out a case that the assessee had not adopted consistent method of accounts and the profit and gains earned by the assessee could easily be detected from the books of accounts. The appeal as such was dismissed."

12. He rested his arguments by stating that the assessee in this case has fully discharged his onus placed upon him and no specific defects has been pointed out in respect of the voluminous information and documentary evidences and the books of account filed before the Assessing Officer, more so, in this case where the books of account has not been rejected and as such the entries in the regular books of account has to be accepted. Before concluding, the ld. A/R, has also distinguished the facts of this case vis-à-vis the decision of the Hon'ble Apex Court in *N.K. Proteins Ltd. v. DCIT (2017) 84 taxmann.com 195 (S.C.)*. He submitted that the reliance placed by the department on the case of *N.K. Industries* is clearly misplaced and distinguishable on facts. In *N.K. Industries*, bogus purchases were inferred based on seized signed blank cheques and vouchers found during a search. In contrast, no such incriminating material was found in the present case, and no search action was undertaken. The assessee has maintained proper books of account, along with a quantitative tally and day-to-day stock register, which were duly furnished during assessment and are available in the paper book. Month-wise purchase details were also submitted during

the hearing, and no discrepancy has been pointed out by the AO. As such, he prays for deletion of the entire addition.

13. We have heard both the counsels and considered the materials available on the record and the contents of the paper books and the various judgments relied upon by the assessee and we are of the opinion that the assessee has produced the stock statements, complete stock book where no negative stock has been shown and has produced the entire purchase invoices supported by payments through bank channel. It is also seen that the purchase invoices issued by the respective sellers contained date-wise details of transportation of goods along with the vehicle numbers and in course of assessment proceedings, the AO has not formed out any defects in such purchase invoices. In the instant case, we also find that the AO has not made out a case for rejection of books and as such the regular books of account has not been rejected in absence of any rejection of books of account, the entries in such regular books of account cannot be discarded as bogus. Moreover, we also find that the inward and outward movement of the stock register as examined by A.O. has not been doubted and as such the gross sales of the assessee which are also recorded in the stock register has been accepted as correct and when sales are accepted as correct, there is no reason to treat the purchase as bogus because there cannot be any extraction of finished products without input of raw materials. We also find that the

entire addition of disallowances has been made on the basis of third party statement which has been recorded behind the back of the assessee without affording any opportunity to the assessee of cross examination of witnesses. As such, we are of the opinion that the statements recorded behind the back of the assessee cannot be used for making addition unless and an opportunity to cross examine the witness is allowed.

14. As such, we are of the opinion that the ld. first appellate authority has rightly arrived at a conclusion that the entire purchase cannot be considered to be bogus especially when the books of account of the assessee are not rejected then the book figures are to be accepted as correct. As such, we uphold the order of the ld. CIT(A) and the Revenue appeal on this ground is dismissed being devoid of merits.

15. **C. O. No. 3/Asr/2025 for Asstt. Year: 2014-15**

The assessee has filed Cross Objection against the order of ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 03/09/2024 passed u/s 250(6) of the Income Tax Act, 1961 which has emanated from the order of the Assessing Officer dated 26.03.2022 passed by the AO, NFAC, Delhi.

16. The grounds of appeal taken by the assessee in C.O. are as follows:

- “1. That the Ld. CIT(A), has erred in upholding the action of the Assessing Officer in reopening of the case u/s 148 on account of alleged bogus purchases of Rice Phuck and Nakku..
2. That the Ld. CIT(A) has failed to appreciate that the original assessment was framed u/s 143 (3) vide order, dated 19.12.2016 and, as such, the reopening of the assessment u/s 148 amounts to only change of opinion.
3. That the Ld. CIT(A) has failed to follow the judgment of Hon'ble Punjab & Haryana High Court in the case of M/s Supertech Forgings (India) Pvt. Ltd. Vs PCIT, in ITA No.101/2022, where under similar facts and circumstances, the reopening u/s 148 was quashed on the identical issue of bogus purchases.
4. That the Ld. CIT(A) has erred in applying Gross profit of 1.20% on the purchases from Universal Food & Evergreen Sales.
5. That respondent craves leave to add or amend the ground of cross objections before the appeal is finally heard or disposed off.”

17. Ground nos. 1, 2 and 3 of the CO relates to the reopening of proceedings u/s 147/148 of the Act on the ground of alleged bogus purchase, where the assessee has relied on the judgments of the Hon’ble Punjab & Haryana High Court in the case of *M/s Supertech Forgings (India) Pvt. Ltd. Vs PCIT* reported in [2021] 62 CCH 0632 Asr, which according to the assessee is an identical case.

18. The ld. AR of the assessee submitted that when the reassessment proceedings are commenced by issue of notice u/s 148, beyond four years the same should be based on some tangible materials available with the AO, but in the instant case, the

said reopening has been done simply on the basis of statement of third parties recorded behind back of the assessee. He further submitted that complete invoices were available with the assessee and day to day stock registers were maintained evidencing the purchase of rice bran (*raw material*) the payment of which has been made through bank channel. He further submitted that purchase of raw materials has been accepted by the Assessing Officer in original assessment proceedings and as such, the reopening of this assessment u/s 148 was bad in law and he strongly relied upon the judgment of the jurisdictional High Court in the case of *M/s Supertech Forgings (India) Pvt. Ltd. Vs PCIT* (supra) where under similar facts and circumstances on the basis of statement of the buyers that they had not made any sales to the assessee concern, the assessment was reopened u/s 148 and the Hon'ble Tribunal held that the said information was required to be corroborated and verified by the AO before taking any action u/s 148, because the original assessment has been framed u/s 143(3) after necessary verifications and as such the Hon'ble Tribunal has quashed the reopening u/s 148.

19. Subsequently, the Revenue challenged the matter before the jurisdictional High Court where the Hon'ble Court has confirmed the order of the Tribunal which has quashed the reopening of the case u/s 148 of the Act. Number of other judgment has also been cited and relied upon by the assessee which laid down the law that where original assessment has been framed u/s 143(3) then it has to be proved that the fresh

information that has been received has to be corroborated and until and unless the same is proved, the reopening of the assessment is bad in law. On this issue, the Id. AR of the assessee has cited number of judicial precedents which are as follows:

- “i). Judgement in the case of CIT and another Vs Canara Bank, reported in 460 ITR 6 (SC).*
- ii). Judgement in the cae of ACIT Vs Meder Gems 154 taxmann.com 647. dated 25.08.2023(SC).*
- iii). Judgement in the case of Basic Clothing P. Ltd. Vs ITO 155 taxmann.com 507 Del HC order, dated 19.09.2023.*
- iv). Judgement of Hon'ble Bench in the case of GMADA for A.Y. 2008-09 and AY 2009-10 in ITA No. 410/Chd/2013 order, dated 20.12.2017*
- v). Judgement in the case of CIT Vs ICICI Bank Ltd., reported in 31 taxmann.com 53 (Bom. HC)*
- vi). Judgement in the cae of Hon'ble Bombay HC in the case of CIT Vs Jet Speed Audio Pvt. Ltd., reported in 55 taxmann.com 531.*
- vii). Shiva Exports Vs ITO in [2009] 28 SOT 512 (Chd).”*

20. The Id. AR further submitted that in the instant case, wrong reasons to believe has been recorded by the Assessing Officer in the sense that the purchase from ESC has been recorded at Rs.3.98 crores instead of actual purchase of Rs.2.43 crores which proves that the reopening is on the basis of wrong reasons to believe. On this issue he has relied upon some judicial precedents which are as follows:

- “i). [2024] 165 taxmann.com 197 (Amritsar- Trib.) ITAT, Amritsar Bench in the case of Sukhvir Singh Vs ITO.*
- ii). Smt. Monika Rani in ITA No. 582/Chd/2019, dated 28.02.2020.*
- iii). Gaurav Joshi Vs ITO, reported in (2019) 55 CCH 0083 (Jalndhar Camp)*
- iv). Sagar Enterprises Vs ACIT (2002) 257 ITR 335 (Gujarat High Court)*
- v). Harjeet Singh Vs ITO (ITAT) Delhi, order dated 12.11.2018, in ITA No. 2013/Del.2015.*
- vi). KMV Collegiate Sr. Sec. School Vs ITO (2017) 163 ITD 653 (Asr.) (Trib.)*
- vii). Fortune Metaliks Limited. Vs DCI, ITA No. 1090/Chd/2019, dated 12.01.2021-Chd. Trib”*

21. The ld. DR relied upon the findings of the Assessing Officer and relied upon the order of the ld. CIT(A) and argued that the tangible materials were there before the AO for reopening of the assessment proceedings and refer to the observations of the ld. CIT(A) in para nos. 5.1 to 5.10 of the appellate order.

22. We have heard the rival submissions of the counsels and we have considered the materials on record and also the contents of the paper book filed by the assessee along with the copy of the judgment set of various decisions of various courts relied upon by the assessee in support of his argument. We find that in the instant case, the original assessment was framed u/s 143(3) on 19th December, 2016 and the reopening notice u/s 148 was issued on 19th March, 2021 which has been issued beyond four

years, on the basis of statement of two parties recorded behind the back of the assessee by the ITO, Ward 2(4), Abohar and on the basis of information supplied by the ITO, Ward-2(4), Abohar to the AO of the assessee, proceedings has been initiated u/s 148 without verifying the particulars and the contents of such information. The AO has not made any enquiry before issue of such notice u/s 148. We find that the Assessing Officer has not recorded his independent satisfaction. He has simply relied upon the information passed on to him by the AO, Abohar and relying on the report of the investigation wing, he has proceeded to reopen the assessment without any independent satisfaction or findings that there has been any escapement of income. Respectfully, following the law laid down by the jurisdictional High Court in the case of *M/s Supertech Forgings (India) Pvt. Ltd. Vs PCIT* (supra) where the AO has disallowed the entire purchase as bogus purchase on the basis of statement of third parties recorded on the back of the assessee where they have denied making any sales to the assessee company and this information received by the AO was neither corroborated nor verified by the AO, the Hon'ble jurisdictional High Court quashed the reopening of the assessment.

23. In the instant case, the facts are identical to the case relied upon by the assessee and as such we have no hesitation in holding that the reassessment proceedings in the instant case by issue of notice u/s 148 dated 29.03.2021 is bad in law. We further find that in the recorded reasons the purchase from Evergreen Sales Corporation (ESC)

has been (incorrectly mentioned at Rs.3,98,4048/-) against the correct amount 2,43,78,214/- which proves that the wrong reasons to believe has been formed by the Assessing Officer and relying on the judgments cited by the assessee before us, the reassessment proceedings are held to be *void ab-initio* and accordingly the cross objection of the assessee is allowed on this legal ground and reassessment proceedings as initiated by the Assessing Officer by notice u/s 148 dated 29.03.2021 are liable to be quashed.

24. In the result, C.O. filed by the assessee is allowed.

25. On the whole the ITA No. 588/Asr/2024 filed by the revenue is dismissed and the CO No. 3/Asr/2025 filed by the assessee is allowed.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 29.04.2025.

Sd/-
(Krinwant Sahay)
Accountant Member

Sd/-
(Udayan Dasgupta)
Judicial Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

True Copy
By Order