

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 548/DEL/2024
Assessment Year: 2013-14

DCIT, Central Circle 14, New Delhi	Vs.	Kundan Rice Mills Ltd., E-4, Industrial Area, Panipat, Haryana PIN: 132 103 PAN No. AAACK7098P
(Appellant)		(Respondent)

ITA No. 593/DEL/2024
Assessment Year: 2013-14

Kundan Rice Mills Ltd., E-4, Industrial Area, Panipat, Haryana PIN: 132 103 PAN No. AAACK7098P	Vs.	DCIT, Central Circle 14, New Delhi
(Appellant)		(Respondent)

ITA No. 573/DEL/2024
Assessment Year: 2014-15

DCIT, Central Circle 14, New Delhi	Vs.	Kundan Rice Mills Ltd., E-4, Industrial Area, Panipat, Haryana PIN: 132 103 PAN No. AAACK7098P
(Appellant)		(Respondent)

ITA No. 594/DEL/2024
Assessment Year: 2014-15

Kundan Rice Mills Ltd., E-4, Industrial Area, Panipat, Haryana PIN: 132 103 PAN No. AAACK7098P	Vs.	DCIT, Central Circle 14, New Delhi
(Appellant)		(Respondent)

ITA No. 595/DEL/2024
Assessment Year: 2015-16

DCIT, Central Circle 14, New Delhi	Vs.	Kundan Rice Mills Ltd., E-4, Industrial Area, Panipat, Haryana PIN: 132 103 PAN No. AAACK7098P
(Appellant)		(Respondent)

ITA No.1363/DEL/2024
Assessment Year: 2015-16

Kundan Rice Mills Ltd., E-4, Industrial Area, Panipat, Haryana PIN: 132 103 PAN No. AAACK7098P	Vs.	DCIT, Central Circle 14, New Delhi
(Appellant)		(Respondent)

Assessee by:	Shri Ashwani Kumar, CA Ms. Muskan Garg, Adv.
Department by:	Shri Dayainder Singh, CIT (DR) & Shri Om Prakash, Sr. DR

Date of Hearing:	02.06.2025
Date of pronouncement:	27.06.2025

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

The above captioned cross-appeals by the Department of Revenue and Assessee are against orders dated 12.12.2023, 13.12.2023 & 08.02.2025 of the Learned Commissioner of Income-Tax(Appeals)-26, New Delhi (hereinafter referred to as “Ld. CIT(A)”) under Section 250 of the Income-Tax Act, 1961 (hereinafter referred to as “the Act”) arising out of assessment orders dated 21.03.2022, 31.03.2022 and 22.03.2022 by the Deputy Commissioner of Income Tax, Central Circle-14, New Delhi (hereinafter referred to as “Ld.AO”) under Sections 147 r.w.s. 143(3) of the Act for assessment years 2013-14, 2014-15 and 2015-16 respectively.

2. Brief facts of ITA No.548/Del/2024 are that appellant/assessee company filed return of income under Section 139(1) of the Act at Rs.7,47,43,250/- for assessment year 2013-14 on 28.09.2013. Assessment was completed under Section 143(3) at an income of Rs.7,61,81,580/- on 15.03.2016. Proceedings under Section 147 of the Act were initiated and notice under Section 148 read with section 147 was issued to assessee on 14.01.2021 after recording reasons and necessary approval under Section 151 of the Act. In compliance of notice

under Section 148 of the Act, assessee filed return of income under Section 148 on 20.01.2021 declaring total income of Rs.7,61,81,580/-. Notice under Section 142(1) of the Act along with questionnaire were issued from time to time. Notices under Section 143(2) dated 26.06.2021 were issued. Assessee requested for copy of reasons recorded. Through notice dated 01.08.2021, copy of reasons recorded were provided. Letter for objections to opening the case dated 31.08.2021 was filed by the assessee. Ld. AO vide order dated 04.02.2022 rejected the objections for reopening of the case. Notice under Section 142(1) dated 25.02.2022 was issued. On completion of assessment proceedings, Ld. AO passed order dated 22.03.2022 assessing income at Rs.35,51,59,480/- as against the returned income of Rs.7,61,81,580/- for assessment year 2013-14.

3. Similarly, Ld. AO passed assessment order dated 31.03.2022 and assessing income at Rs.74,90,29,570/- against return of Rs.34,90,29,570/- for assessment year 2014-15. Likewise, Ld. AO vide order dated 22.03.2022 assessed income of Rs.9,53,83,460/- against returned income of Rs.8,73,14,960/- for assessment year 2015-16.

4. Against orders dated 22.03.2022, 31.03.2022 and 22.03.2022 of Ld. AO, appellant/assessee preferred appeals before Ld. CIT(A) which were partly allowed vide orders dated 12.12.2023, 13.12.2023 and 08.02.2024 for assessment years 2013-14, 2014-15 and 2015-16 respectively.

5. Being aggrieved, above captioned cross-appeals have been preferred by the Revenue and Assessee with following grounds:

5.1 Revenue's grounds in ITA No. 548/Del/2024:

“1. Whether on the facts & the circumstances of the case and in law, the Ld. CIT(A) erred, in restricting the addition of Rs.27,89,77,900/- on account of unexplained income u/s. 69A if the Act to Rs.55,79,558/- even though the assessee failed to discharge onus of evidence?

2. Whether on the facts & the circumstances of the case and in law, the Ld. CIT(A) erred, in restricting the addition and partly allowing the appeal even though there is admission by Sh. Mohit Bansal in his statement that there is no genuine business of bullion trade and M/s. Faith Jewellers Ltd. is engaged in giving accommodation entries.

3. That the appellant craves leave to add, amend, alter, or forego any ground(s) of appeal either before or at the time of hearing of the appeal.”

5.2 Assessee's grounds in ITA No. 593/Del/2024:

“1. That the order dated 12.12.2023 passed u/s 250 of the Income-tax Act, 1961 (hereinafter called the "Act") by the Commissioner of Income Tax (Appeals) -26, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Deputy Commissioner of Income-Tax, Central Circle - 14, New Delhi in resorting to reassessment proceeding and issuing notice u/s 148 of the Act.

2. That the order dated 12.12.2023 passed u/s 250 of the Act by the Commissioner of Income Tax (Appeals) -26, New Delhi is against law and facts on the file in as much as he was not justified to partly uphold the action of the Ld Assessing Officer in disregarding the actual nature of the transaction of Rs. 27,89,77,900/- between the Appellant Company and M/s Faith Jewellers and restricting the addition made by the Ld. Assessing Officer to Rs. 55,79,558/- (i.e. 2% of Rs. 27,89,77,900/-) by holding that:- (i) the Appellant Company has, allegedly, made sales to some other parties on higher profit margins in grey market and took entry of bills of sales

from M/s Faith Jewellers to allegedly maintain its profit margin as shown from other buyers; (ii) the Appellant Company has allegedly earned an extra profit of Rs, 55,79,558/- (i.e. 2% of Rs. 27,89,77,900/-) which is to be considered as alleged undisclosed income;

3. That the order dated 12.12.2023 passed u/s 250 of the Act by the Commissioner of Income Tax (Appeals) -26, New Delhi is against law and facts on the file in as much as he was not justified in upholding the action of the Ld Assessing Officer in passing the order being non-est and bad in law in as much as (i) the proceedings had not been conducted in the manner prescribed by the Departmental instructions, in particular those relating to e-proceedings, issued from time to time, which were to be mandatorily complied with by the Ld. Assessing Officer; (ii) requisite conditions of Circular No. 19 of 2019 for communicating/recording mandatory computer generated Document Identification Number on the assessment order/notice of demand u/s. 156 calculation sheet have not been fulfilled.

4. That the appellant craves leave to add, amend, alter, or forego any ground(s) of appeal either before or at the time of hearing.”

5.3 Revenue's grounds in ITA No. 573/Del/2024:

“1 Whether on the facts & the circumstances of the case and in law, the Ld. CIT(A) erred, in restricting the addition of Rs. 24,51,37,226/- on account of unexplained income u/s 69A of the Act to Rs. 49,02,745/- even though the assessee failed to discharge onus of evidence?

2 Whether on the facts & circumstances of the case and in law, the Ld. CIT(A) has erred, in restricting the addition and partly allowing the appeal even though there is admission by Sh. Mohit Bansal in his statement that there is no genuine business of bullion trade and M/s Faith jewelers Ltd. is engaged in giving accommodation entries.

3 That the appellant craves leave to add, amend, alter, or forego any ground/(s) of appeal either before or at the time of hearing of the appeal.”

5.4 Assessee's grounds in ITA No. 594/Del/2024:

“1. That the order dated 13.12.2023 passed u/s 250 of the Income tax Act, 1961 (hereinafter called the "Act") by the Commissioner of Income Tax (Appeals) 26, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Deputy Commissioner of Income Tax, Central Circle -14. New Delhi in resorting to reassessment proceeding: and issuing notice u/s 148 of the Act.

2 That the order dated 13.12.2023 passed a 250 of the Act by the Commissioner of Income Tax (Appeals) 26, New Delhi is against law and facts on the file in as much as he was not justified to partly uphold the action of the Ld Assessing Officer in disregarding the actual nature of the transaction of Rs. 24,51,37,226/- between the Appellant Company and M/s. Faith Jewellers and restricting the addition made by the Ld. Assessing Officer to Rs. 49,02,745/- (i.e. 2% of Rs. 24,51,37,226) by holding that the Appellant Company: (i) has, allegedly, made sales to some other parties on higher profit margins in grey market and took entry of bills of sales from M/s Faith Jewellers to allegedly maintain its profit margin as shown from other buyers; (ii) has allegedly earned on extra profit of Rs. 49,02,745/-(i.e. 2% of Rs. 24,51,37,226/-) which is an be considered as alleged undisclosed income.

3 That the order dated 13.12.2023 passed u/s 250 of the Act by the Commissioner of Income Tax (Appeals)-26, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Ld Assessing Officer in adding back a sum of: (1) Rs 2,92,43,155/-on account of profits earned on currency derivatives by treating the same as alleged unexplained income/69A of the Act by ignoring the fact that the same already stood credited to the Profit & Loss Account; (ii) Rs.5,84,853/-on account of alleged unaccounted commission expenses 2% on corning this alleged fictitious profit of Rs.2,92,43,155/-by applying the dimming provisions of Section 690 of the Act as unexplained expenditure.

4. That the order dated 13.12.2023 passed u/s 250 of the Act by the Commissioner of Income Tax (Appeals)-26, New Delhi to against law and facts on the file in as much as he was not justified to direct the Ld. Assessing Officer to verify, and allow credit in respect of the profit from currency derivatives of Rs. 2,92,43,155/- by ignoring the fact that the

same were already credited to the Profit & Loss Account and without appreciating the evidence filed on behalf of the Appellant Company.

5. That the order dated 13.12.2023 passed u/s 250 of the Act by the Commissioner of Income Tax (Appeals)-26, New Delhi is against law and facts on the file in as much as he was not justified in upholding the action of the Ld Assessing Officer in passing the order being non-est and bad in law in as much as (1) the proceedings had not been conducted in the manner prescribed by the Departmental instructions, in particular those relating to e-proceedings, issued from time to time, which were to be mandatorily complied with by the Ld. Assessing Officer, (ii) requisite conditions of Circular No. 19 of 2019 for communicating/recording mandatory computer-generated Document Identification Number on the assessment order/notice of demand u/s. 156 calculation sheet have not been fulfilled.

6. That the appellant craves to add, amend, alter, modify or delete any or all of the grounds of appeal before or at the time of hearing.”

5.5 Revenue’s grounds in ITA No.1595/Del/2024:

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in accepting plea of assessee and restricting the addition amounting to Rs. 1,61,370/- out of Rs. 80,68,500/- on account of unexplained income u/s 69A of the Act even though assessee failed to discharge onus of evidence.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in ignoring the statement recorded during search of Proprietor of M/s Faith Jewellers, Shri Naval Kishor Goyal regarding modus operandi of accommodation entry.

3. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of hearing.”

5.6 Assessee’s grounds in ITA No. 1363/Del/2024

1. That the order dated 08.02.2024 passed u/s 250 of the Income-tax Act, 1961 (hereinafter called the "Act") by the Commissioner of Income Tax (Appeals)-26, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Deputy

Commissioner of Income-Tax, Central Circle -14, New Delhi in resorting to reassessment proceeding and issuing notice u/s 148 of the Act.

2 That the order dated 08.02.2024 passed-u/s 250 of the Act by the Commissioner of Income Tax (Appeals)-26, New Delhi is against law and facts on the file in as much as he was not justified to partly uphold the action of the Ld Assessing Officer in disregarding the actual nature of the transaction of Rs. 80,86,500/- between the Appellant Company and M/s Faith Jewellers and restricting the addition made by the Ld. Assessing Officer to Rs. 1,61,370/- (i.e. 2% of Rs. 80,68,500/-) by holding that the Appellant Company:- (i) has, allegedly, made sales to some other parties on higher profit margins in grey market and took entry of bills of sales from M/s Faith Jewellers to allegedly maintain its profit margin as shown from other buyers; (ii) has allegedly earned an extra profit of Rs.1,61,370/-: (i.e. 2% of Rs. 80,68,500/-) which is to be considered as alleged undisclosed income.

3.That the order dated 08.02.2024 passed u/s 250 of the Act by the Commissioner of Income Tax (Appeals)-26, New Delhi is against law and facts on the file in as much as he was not justified in upholding the action of the Ld Assessing Officer in passing the order being non-est and bad in law in as much as (i) the proceedings had not been conducted in the manner prescribed by the Departmental instructions, in particular those relating to e-proceedings, issued from time to time, which were to be mandatorily complied with by the Ld. Assessing Officer; (ii) requisite conditions of Circular No. 19 of 2019 for communicating/recording mandatory computer-generated Document Identification Number on the assessment order/notice of demand u/s 156 calculation sheet have not been fulfilled.

4. That the Appellant craves to add, amend, alter, modify or delete any or all of the grounds of appeal before or at the time of hearing.

6. Aforesaid grounds of appeals give rise to following questions:

1. Whether, Ld. CIT(A) erred in restricting addition and partly allowing appeal despite admission by Shri Mohit Bansal in his statement that there is no genuine business of bullions trade and M/s. Faith Jewellers is engaged in giving accommodation entries?

2. Whether, Ld. CIT(A) erred in ignoring statement recording during search of Prop. M/s. Faith Jewellers Shri Naval Kishore Goel regarding modus operandi of accommodation entries?

3. Whether, Ld. CIT(A) was not justified in upholding the action of Ld. AO in disregard of actual nature of transaction between appellant company and M/s. Faith Jewellers and restricting the addition to 2% by holding that the appellant company has allegedly made sales to some other parties on higher profit margin in Grey Market and took entry of bills of sales from M/s. Faith Jewellers to allegedly maintained its profit margin?

7. Learned Authorised Representative for Department of Revenue submitted that on basis of conclusion drawn out of search and survey conducted in case of Naval Kishore Goyal, Proprietor of M/s. Faith Jewellers, it was found that no actual business took place in M/s. Faith Jewellers and the actual work of bogus billing was done on directions of Shri Naval Kishore Goyal. Ld. AO after noting above facts, issued notices, supplied copy of statements to assessee and reopened the case of assessee.

8. Learned Authorised Representative for appellant/assessee submitted that Ld. AO treated accommodation entries and made additions. Ld. CIT(A) wrongly upheld action of Ld. AO in this regard of actual nature of transaction between assessee and M/s. Faith Jewellers. By restricting addition to 2% by holding that assessee has allegedly made sales to some other party on hire profit margin in -- Market and took entries of bills of sales from M/s. Faith Jewellers for alleged maintenance of its profit margin. Ld. CIT(A) failed to appreciate that

in assessment year 2013-14, original return of income was filed on 28.09.2013. Assessment was completed under Section 143(3) of the Act on 15.03.2016, copy of order is at pages from 67 to 73 of the paper book. Notice under Section 148 read with section 147 of the Act dated 14.01.2021 was issued. Return of income filed by assessee in response to notice was at an income of Rs.7,61,81,580/-. Copy of reasons recorded for issuing notice under Section 148 of the Act on 01.08.2021 at page nos. 74 to 81 of the paper book. In reasons, failure of assessee has not been mentioned. Reopening after four year without reasons is illegal. Reliance was placed on the orders of ITAT dated 20.05.2016 in the case of Rajat Shubra Chatterji vs. ACIT, Circle 37(1), New Delhi vide ITA No.2430/Del/2018 and in the case of M/s. MAH Impex Pvt. Ltd. vs. ITO, Ward 16(1), New Delhi vide ITA No,279/Del/2019.

9. Learned Authorised Representative for appellant/assessee submitted that the search was conducted on Naval Kishore Goyal. Statement of Shri Mohit Bansal was not provided to the assessee. Statement of Shri Mohit Bansal does not mention the name of assessee. The entire basis of order of Ld. AO is on statements of Shri Mohit Bansal and Naval Kishore Goyal. Account books of assessee were not rejected. Sales of the assessee were accepted. Stock books were produced before the Ld. AO. Where search was conducted on third party, assessment conducted under Section 148 of the Act, whereas assessment should have been conducted under Section 153C of the Act. Reliance was placed in

the case of Rajat Shubra Chatterji vs. ACIT, Circle 37(1), New Delhi vide ITA No.2430/Del/2018 and in the case of M/s. MAH Impex Pvt. Ltd. vs. ITO, Ward 16(1), New Delhi vide ITA No,279/Del/2019.

10. Learned Authorised Representative for assessee submitted that additions made under Section 68 and 69A of the Act where sales were reflected in books of accounts is unsustainable. As held by ITAT vide order dated 03.01.2024 in the case of ITO vs. J.K. Wood India Private Ltd. (2024) 158 taxmann.com 208 (Delhi Trib.) and in the case of Durga Fire Works vs. ITO, Ward 59(8) vide ITA No.383/Del/2024.

11. From examination of record in light of aforesaid rival contentions, it is crystal clear that for the assessment year 2013-14, original return of income was filed by appellant/assessee under Section 139 of the Act at Rs.7,47,53,250/-. Copy of reasons recorded for issuance of notice under Section 148 of the Act at pages 74 to 18 of the paper book does not mention reasons regarding failure of assessee.

12. Reopening after more than four years of assessment, is not permissible as per ratio of judgment of Hon'ble Supreme Court of India in the case of ACIT Vs. Sabh Infrastructure Ltd. (2024) 159 taxmann.com 184 (SC) as under:

“15. The assessment proceedings, especially those under section 143(3) of the Act, have to be accorded sanctity and any reopening of the same has to be on a strong and sound legal basis. It is well-settled that a mere conjecture or surmise is not sufficient. There have to be reasons to believe and not merely reasons to suspect that income has escaped assessment. In this case, the reasons failed to mention what facts or

information was withheld by the petitioner. Merely relying upon the statement of Mr. Navneet Kumar Singhania that the companies in question were "paper companies", by itself, is insufficient to reopen the assessment, unless the Assessing Officer had further information that these companies were non-existent after making further inquiries into the matter. It is clear that the Assessing Officer did not make any inquiry or investigation, if these companies were in fact "paper companies". No effort has been made to establish the connection between the statement of Mr. Navneet Kumar Singhania and the five companies.”

13. It is a material fact that search was conducted on M/s. Faith Jewellers. Reasons recorded for reopening and approval of assessment proceedings under Section 147 of the Act (page nos. 74 to 81 of the Paper Book) mention statements of Shri Naval Kishore Goyal and Mohit Bansal regarding providing of accommodation entries to assessee. In order in case of M/s. MAH Impex Pvt. Ltd. vs. ITO, Ward 16(1), New Delhi vide ITA No,279/Del/2019, it is held as under:

“10. We are of the considered view that Ld. Tax Authorities have fallen in error as the reopening u/s 147/148 is on the basis of income chargeable to tax which has escaped the assessment due to concealment or furnishing inaccurate particulars. While here is a case where Ld. AO intends to make an addition u/s 68 of the Act, for any sum found credited in the books, by rebutting the explanation given by the assessee u/s 68 of the Act, on the basis of incriminating material found in the search of another person who has also been subject to assessment u/s 153A. We are of considered opinion that the assessment of the any assessee, whose explanation u/s 68 of the Act is being discredited on the basis of incriminating evidence found elsewhere alone, then the assessment of such other person should be u/s 153C as 'other person', and not u/s 147 of the Act.”

14. In view of above material facts and well settled principles of law, the proceedings under Section 148 of the Act on basis of search conducted on third

party are unsustainable and ought to have been conducted under Section 153C of the Act.

15. It is glaring fact that apparent on record that Ld. AO and Ld. CIT(A) had not rejected the book of accounts, stock books etc., sales were accepted by the Departmental Authorities. In case of Durga Fire Works Vs. ITO, Ward 59(8) (ITA No. 383/Del/2024), it is held as under:

“19. We further observed that the coordinate bench of the Tribunal in the case of M/s Shivam Industries Pvt. Ltd. Vs. ACIT the coordinate bench of the Tribunal held that when the audited books of account were not rejected and the sales of the assessee have not been disturbed the Revenue authorities are precluded from making any addition u/s 68 of the Act in respect of the cash deposits made into bank account during demonetization period.”

16. In view of above material fact and well settled principles of law, the additions made by the Ld. AO being unsustainable in the eyes of law are set aside. Accordingly, all the questions are decided in favour of assessee.

17. In the result, the appeals of the Revenue are dismissed and appeals of the assessee are allowed.

Order pronounced in the open court on 27/06/2025.

Sd/-

(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 27 /06/2025
Mohan Lal

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi