

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

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

**I.T.A. No. 645/Asr/2024
Assessment Year: 2012-13**

Sh. Mandeep Singh S/o Sh Narinder Singh, Village and Post Officer Tarmala Malout Distt. Muktsar. Punjab [PAN:-BYTPS2919C] (Appellant)	Vs.	ITO, Ward-2(5), Muktsar. (Respondent)
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Appellant by	Sh. Sudhir Sehgal, Adv.
Respondent by	Sh. Bharat Bhushan Garg, CIT. DR

Date of Hearing	09.04.2025
Date of Pronouncement	30.06.2025

ORDER

Per: Udayan Dasgupta, J.M.:

This appeal is filed by assessee against order of Ld. CIT (A), NFAC, Delhi, passed u/s 250 dated 26.09.2024 which has emanated from the order of the Id. AO, Ward 2(5), Muktsar, dated 14/12/2019, passed u/s 147 of the Act 1961.

2. The assessee has taken the following grounds of appeal:

“1. That the Id. CIT(A) has erred in confirming the action of the Assessing officer in sustaining an addition of Rs. 15,00,06,000/-as made by the Assessing officer in his order u/s

143(3) r.w.s 147 of the IT Act 1961 dated 14.12.2019 as against the income declared in the return of income at Rs. 1,65,519/-.

2. a) That the Ld. CIT(A) NFAC Delhi has erred confirming the action of Assessing Officer in issuing notice u/s 148 on the basis of information provided by the DDIT(Inv.) Bhatinda without making proper preliminary enquiries and re-assessment proceedings were initiated for the purpose of verification which is not admissible under the law.

b) That the Ld. CIT(A) NFAC Delhi has erred in confirming the action of the Assessing Officer in issuing u/s notice u/s 148 of the LT Act and further the prescribed authority had given its approval in a mechanical manner under section 151 of the I. T Act, 1961.

c) That the Ld. CIT(A) NFAC Delhi has failed to appreciate that the notice u/s 148 was not served upon the assessee in the manner prescribed u/s 282 of the Act and thus the completion of assessment by the Assessing Officer is invalid and needs to be quashed.

3. Notwithstanding the above said grounds of appeal, that the Ld. CIT(A) NFAC Delhi has erred in confirming an additions of Rs. 15,00,06,000/- on protective basis under section 69A of the Act on account of un-explained cash deposits in the bank account despite the fact that the assessee had denied having maintained any current account No. 02831131002070 with OBC, Abohar and had filed copy of FIR lodged with police for fraudulently opening bank account in his name by M/s. Gaga Wine Trade and

Financers Ltd., L-1, Abohar and M/s New Gagan Wines, L-1, Abohar.

4. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard and disposed off.”*

3. The brief facts emerging from records are that the assessee is engaged in the business of retail trading of foreign liquor under license granted by the State Excise authorities. On the basis information gathered by the AO that the assessee has made cash deposit amounting to *Rs. 15 crore (fifteen crores)* in the current account maintained with *Oriental Bank of Commerce* under the trade name of *Mandeep Singh and Sons*, during the *period 13.03.2012 to 26.03.2012* , and in absence of any regular return on record , necessary inquiries were conducted u/s 133(6) , and in absence of any response from the assessee , proceedings were initiated u/s 147 after necessary approval from higher authorities vide notice dated 27/03/2019, against which return was filed on 15th November, 2019, declaring income of Rs. 1,65,519/- on disclosed turnover of alcoholic liquor (*for human consumption*) Rs.83.36 lakhs.

3.1 The entire amount of cash deposited in the bank account (*within the specific period of 13th March, 2012 to 26th March 2012*) was immediately transferred by cheque in favour of two business concern (i) M/s Gagan Wine Trade and Financers

Ltd. and (ii) M/s New Gagan Wines (*Proprietor Mr Amit Doda*) as evident from the bank statement (*placed in page – 11 of PB*) .

3.2 Statement of the assessee was recorded u/s 131 of the Act, by the DDIT, Investigation, Bathinda where the assessee has denied the opening of any bank account with OBC , and has stated that the bank account (*being A/c No xxxx 002070 with OBC*) , which is the subject matter of dispute in the instant case , has been fraudulently opened by *Mr Amit Doda (Prop M/s Gagan Wines)* in the name of the assessee, (*without the assessee's knowledge*) supported by copies of documents fraudulently, obtained from State Excise office, without his knowledge , and the entire cash that has been deposited in the said bank account starting from *13.03.2012 till 26.03.2012 totalling Rs.15 Crores* (approximate) has been deposited by the above named two business concerns namely (i) *M/s Gagan Wines Trade and Financers Ltd., and (ii) M/s Gagan Wines* and immediately after deposit of the same, the said amount has been transferred to the above two parties, through bank channel , by utilising the cheque book of OBC bank but under signature of some “ *Raj Kumar* ” acting as authorised signatory of the assessee firm *Mandeep Singh and Co* .

3.2 It is also seen from record that the disputed bank account was operated by the above two parties (*through the authorised signatory*) and the assessee had no control over the said bank account and had no access to the cheque books and he has

neither deposited any money in the said bank account nor withdrawn any money from the same and nothing belongs to him and has not derived and direct or indirect benefits from such financial transactions. As stated by the assessee the entire financial transaction has been done with malicious intention and it was never in the knowledge of the assessee and the entire exercise has been done by *New Gagan Wines* (Prop Amit Doda) for their personal benefits , being engaged in similar trade of alcoholic liquor (*as distributor as evident from Form 26AS*).

3.1 The entire transactions of correlating purchase of *alcoholic liquor* are also recorded in the income tax portal in form 26AS in the name of the assessee, and the same is subjected to TCS collected at source (u/s 206C), and the entire transactions of purchase are affected through the disputed bank account *Oriental bank of commerce a/c XXXXXXXXX2070* , which according to the assessee does not belong to him or does not relate to him and the *assessee has never claimed the credit of corresponding TCS u/s 206C , in his return.*

3.3 It was also seen from assessment order that the addition of *Rs. 11 crore and Rs. 4 crore totalling Rs.15 crore* has already been made in the case of actual beneficiary *M/s Gagan Wines and Financers and M/s New Gagan Wines (Proprietor Amit Doda)* who are both *L – 1 Excise license holders* by treating the same as unexplained money u/s 69A of the Act. However, it is seen from the assessment order *para 4* that in the instant case, the said amount has been also added back in the

hands of the assessee *on protective basis and* assessment completed by accepting the returned income at Rs.1,65,519/- [(+) *an addition of Rs.15 crore on protective basis u/s 69A of the Act*].

4. The matter was carried in appeal before the first appellate authority and in course of appellate proceedings full submission has been filed by the assessee where the submission of the assessee has been rejected and the appeal has been dismissed by the Id. CIT(A) with the following observations:

“In view of above facts and the considering the explanation of the appellant, it is clear that the assessee has failed to justify the transactions based on which addition was made to his income during the assessment proceedings. During the course of appellate proceedings, the appellant has not submitted supporting documents for the contention. It is evident that the appellant made cash deposits of Rs. 15,00,06,000/-in his bank accounts maintained with HDFC Bank and Oriental Bank of Commerce, Abohar during the said year. The contention of the appellant remained unjustified and unsubstantiated. Hence, the Assessment order is upheld and the ground is noted as dismissed.”

5. Now, the assessee is in appeal before the tribunal on the ground contained in the memorandum of appeal.

6. In course of hearing the Id. AR of the assessee filed a written submission along with copies of first information report (FIR) filed before the Police Station, Abohar explaining the entire context of the case for which criminal proceedings are ongoing.

6.1 On legal issue the assessee has challenged the reopening of the case u/s 148 of the Act in support of which he has filed written arguments which are reproduced below:

“Our Arguments on the issue of re-opening of the case u/sec 148 of the Act:

11. No reason to believe/no satisfaction, since the reasons are recorded on the basis of borrowed information/satisfaction:

a) It is very much clear from the order of the Assessing Officer that the entire proceedings are based upon the information transferred from the Investigation Wing (Bathinda). There has to be independent formation of belief by the Assessing Officer and, which is not there in the present case and there being no application of mind of the Assessing Officer and neither he has formed his own belief and, as such, the issuance of notice u/s 148 is not proper.

b) There was no document or any other information in the file of the AO, on account of which the AO shall had formed his reason to believe. The whole exercise

of re-opening of the case is based upon the information from the Investigation Wing and there is no application of mind by the AO.

c) *Reliance is being placed on the following judgments wherein it has been held that the 148 proceedings are bad in law in case, the reasons recorded are based upon borrowed satisfaction and the re-opening is purely based upon reasons to suspect: -*

Hon'ble Jurisdictional ITAT, Chandigarh Bench, Chandigarh in the case of Evershine Recreation Pvt. Ltd. in ITA No. 718/Chd/2022 and Others wherein in para 93 at pages-152 & 153 it has been held as under:

"93 Therefore, the issuance of notice under section 148 on the basis of the statement or the documents seized during the search under section 132 of the Income Tax Act on a third party is against the provisions of the Income Tax Act. Reliance in this regard has been placed on the order of the Chandigarh Bench of the ITAT in the case of "Kaur Jain Spinning & Weaving Mills Limited Versus ACIT", 128 taxman.com 147 (Chd), dated 16.04.2021, the Delhi ITAT decision in the case of "Nawal Oils and Container Private Limited Versus Income Tax Officer", ITA No. 852/DEL/2019, order dated 04.03.2020, the Chandigarh ITAT decision in the

case of "Sanjay Singhal (HUF) Versus Deputy Commissioner of Income Tax", ITA Nos. 702 to 704/Chd/2018, dated 19.06.2020, the Jaipur ITAT decision in the case of "Shri Kalyan Buildmart Private Limited Versus Assistant Commissioner of Income Tax", ITA Nos. 152 and 153/JP/2018, dated 28.06.2018, the Amritsar ITAT decision in the case of "Arun Kumar Kapoor, Amritsar Versus Department Of Income Tax", ITA No. 147(ASR)/2010, and the Delhi High Court decision in the case of "PCIT Versus Anand Kumar Jain (HUF)", in ITA No. 23/2021, dated 12.02.2021."

i). *Sh. Gopal Sharan vs. ITO in ITA no. 51/Asr/2012 vide order dated 05.09.2012 (Amritsar ITAT):*

"As regards the reason recorded, nothing has been brought on record by the revenue that the A.O has applied his mind to the information of the ADIT, Amritsar independently and arrived at belief on the basis of material placed before him that income had escaped assessment. On such borrowed satisfaction of the ADIT, Amritsar, section 147 does not confer power on the A.O to initiate reassessment proceedings."

ii) *Sh. Mohd Yousuf Wani vs. ITO in ITA No. 372/Asr/2009(Amritsar ITAT):*

“ In our considered view, reliance placed by the A.O on the letter of Vigilance Department was not sufficient to make a belief that the income of the Assessee has escaped assessment. In the present case, the reason for formation of belief was only the information received from the vigilance Organization. In our opinion, the so-called reason recorded by the A.O could not be held the reason for proceedings under section 147/148 of the Act, since it was only an information and was not at all discernible as to whether the A.O has applied his mind to the information and independently arrived at a belief on the basis of material which he has before him the income of the assessee had escaped assessment”.

iii) Sh. Sanjeev Aggarwal vs. DCIT in ITA NO. 547/Asr/2011(Amritsar ITAT)

“ There is no dispute to the facts that the AO has recorded the reason with respect to Rs.501000/- on the basis of information received from the Investigation Wing of the Income Tax department. It was also not in dispute that before recording the reasons, the AO has not applied his mind. Had he applied that mind, the amount of Rs. 5,01,000/- as suggested by the Investigation Wing of the Income tax Department could have been corrected before recording the reasons but the same has not been done, which in facts, has been done and mind has been applied only during the assessment proceedings by making confirmation from the Manager of

Punjab & Sind Bank and that too on additional information received from Investigation Wing of the Income Tax Department during assessment proceedings. But the fact remains that the AO did not have any material or was having wrong material to suggest that income of the assessee had escaped assessment.”

- iv) CIT vs Paramjit Kaur as reported in 311 ITR 38 (P& H HC)*
- v) CIT vs Meenakshi Overseas Ltd. as reported in 395 ITR 677*
- vi) PCIT vs G G Pharma India Ltd. as reported in 384 ITR 147*
- vii) Smt Geeta Garg vs CIT as reported in 51 IT Rep 215 P& H HC*
- viii) M/s Supertech Forgings (India) Pvt Ltd. vs DCIT in ITA No. 563/Asr/2018 order dated 25.08.2021. Further the appeal of the department has even been dismissed by the Hon’ble Punjab & Haryana HC vide order dated 05.09.2023 in ITA-101-2022 (O&M)*
- ix) ITO vs Lakhmani Mewal Das 103 ITR 437 (SC)*
- x) Smt. Sarika Jain vs ITO in ITA NO. 316/Chd/2012 order dated 19.01.2016*
- xi) M/s Holy Faith International Pvt Ltd. Vs DCIT in ITA No. 181/Asr/2017 order dated 15.01.2019*
- xii) Durga Prashad Goyal vs ITO (ITAT, Amritsar Bench) as reported in (2006) 101 TTJ (Asr) (SB) 1;*

xiii) *M/s Bhai Industries Pvt Ltd. vs Ito in ITA No. 358/Asr/2019 order dated 11.08.2022*”

7. On merits of the case, it has been argued by the Id. AR that the bank account with the Oriental Bank of Commerce was never opened by the assessee and the same was never operated by the assessee either.

7.1 He further submitted the form of bank opening with Oriental Bank of Commerce to submit before us that the authorised signatory of the said bank account was one *Mr. Raj Kumar* son of *Sh. Dula Ram* who had been the employee of *M/s Gagan Wine Trade and Financiers Ltd.*, he further pointed out that the introducer in the account opening form is of *M/s New Gagan Wines* and he has also produced copies of cheque which were presented before the bank for debiting various amount (*in the name of the assessee*) which is signed by the *Sh. Raj Kumar* who has happened to the authorised signatory:

7.2 He further referred to the following pages of the PB to argue as follows:

“12.4 Copy of the notarized stamp paper signed by the notarized public dated 24.03.2012 submitted in the name of the assessee for opening a false bank account in the name of the assessee, whereas the bank account was operated prior to that date. (Pg-29 of PB).

12.5 Copy of the Bank Account Statement bearing A/c no. 02831131002070 in OBC bank for the year under consideration is enclosed in the PB at page-11. From the perusal of the same it is clear that the cash is deposited in the said account and immediately, the amount is either

transferred to M/s Gagan Wine Trade and Financiers Ltd or M/s New Gagan Wines, thereby proving the ultimate beneficiary of the amount deposited are only those parties.

12.6 *The Account has been used only from 12.03.2012 to 26.03.2012. (relevant page-11 of PB)*

12.7 *Copy of FIR dated 13.02.2019, against Sh Amit Doda, Shiv Lal Doda and Gagan Doda (Owners of M/s Gagan Wine Trade and Financiers Ltd and M/s New Gagan Wines) and Sh Raj Kumar (their employee) was filed by the Assessee specifying the said facts. (Pg- 30-37 of PB). It has even been mentioned in the said FIR that the signatures of the Assessee have been forged in the said Bank account at the time of opening the bank account.*

12.8 *Further even Challan Form u/sec 173 of CRPC Act has even been filed by the Police department in the Court wherein Sh Amit Doda, Shiv Lal Doda and Gagan Doda (Owners of M/s Gagan Wine Trade and Financiers Ltd and M/s New Gagan Wines) and Sh Raj Kumar (their employee) have been treated as guilty by the Police.*

12.9 *Sh Amit Doda, Shiv Lal Doda and Gagan Doda have shown sales to the Assessee by filling TCS returns and have shown sales to the Assessee in their Firms as under:*

<i>Detail as per 26AS of Assessee (Pg-6-8)</i>	<i>Purchase Amount</i>	<i>TCS Amount</i>
<i>Amit Doda (Pg-6 of PB)</i>	<i>6,62,91,881.67</i>	<i>6,62,918.00</i>

<i>Gagan Wine and Finance Limited (Pg-7 of PB)</i>	<i>21,75,94,978.00</i>	<i>21,75,945.00</i>
<i>Molson Coors India Private Limited (Pg-7 of PB)</i>	<i>46,08,065.02</i>	<i>46,079.00</i>

The above said purchases were never made by the Assessee Firm and the said entries were done the respective persons only to give a true and fair colour to the transactions done by them.

12.10 Further it is also worth to mention here that the Assessee at the time of filling the return of income has even not claimed the said TCS belonging to the purchases as alleged to be made from the above parties. (relevant page-3 of pb of computation of income)

12.11 The AO has even agreed to the facts in the case of the Assessee (Pg-4-5 of the order) and has made only protective addition in the case of the Assessee.

12.12 But, it is argued before the Hon'ble Bench that, since it is clear that the Assessee has never used the said account and the cash deposits do not belong to the Assessee at all, even protective addition cannot be made in the case of the Assessee."

7.3 He prays for deletion of the addition wrongly made by the AO and sustained by the Ld. CIT (A).

8. The Ld. DR relied on the order of the CIT (A) but did not controvert the submission made by the assessee.

9. We have heard the rival submissions and considered the materials on record and the contents of the paper book. We find that the assessee himself is a retailer of alcoholic liquor, under license granted by State Excise authorities and his gross turnover as declared in his return, amounting to *Rs. 83.36 lakhs* also matches with the related purchase as reflected in form 26AS (*excluding the fraudulent purchase as discussed above*) and transacted through HDFC bank , against which a net profit of *Rs. 1,65,519/-* is disclosed and accepted by the AO in scrutiny proceedings. We also note that the assessee has restricted his claim of TCS (u/s 206 C), to the extent of actual purchase made by him from parties who are all distributors of alcoholic liquor under control of State Excise authorities. Moreover, for all practical purpose, it would not have been humanly possible for the assessee (*a retail trader*) to execute a turnover of such huge amount of *Rs. 15 crores* in a short span of only fourteen days considering the capacity of his license category, which only empowers him to sell to actual consumers over the counter.

9.1 Moreover, the assessee coming to know of such scrupulous activities being carried out in his name, has rightly taken shelter under the provisions of law by filing the FIR and necessary legal proceedings are under way and the law will take its own course in the matter.

9.2 Moreover, we also find that the AO has conducted proper enquiry and has arrived at a logical conclusion regarding the transactions carried out by the aforesaid

two alleged parties and has found out that the necessary proceedings against both of them has been initiated in respect of the financial transactions indulged in by them.

Considering the factual aspect of the matter on merits of the case we are of the opinion that, the addition on protective basis, made by the AO in the hands of the assessee is not legally justified, and the same is directed to be deleted.

10. Since we have decided the appeal in favour of the assessee on merits we do not adjudicate on the legal issues raised by the assessee, which will just be of academic interest.

11. In the result appeal of the assessee is allowed.

Order pronounced on 30.06.2025 under Rule 34(4) of the Income Tax Appellate Tribunal Rules 1963.

Sd/-

Sd/-

(KRINWANT SAHAY)
Accountant Member

(UDAYAN DASGUPTA)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

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By order