

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

(HYBRID COURT)

**BEFORE SH. MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

I.T.A. No. 415/Asr/2024
Assessment Year: 2012-13

Yadav Rice Mills,
Balamgarh Road,
Muktsar, Punjab 152026

[PAN: AAIFY 1979N]

(Appellant)

Vs.

Deputy Commissioner of Income
Tax, Circle-2, Bathinda

(Respondent)

Appellant by : Sh. Ashwani Kumar, Ms. Deepali Aggarwal,
& Ms. Muskan Garg, CAs
Respondent by : Sh. Charan Dass, Sr. D.R.
Date of Hearing : 02.07.2025
Date of Pronouncement : 17.09.2025

ORDER

Per Udayan Dasgupta, J.M.:

This appeal is filed by the assessee against the order of the Id. CIT(A) NFAC, Delhi dated 24.05.2024 passed u/s 250 of the Income Tax Act, 1961 which has arisen from the order of the AO, DCIT, Circle-2, Bathinda passed u/s 143(3) of the Act, 1961 dated 05.12.2019.

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

- “1. *That order passed u/s 250 of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals), NFAC, Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Assessing Officer in Initiating proceedings u/s 148 of the Income Tax Act, 1961 on various grounds raised before him in the grounds of appeal.*
2. *That CIT(A) further gravely erred in upholding the addition of Rs. 45,10,231/- as alleged unaccounted credits in the bank account by resort to provisions of Section 68 of the Act.*
3. *That CIT(A) further gravely erred in upholding the estimated addition of Rs. 4,510/- on account of alleged commission paid by resort to provisions of Section 69C of the Act.*

3. The facts borne out from records are that the assessee is a partnership firm engaged in the business of milling and sales of rice (*under trade name of Yadav Rice Mills*) situated at Bhatinda, Punjab. Return for the year has been filed on 26th September, 2012 declaring *total income at Rs.28.80 lakhs* which has been accepted u/s 143(1) of the Act 61.

4. Subsequently, on the basis of statement of one Mr. Dinesh Jain (*of M/s Adieshwar Traders*), Delhi , recorded *u/s 131(1A) , of the Act 61 , by the DDIT (investigation), Panipat, where the said person admitted to be running shell companies and provided accommodation entries by issuing bills and invoices,*

without actual physical delivery of goods and has entered into financial transactions through his bank *account no xxxxx00646 / HDFC Bank LTD, Delhi*, from where payments were discovered to have been made by the said *M/s Adieshwar Traders* to the assessee firm (*Yadav rice Mill*) amounting to *Rs.30.99 lakhs* during the *FY 2011-12* on various dates, reassessment proceedings has been initiated by the AO (*after necessary approval from higher authorities*) vide notice u/s 148 dated 23/03/2019.

5. Objections to notice u/s 148 has been raised and disposed off and submissions made by the assessee during assessment proceedings, consisting of books of accounts, copies of sale bills, transport documents evidencing movement of goods, bank statements, has been examined along with audited financials, and assessment completed on a total income of *Rs. 73.94 lakhs (with an addition of Rs.45.10 lakhs on account of un accounted credits in bank account alleged as bogus sales and an estimated addition of Rs.4,510/- as unexplained expenditure on account of commission paid)* to the returned income

6. The matter carried in first appeal has been dismissed by the Ld CIT (A) both on the legal issue challenging the reopening u/s 147 and also on the merits of the case by observing as follows (*relevant portion of the Ld first appellate order reproduced for ready reference*):

“Ground No.2 to 6 are raised against the AO's action in reopening assessment u/s.148.

During the appellate proceedings, the assessee challenged the reopening u/s 148. The assessee contended that the reopening was done on the basis of borrowed satisfaction without making preliminary enquiry and without application of mind. The assessee, further, contended that the AO should not have relied on the statement of the third person without considering the documents filed by the assessee. The assessee, further, argued that the reasons recorded do not reveal the satisfaction of the prescribed authority u/s 151 of the Act.

7.2 As seen from the facts of the case, as per information available, there are credits in the bank accounts of Shri Dinesh Jain Prop. Mis Adieshwar traders, Naya Bazar, Delhi, During the course of proceedings u/s 131(1A), statement of Shri Dinesh Jain was recorded by the DDIT(Inv.), Panipat. Sh. Dinesh Jain in his statement admitted that he was running shell concern M/s Adieshwar traders and was engaged in providing accommodation entries through the said entity. Sh. Dinesh Jain in his statement admitted that his concern was not engaged in actual delivery of goods but only bills were being issued in lieu of commission. It was found that this concern Le M's Adleshwar traders, 2533/18, Gali Lallen Wali, Naya Bazar, Dehli maintained various bank account and out of the said bank accounts, one bank account is No.09312320000646 with HDFC Bank Limited, New Delhi. This concern had made payments through banking mode totalling to Rs.30,99,800/- to the assessee, Mis Yadav Rice Mills, Muktsar during the year under consideration, Shri Dinesh Jain, in his statement admitted that he was involved in providing accommodation entries by issuing bogus bills in lieu of certain commission and no actual sale/purchase taken place. In view of the statement of Sh. Dinesh Jain, it was revealed that the transactions were made by the assessee without actually making sales/delivery of the goods, Hence, the amount of Rs.30.99,800/-represents unaccounted credits in the bank accounts/books of account of the assessee. Accordingly, proceedings u/s147 of the Act were initiated in this case by issue of notice uls 148 of the Act on 23.03.2019 after recording reasons and after obtaining necessary approval of the Pr. Commissioner of Income Tax, Bathinda as conveyed vide his letter No. Pr. CIT/BTI/Tech/4/2018-19/3630 dated 19.03.2019. It is also noticed that copy

of statement of Shri Dinesh Jain was provided to the assessee during the assessment proceedings.

7.3 *At this juncture, it may not be out of place to highlight the fact that it is trite law that at the time of initiation of proceedings u/s 147 of the Act, the condition precedent is reason to believe that income had escaped assessment but not establishment of the fact of actual escapement of income. Accordingly, while issuing notice u/s 148 of the Act, there should be evidence on record or specific information received from outside agencies or gathered by the AO to demonstrate that there is a prima facie case of escapement of income. Under the circumstances, I don't find any merit in the assessee's contention that the AO recorded reasons for reopening based on information received without proper application of mind. The case laws relied upon by the assessee are not applicable to the facts of the case.*

7.4 *In this regard, I would like to place reliance on the latest decisions of the Hon'ble Supreme Court, apart from the judgments of other High Courts, on the issue of reopening of the assessment as discussed below.*

7.5 *Reliance is placed on the following judicial precedents rendered by the Hon'ble Supreme Court:*

- 1. Kalyanji Mavji & Co., vs CIT [1976] 102 ITR 287 (SC):*
- 2. ITO vs Lakshmani Mewal Das [1976] 103 ITR 437 (SC) &*
- 3. Raymond Woolen Mills vs ITO [1999] 236 ITR 34 (SC):*

7.6 *Also, reliance is placed on the decisions of the Hon'ble High Court of Gujarat in the following cases:*

- (i) Peass Ltd. Industrial Engineers (P.) [2016] 76 taxmann.com 122 (Gujarat): in this case, it is held that-vs. DCIT*

"Where in case of assessee, return was processed under section 143(1), Assessing Officer could initiate reassessment proceedings subsequently on basis of information supplied by Investigation wing of department that assessee had taken bogus purchase entries from two parties.

- (ii) *Backbone Projects Ltd. vs. ACIT [2021] 131 taxmann.com 80 (Gujarat)*
- (iii) *Priya Blue Industries [2021] 130 taxmann.com 492 (Gujarat). (P.) Ltd. VS. ACIT [2021] 130 taxmann.com 492 (Gujarat).*
- (iv) *Aaspas Multimedia Ltd. vs. DCIT [2017] 83 taxmann.com 82 (Gujarat): In this case, it is held that-*

"Where reassessment was made on basis of information received from Principal DIT (Investigation) that assessee was beneficiary of accommodation entries by way of share application provided by a third party, same was justified."

7.7 *In view of the above, respectfully following the decisions of the Hon'ble Supreme Court as well as various High Courts (supra), I am of the considered opinion that, in the instant case, the AO had properly applied his mind and recorded reasons and, therefore, there is no merit in the assessee's contention that the assessment was reopened on the basis of borrowed satisfaction but without application of mind by the AO.*

7.8 *Further, with regard to the contention of the assessee that the AO relied on the statement of the third party without considering the documents filed by the assessee, it is noticed that the AO considered the submissions and the documents furnished by the assessee and rejected them after giving reasons for the same. Therefore, the contention of the assessee is not tenable.*

7.9 *Further, with regard to the argument of the assessee that the reasons recorded do not reveal the satisfaction of the prescribed authority u/s 151 of the Act, it is noticed that proceedings u/s 147 of the Act were initiated in this case by issue of notice u/s 148 of the Act on 23.03.2019 after recording reasons and after obtaining necessary approval of the Pr. Commissioner of Income Tax, Bathinda as conveyed vide his letter No. Pr. CIT/BTI/Tech/4/2018-19/3630 dated 19.03.2019. Therefore, the contention of the assessee is not tenable.*

7.10 *In view of the above, the ground no. 2 to 6 raised by the assessee on the issue of reopening are dismissed."*

7. Regarding the grounds on merits the observation of the Ld CIT (A) are as follows:

“8.0 Ground No. 7 is raised against the addition of Rs. 45,10,231/- on account of unaccounted credits in the bank account u/s.68 of the Act.

During the course of proceedings u/s 131(1A), statement of Shri Dinesh Jain was recorded by the DDIT(Inv.), Panipat. Sh. Dinesh Jain in his statement admitted that he was running shell concern M/s Adieshwar traders and was engaged in providing accommodation entries through the said entity. Sh. Dinesh Jain in his statement admitted that his concern was not engaged in actual delivery of goods but only bills were being issued in lieu of commission, It was found that this concern Le Mis Adieshwar traders, 2533/18, Gali Lalten Wali, Naya Bazar, Dehli maintained various bank account and out of the said bank accounts, one bank account is No. 09312320000646 with HDFC Bank Limited, New Delhi. This concern had made payments through banking mode totalling to Rs.30,99,800/- to the assessee, M/s Yadav Rice Mills, Muktsar during the year under consideration. Shri Dinesh Jain, in his statement admitted that he was involved in providing accommodation entries by issuing bogus bills in lieu of certain commission and no actual sale/purchase taken place. The nature of business of the assessee is Rice sheller, Shri Dinesh Jain, in his statement admitted that he was involved in providing accommodation entries by issuing bogus bills in lieu of certain commission and no actual sale/purchase taken place. It was also admitted by him that no actual delivery of goods took place and only bills are given as well as taken

8.1 On the other hand, the assessee stated that it had entered into trade transactions with the aforesaid entity but physical delivery of goods took place and there was nothing like accommodation entries. The assessee also filed copy of account of the aforesaid entity in its books of account, copies of bills raised, transport receipts, etc. As per copy of account, during the year, the assessee showed sales aggregating to Rs 45,85,970/- and cash advances to truck drivers aggregating to Rs.50,000/- and thus total debits were Rs.46,35,970/-. The assessee showed receipts of payments aggregating to Rs.45,10,231/-and account balance was showed Rs.NIL after taking into account other credits on account of

freight, receipts, RTGS charges, etc. The balance outstanding at the opening of the year as well at the closing of the year was shown at Rs.NIL, after taking into account

8.2 After analyzing all the facts, the AO observed that amounts aggregating to Rs.45,10,231/-were debited from the bank account No. 09312320000646 of M/s Adieshwar traders and thus the same were credited the bank account of the assessee. The AO, further, observed that assessee received the said payments in the guise of sales made to him but Sh.Dinesh Jain in his statement admitted that he was running shell concerns and was engaged in providing accommodation entries through these concerns.

8.3 Further, the AO made an interesting observations that the RTGS charges incurred on remitting amounts to the assessee were credited by the assessee in the account of M/s Adieshwar traders which shows that the transactions of sales are not genuine. As in case of genuine transactions, the assessee would have credited only the amounts actually received from the purchaser. Further, the assessee claimed to have transported goods to Gandhidham (Gujrat) on eight occasions out of nine occasions but the same are without any locus standi. Sh. Dinesh Jain further admitted that his concerns were not engaged in actual delivery of goods (purchases as well as sales) but only bills or RTGS were being issued in lieu of commission. On further investigation, it was found that Sh. Dinesh Jain was operating one such shell concern under the name & style Mis Adeshwar traders. It was found that this concern maintained a bank account No. 09312320000646 with HDFC Bank Ltd., Delhi. The entity M/s Adieshwar traders had made various payments through banking mode on different dates to the assessee during the year under consideration. The nature of business of the assessee is Rice sheller. Shri Dinesh Jain, in his statement admitted that he was involved in providing accommodation entries by issuing bogus bills in lieu of certain commission and no actual sale/purchase taken place. It was also admitted by him that no actual delivery of goods took place and only bills are given as well as taken. It was also stated by him that he has provided accommodation entries in respect of bogus sales and as well as towards bogus purchases by either accepting credits by way of cheques/RTGS, etc or by way of giving debits through cheques & RTGS and sometimes, the transactions are done in cash but no actual delivery of goods viz paddy/rice is not taken. In view of the statement of Sh. Dinesh Jain, it is revealed that the transactions were made by assessee to

obtain sale bills of the amount without actually making delivery of the goods. Sh. Dinesh Jain also admitted that he had received commission in lieu of such transactions which has been declared by him in his return of income. Keeping in view the entire facts and circumstances, the AD held that books of accounts of the assessee are not reliable and rejected u/s 145(3) of the Act. Hence, the AD computed the amount of Rs 45,10,231/- represents unaccounted credits in the bank accounts u/s 68 of the Act.”

“8.13 Accordingly, after applying the Theory of Human Probabilities', and the concept of 'substance over form' aided with various case laws mentioned above, in the instant case, the claim of the assessee that the transactions are genuine lacks bone fides. Under the circumstances, I am of the considered opinion that the AO rightly made the impugned addition of Rs.45,10,231/- warranting no interference of the appellate authority. Thus, the Ground No. 7 raised by the assessee on this issue is dismissed.

9.0 Ground No.8 is raised against the AO's action in making an addition of Rs.4,510/- u/s.69C of the Act on account of commission paid.

The amount of commission paid by the assessee for obtaining accommodation entry of Rs.45,10,231/- is estimated at Rs.4,510/- by the AO which is also treated as unexplained expenditure of the assessee uis 69C of the Act.

9.1 As seen from the facts of the case, Sh. Dinesh Jain admitted that his concerns were not engaged in actual delivery of goods (purchases as well as sales) but only bills or RTGS were being issued in lieu of commission. Therefore, I am of the considered opinion that the AO rightly estimated the commission paid by the assessee for obtaining accommodation entry. Thus, Ground No. 8 raised by the assessee on this issue is dismissed.”

8. The assessee is in appeal against the order of the Ld first appellate authority on the grounds contained in form 36, both on legal aspect challenging the notice issued u/s 148 as well as on merits of the case.

9. In course of hearing the Ld AR of the assessee submitted on the legal issue that the reopening proceedings has been initiated on the basis of a statement recorded by the DDIT (Inv) issued by a third party (*during proceedings u/s 131(1A)* of the Act), by one Mr. Dinesh Jain (*prop of Adieshwar Traders*) that he was engaged in providing accommodation entries where only bills were issued without actual physical delivery of goods and on the basis of this flagged information, the AO initiated reassessment proceedings without conducting any independent enquiry and there is no evidence to show any application of mind , more so , considering the fact that the said Mr Jain , has nowhere made any specific reference of the *assessee by name in his recorded statement*. He further submitted that even if the said information is considered informative the AO should have caused independent enquiry to gather corroborative evidences and should have correlated facts and arrived at his independent satisfaction, instead of simply recording reasons on information supplied by the investigation unit. He further submitted that objections raised by the assessee, challenging the recorded reasons has been dismissed without allowing *an opportunity of cross examination of the witness*, on the basis of whose statement the entire assessment is framed, thereby, leading to a clear violation of the principles of justice on this count.

10. He further referred to the recorded reasons (*placed in page 15 and 16 of the PB*) to submit that reasons are also recorded *on incorrect facts* where it has been

stated by the said Mr. Jain that his concern (*Adileshwar Traders*) was not engaged in *actual delivery of goods but only bills are issued* in lieu of commission, which itself proves that these statements are not meant for the assessee by any stretch of imagination, because in the instant case it is the assessee who is the owner of the rice mill (*Yadav rice Mill*) and is the SELLER of goods and it is the assessee who is making the sales and *sale invoice (bills)* are drawn by the assessee in the name of the buyer, and it is the assessee who makes physical delivery of goods through road transport evidenced by *consignment notes* supported by VAT way bills (*export slip generated by the excise and taxation department*) Punjab, as Government documents regarding proof of goods moving out of the State of Punjab to *Gandhidham* (Gujrat) against “C” forms issued under *Central Sales Tax Act 56*, as reflected in the sales invoice.

11. On merits he further placed reliance to the paper book containing copies of sales invoices, drawn by the assessee, along with correlating transport documents by way of consignment notes containing truck numbers, VAT way Bills, computerized Weigh Bills issued by weigh bridge and terms and conditions regarding *ex- Mill delivery, at Adileshwar Traders, Gandhidham*, to explain the issue of freight charges being deducted from bills, and submitted that all evidence of physical movement of inter-state transaction of goods (*covered by e way bills and Central declaration forms*) are available for examination, and none of the documents has been proved to

be false or not authentic at any stage of verification, and the said documentary evidences cannot be rejected without any adverse findings.

12. He further submitted that the proceedings has been initiated on incorrect recording of basic facts and *sanction of higher authorities u/s 151(1)* has also been issued without application of mind to the incorrect facts put up, before them in as much , that neither any delivery of goods are made *by Mr Jain nor any bills are required to be issued by the party* , because for all practical purpose it is the other way round, where bills are drawn by the assessee (*seller*) and delivery of goods are also made by the assessee (*as per supporting invoices and movement of goods being inter- state, proved by supporting consignment notes and way bills*).

13. The Ld AR of the assessee further submitted on merits, that the gross turnover of the assessee firm (*as per audited financials placed in pb 1-14*), for the year under appeal is *Rs. 3.79 crores*, and in comparison to this the disputed sales relevant to this appeal is only a meager amount of *Rs.45.14 lakhs*, and it is *nota case of suppression or concealment of sales* on the part of the assessee and the assessee has correctly shown and disclosed the sales of RICE made to the buyer *Adileshwar Traders, Gandhidham*, in course of normal business activity and has accepted payments through bank channel , and has submitted all corresponding documents evidencing *physical inter-state movement of goods* in support of actual delivery . He further

submitted that on the *preponderance of probability also*, the assessee has not gained anything out of this sales transaction (*except normal profits*) and entire books and stock registers recording inward and outward movements were produced and examined without any adverse findings and there was no case before the AO for rejection of books u/s 145(3) of the Act, simply on the basis of a third party statement (*without any opportunity of cross examination*).

14. He further pointed out (*referring to the ledger A/c of the buyer and copies of audited trading and profit and loss A/c placed in PB*) , that the total disputed sale figure of *Rs.45.10 lakhs* , has already formed a part of the *gross turnover credited in the trading A/c* , which has been considered for working out net profits as per P & L A/c and for all practical purpose the said disputed sale figure has already been subjected to taxation and adding back the said amount again u/s 68 as *unaccounted credits* will amount to double taxation, because the said receipts are already accounted for in books of accounts and credited to sales(*transferred to trading a/c*) .

15. Before concluding, the Ld AR relied on some judicial decisions in support of his arguments on legal issues:

“CIT vs Kelvinator of India [2010] 320 ITR 561 (SC)

M/s Lakshya ICE & Cold Storage Pvt. Ltd. v. I.T.O. Ward 1(5), Aligarh [2019] 73 ITR (Trib.) 95 (ITAT Agra)

CIT v. Smt. Paramjit Kaur v. CIT [2009] 311 ITR 38 (P&H)

S P Agarwalla Alias Sukhdeo Prasad Agarwala v. ITO [1983] 140 ITR 1010 (Cal)

Signature Hotels (P) Ltd. v. ITO [2011] 338 ITR 51 (Delhi HC)

CIT v. SFIL Stock Broking Ltd. [2010] 325 ITR 285 (Del)

CIT v. Meenakshi Overseas Pvt. Ltd. [2017] 99CCH 0028 (Delhi HC)”

16. The Ld AR relying on the above decisions on legal grounds against the initiation of proceedings u/s 148 and also on the merits of the case arising out of the facts discussed above, he prayed for deletion of the addition.

17. The Ld DR relied on the order of the Ld first appellate authority and has relied on the decision of the Hon'ble Apex court in the case of *JMJ Essential Oil Company vs CIT [2023] 148 taxmann.com448 (SC)*, to argue that in the case relied upon the assessee company had failed to establish genuineness of unaccounted income found in garb of cash sales in its accounts and there was sufficient material on record to show that cash sales were fabricated, and on the facts the Hon'ble Apex court opined that the tribunal was not justified in deleting penalty merely because the sales tax authority has accepted the book results. (SLP filed by the assessee against the order of the High court was dismissed).

18. The Ld DR drawing a parallel, to this instant case before us , submitted that addition is justified on account of unaccounted credits in guise of sales, and he prayed for upholding the order of the first appellate authority.

19. We have heard the rival submissions and considered all the materials on record (*including the paper book*) and we find that the Hon'ble Apex court decision cited by the Ld DR are distinguishable on facts:

<i>JMJ Essential Oil Company</i>	<i>Assessee Case</i>
<i>Sale proceeds received in cash</i>	<i>Entire Sale proceeds through bank channel</i>
<i>Sale Bills did not contain full particulars and address of buyers where found to be incorrect</i>	<i>Buyer is fully identified and the Sale bills contains full particulars supported by delivery and transit documents and WAY bills</i>
<i>Entire SALES only in the month of September over the counter</i>	<i>Business transactions carried out throughout from May 2011 till September , 2011 as per ledger A/c</i>
<i>Cash immediately withdrawn by the Partners in September</i>	<i>No such withdrawls , all normal business transactions</i>
<i>Claimed deduction u/s 80 IC under chapter VIA</i>	<i>No such deductions claimed</i>
<i>High court of the opinion that cash sales were fabricated</i>	<i>No transaction in cash , all routed through bank chanel</i>

20. As such we are of the opinion that the facts of the above case does not match with the instant case before us where all transaction of sales are authenticated by

documentary evidences and the main issue raised in ***recorded reasons*** regarding actual physical delivery of goods *are proved* by documentary evidences of transport consignment notes , date wise *way bills* generated by Excise and Taxation Department, with particulars of goods dispatched (*food grains*) , stating quantity and amount, and supported by payments received through bank channel and all these evidences has been produced at the assessment stage (*para – 4 of assessment order*) and the AO has not pointed out any deficiency in such documentary evidences produced and has not brought any adverse material on record to disprove the same.

21. We also find that in spite of repeated request, *no opportunity of cross examination of the witness* has been allowed , (*application contained in para – 3.2 of the objections to RR placed at page 18 of PB*)which was mandatorily to have been allowed in this case , because the entire proceedings reopening and reassessment , are based on the statement of *Mr. Dinesh Jain (Prop Adileshwar Traders)* and on this issue we refer to the decision of the *Hon’ble Bombay High Court in the case of CIT vs Ashish International , order dated 22nd February, 2011 ,(ORDINARY ORIGINAL CIVIL JURISDICTION INCOME TAX APPEAL NO.4299 OF 2009)* , where in an almost identical situation the Hon’ble court observed as follows :

“The question raised in this appeal is, whether the Tribunal was justified in deleting the addition on account of bogus purchases allegedly made by the assessee from M/s. Thakkar Agro Industrial Chem Supplies P. Ltd.

According to the revenue, the Director of M/s. Thakkar Agro Industrial Chem Supplies P. Ltd. in his statement had stated that there were no sales / purchases but the transactions were only accommodation bills not involving any transactions.

The Tribunal has recorded a finding of fact that the assessee had disputed the correctness of the above statement and admittedly the assessee was not given any opportunity to cross examine the concerned Director of M/s. Thakkar Agro Industrial Chem Supplies P. Ltd. who had made the above statement. The appellate authority had sought remand report and even at that stage the genuineness of the statement has not been established by allowing cross examination of the person whose statement was relied upon by the revenue. In these circumstances, the decision of the Tribunal being based on the fact, no substantial question of law can be said to arise from the order of the Tribunal.

The appeal is dismissed with no order as to costs. (MRS. MRIDULA BHATKAR, J.) (J.P. DEVADHAR, J.) Bombay HC.”

22. We are also of the opinion that in absence of any opportunity being allowed to the assessee for cross examination of Mr. Dinesh Jain, this assessment suffers from an incurable legal defect.

23. Regarding the issue of reopening, we are also of the opinion that notice u/s 148 has been issued without any independent application of mind by the AO simply on the basis of information flowing from DDIT(inv) report , because as per the statement given by the buyer, *Mr. Dinesh Jain ,that he was not engaged in actual delivery of goods and only bills were being issued* , the name of the assessee concern has never been stated therein , which has been overlooked by the AO , which indicates *non application of mind* because in the instant case , there was no scope for

the buyer *Dinesh Jain* to draw bills and make delivery of goods , because he is the buyer and the delivery of goods are made by the assessee (*seller in this case*) and bills are also drawn by the assessee only and for all logical purpose the contents of the statement are factually not applicable to the assessee.

24. Moreover, on merits we also note that in the instant case the disputed sale figure is already credited in the books of accounts (*sales A/c*) and has formed a part of the gross sales turnover (*in audited trading accounts*) and has already been subjected to taxation and any further addition *u/s 68 of the said amount* will result in double taxation.

25. As such considering all aspects of the matter, both on the legal aspect as well on merits this addition of *Rs. 45.14 lakhs*, cannot be sustained and as such we have no hesitation in deleting the same.

26. In the result, the appeal filed by the assessee is allowed.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 17.09.2025

Sd/-
(Manoj Kumar Aggarwal)
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