

**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. 236/Asr/2023
Assessment Year: 2011-12

Nasa Agro Industries Pvt. Ltd.,
Vill. Painchawali, Distt. Fazilka
Punjab 152123

Vs.

Deputy Commissioner of Income
Tax, Circle-II, Bathinda

[PAN: AAACN 7050J]

(Appellant)

(Respondent)

Appellant by : Sh. Y. K. Sud & Sh. P. K. Anand, CAs
Respondent by : Sh. Charan Dass, Sr. D.R.
Date of Hearing : 15.07.2025
Date of Pronouncement : 26.09.2025

ORDER

Per Udayan Dasgupta, J.M.:

This appeal is filed by the assessee against the order of the Id. CIT(A) NFAC, Delhi dated 19.06.2023 passed u/s 250 of the Income Tax Act, 1961 which has emanated from the order of the DCIT/ACIT, Circle-2, Bathinda passed u/s 143(3) r.w.s. 147 of the Act, 1961 dated 29.12.2018.

2. The grounds of appeal taken by the assessee in Form No. 36 are as follows:

- “1. That learned CIT(A) has arbitrarily upheld initiation of reassessment proceedings on the facts & circumstances of the case only on basis of report of DDIT (Inv.) Karnal mechanically without making any independent enquiry.*
- 2. That learned CIT(A) has wrongly upheld rejection of submitted evidence of government records establishing movement of claimed purchases.*
- 3. That the appellant was not allowed sought opportunity of hearing through video conference.*
- 4. That assessment framed on the facts & circumstances of the case is illegal which could only be made under section 153c as document on the basis of which alleged escapement of income has been assumed was found during search under section 132.*
- 5. That on the facts & circumstances of the case addition of total amount of alleged purchases is illegal as department on similar facts has made additions of only 5% profit element embedded in such purchases.”*

3. Brief facts emerging from records are that the assessee is engaged in the business of running a Solvent Extraction Plant, Cotton factory and Oil Mills at Fazilka. Original assessment for the year under appeal has been completed u/s 143(3) dated 26/09/2013 on an assessed income of Rs. 65.09 lakhs.

4. Subsequently, information has been passed on by the DDIT (Inv), in pursuance of a search u/s 132 of the Act 61, at the premises on one *Mr. Hitesh Jain* , on 23.05.2017, where he recorded a statement on oath that he was operating a firm under

the trade name of *M/s Devinder Kumar Deepesh Kumar* , Delhi , which was a shell concern , and was engaged in providing accommodation entries by issue of bills in lieu of commission , without actual physical delivery of goods and monetary transactions were routed through his bank account no . xxxxxxxx00771. It was also found that the assessee in the instant case has transferred funds through *RTGS* , to the above bank account amounting to *Rs. 51,57,053/-* during the *FY 2010-11 (relevant to the year under appeal)* to obtain purchase bills (*alleged as bogus*) in lieu of commission, without taking any physical delivery of goods, and the amount of *Rs.51.57 lakhs* , represents bogus purchase of the assessee, debited in profit and loss account to reduce profits.

5. Reassessment proceedings commenced vide issue of *notice u/s 148 dated 22nd March, 2018* as per procedure (*after necessary approval from higher authorities*). Return filed in response to notice u/s 148 , was taken up for scrutiny and objections raised against *recorded reasons* has been disposed off. Notices issued u/s 142(1) raising various questioner, has been responded to by the assessee through his lawyers and written submissions filed.

6. The assessment was completed *u/s 143(3)/ 147 with an addition of Rs.51.57 lakhs* by treating the amount transferred by the assessee to the *M/s Devinder Kumar Deepesh Kumar* , as an accommodation entry for recording of bogus purchase, because

as per the AO the physical movement of goods could not be proved, in absence of any *Bilty, weighment slip of goods, octroi receipts*, and in absence of any proof of payment of freight charges , and it was also pointed out that two vehicle numbers against two bills (*details in page – 6 of assessment order*) where not even goods carriage , which raises suspicion of actual movement of goods.

7. The matter carried in appeal has been dismissed by the Ld. first appellate authority by observing as follows:

“4.1 I have gone through the facts of the case, grounds of appeal and the submissions made by the appellant in this regard. Briefly, the AO made addition on account of bogus purchases based on the statement of the supplier who stated that he had only supplied bills and not sold the goods. The appellant however states that it had made a genuine purchase and hence in appeal.

4.2 The appellant at the outset states that the assessment is based on third party information only and therefore should be quashed. This statement of the appellant cannot be accepted as during the assessment proceedings the AO had confronted the / appellant about the statement recorded to the appellant. He has also sought to carry out further investigation and has sought the documents like weighment slips etc from the appellant which the appellant could not produce. It has also been gathered during the assessment proceeding that no freight is paid for the transportation at all. The supplier states that no goods were supplied only bills were issued thus apparently, he had not paid for transportation. The appellant, the purchaser, also states he got the goods free on road and no transportation cost was paid. It is impossible to move goods worth Rs 50 lacs of a voluminous product without any transportation charges. Thus without weighment slips and octroi receipts it is not possible to identify that the vehicles as stated by the appellant carried the goods that are claimed. These instances also show that AO has not merely acted on the third-party information but has carried out independent

inquiry and the outcome of one such investigation revealed that even vehicles mentioned in the list given by the appellant were not even trucks. The assessment has been correctly framed u/s 143(3) and reopening also has been properly done. The assessment as such is very much sustainable and is not bad in the eyes of law.

4.3 The investigation report and the enquiries carried out by the AO show that the purchases are bogus. The investigation report cannot otherwise also be rubbished as an statements recorded. Recently in the case of Swati Bajaj the Hon'ble Calcutta High Court has affirmed the reliability of the investigation report. In this case as stated above the AO has carried out inquiries and then come to a conclusion that purchases were bogus. In this case the appellant is able to show only paper trail and not establish that the goods have really moved. That paper trail gets busted once the supplier said that he had not supplied the goods. There is no evidence of transport engaged by anyone. The supplier in fact is an accommodation entry provider provided bogus bills to enable the appellant to reduce the incidence of taxation. The addition has been rightly made based on the circumstances of the case and this office upholds the addition made by the Assessing officer.

4.4 The grounds of appeal of the appellant are interconnected and have been decided in the discussion above in a consolidated manner.

5. In nutshell, the appeal of the appellant is dismissed.”

8. Now the assessee is before the tribunal on the grounds contained in the memorandum of appeal. In course of hearing the Ld. AR of the assessee, took up ground no – 4 (*of the revised grounds*) because it goes to the root of the initiation of the proceedings.

9. **Ground – 4 (Revised Grounds):** The Ld. AR submitted that in the instant case the proceedings has been initiated on the basis of search u/s 132 of the Act , on the

third party “ *Hitesh Jain* ” (*Prop of M/s Devinder Kumar Deepesh Kumar*), and in such cases where any incriminating materials were found with the searched person relating to a third party (*the assessee in this case*) then the proceedings should have been initiated u/s 153C of the Act '61, and not u/s 147/148, and as such the reassessment proceedings in this case is legally not valid and in support he relied on the decision of “ (a) *Bachan Singh vs DCIT ITA No 16 / ASR / 2015* , (b) *DCIT vs Ranjit Singh ITA No 241 / ASR / 2017* , (c) *Sejal Jewellery vs Union of India & ors (WP 3057 of 2019)* for support.

10. We find from records that in the instant case , as far as the assessee is concerned it is the recorded statement of Mr. Hitesh Jain in course of search , is the only material, on the basis of which this reassessment proceedings has been initiated.

11. We are of the opinion that statement recorded during search alone do not qualify as “*incriminating material*” in isolation and has to be linked to any tangible evidence, books and documents u/s 132(1)(c) which has to have been discovered during search.

“Assessment of Income of any other person.

153C. [(1) *Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,-*

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, "belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person] [and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person [for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A]”

12. In the instant case no such documents has been found which can be related to the present assessee.

13. Only statement recorded at the time of search , has triggered the investigation by the investigation wing , and information forwarded to the AO , who applied his mind to the said information and carried out further investigation (*as apparent from para – 3 of the assessment order*) and after recording reasons (*para – 4 of order*) necessary approval obtained from higher authorities and proceedings initiated vide notice u/s 148 of the Act .

14. As such in the instant case the AO was perfectly justified in *proceeding u/s 147 / 148* , because there are no incriminating materials seized from *Mr. Hitesh Jain*, which

can be said to relate to the other person (*the assessee*) in this case , and no proceedings can be initiated against the assessee u/s 153C of the Act 61, but the powers u/s 147 / 148 of the Act , subject to fulfilment of statutory conditions mentioned under the said sections are always saved.

15. This ground of *appeal no – 4* is decided against the assessee.

16. **Now, coming back to the remaining grounds of appeal:**

17. *First ground of appeal:* The Ld. AR of the assessee submitted that in the instant case his objection is against the reopening on the basis of information passed on by the *DDIT investigation wing* and the contention of the assessee is that there has been no independent application of mind by the AO, to the information on record and reasons has been recorded on the basis of borrowed satisfaction, which cannot be treated as legally valid , and in support he has relied on the following decisions of various courts:

“1. 472 ITR SC 1 ACIT and Others vs B.U Bhandari Autolines Pvt Ltd

INCOME-TAX- REASSESSMENT-NOTICE REASON TO BELIEVE THAT INCOME HAS ESCAPED ASSESSMENT-ENTITY WITH WHICH ASSESSEE HAD SALE TRANSACTION NOT ESTABLISHED TO BE SHELL ENTITY-NO ENQUIRY CONDUCTED BY ASSESSING OFFICER PURSUANT TO RECEIPT OF INFORMATION FROM INVESTIGATION WING- NON-APPLICATION OF MIND ON PART OF ASSESSING OFFICER-NOTICE AND ORDER REJECTING ASSESSEE'S OBJECTIONS SET ASIDE BY HIGH COURT-

SUPREME COURT-SPECIAL LEAVE PETITION DISMISSED ON GROUND OF DELAY AND ON MERITS-INCOME-TAX ACT, 1961, ss. 147, 148.

2. 189 ITD (Chd) 515 Kaur Sain Spinning & Weaving Mills Ltd. vs ACIT

Where AO issued a reopening notice against assessee company on ground that an information was received from department that assessee had received bogus accommodation entries by way of investments of certain amount and further made an addition on account of said Investment, since AO issued said notice merely on basis of information received from department and he had not pointed out as to how investment in question was unexplained income of assessee, impugned order passed by AO was to be quashed.

3. 190 ITD (Chd) 52 Future Tech IT System (P.) Ltd vs ITO

Where Assessing Officer issued reopening notice against assessee merely on basis of information of Director (Investigation) that assessee had received share premium of huge amount during year which was not justifiable considering its lesser income during year, impugned reopening notice was unjustified.

4. 206 TTJ (Asr) 513 Karamjit Singh Rai vs ITO

Reassessment-Reason to believe-Absence of material and rational belief-AO mainly relied upon information derived from AIR to the effect that assessee has purchased immovable property and reopened the assessment after recording the reason that the assessee failed to explain the source of investment in the property-Reasons recorded nowhere reflected as what information and corroborative materials/records regarding this have been independently examined and verified by the AO-There is nothing to suggest that the AO has applied his own mind to the said material before reopening the assessment and satisfied himself before issuing notice under s. 148-AO failed to establish that the investment made by the assessee represented undisclosed income-Link or nexus for the belief that consideration paid for the property is chargeable to tax and it has escaped is missing and thus the proceedings under s. 147 itself are vague-Therefore, reopening of the assessment cannot be upheld.

5. 196 TTJ (Kol) 665 Devansh Exports vs ACIT

AO having reopened the assessment simply on the basis of vague information received from the Director of IT (Inv.) that the assessee has exported iron ore to its foreign AE at price below market price and in his opinion, this has resulted in shifting of profit outside India, without independently applying his own mind to form any belief that assessee's income has escaped assessment, the reasons recorded by the AO do not justify the reopening of the assessment.

6. 210 TTJ (Chd) (UO) 26 Century Fiscal Services Ltd vs ITO

Reassessment-Reason to believe-Information received from Director of IT (Inv.) vis-a-vis absence of AO's own satisfaction-AO has merely relied on the information passed on to him by the Investigation Department regarding accommodation entry taken by the assessee, without even applying his own mind to it and verifying the same-Entire reasons talk about some information with the Department regarding the assessee having availed accommodation entries-There is nothing to reveal application of mind by the AO to the information in his possession, as to whether he had verified that any such amount was actually received during the year and if so in what mode or manner-Thus, the belief of escapement of income as recorded in the reasons, is clearly not that of the AO but a borrowed belief. Therefore, the jurisdiction assumed by the AO to reopen the case under s. 147 was bad in law

7. 406 IT (Guj) 326 Pr CIT vs Manzil Dinesh kumar Shah

REASSESSMENT- INCOME ESCAPING ASSESSMENT NOTICE- BASED ON INFORMATION RECEIVED FROM DIRECTOR (INVESTIGATION) FORMATION OF INDEPENDENT OPINION BY ASSESSING OFFICER-MANDATORY CONDITION-NEED FOR DEEP VERIFICATION OF INFORMATION RECEIVED NOT VALID GROUND FOR REOPENING INCOME-TAX ACT, 1961, ss. 147, 148.

8. 204 TTJ (Del) 137 S.N Arora/Sapra vs ITO

Conclusion: AO having reopened the assessment simply on the basis of the information received from the Investigation Wing without applying his mind to the facts of the case and verifying the said information before recording the reasons for reopening the assessment, it

is a clear case of non-application of mind by the AO and, therefore, the reopening of the assessment is illegal and bad in law.

9. 201 TTJ (Agra) 211 Lakshya Ice & Cold Storage (P) Ltd vs ITO

Reassessment-Reason to believe-Information received from Dy. Director of IT (Inv.)-AO having issued notice under s. 148 only on the basis of information received from Dy. Director of IT (Inv.) without independent application of mind and there being no nexus between tangible material and reason to believe except the suggestion of Dy. Director of IT (Inv.), the notice under s. 148 and consequent reassessment cannot be sustained

10. 200 TTJ (Jd) 273 Vined Commodities Ltd. ACIT

AO having recorded reasons for reopening the assessee's assessment simply by taking note of the information received from the Addl. Director of IT (Inv.), without any verification or enquiry to form the conclusion that assessee's income chargeable to tax has escaped assessment, without independent application of mind, the assumption of jurisdiction under s. 147 was not valid; sanction granted by the CIT under s. 151 by simply writing "Yes, I am Satisfied" is also invalid; reopening of assessment and consequent reassessment are quashed.

11. 426 ITR 228 (Bom) Gateway Leasing Pvt Ltd vs ACIT & Others

REASSESSMENT-NOTICE-ONLY REASONS RECORDED BY ASSESSING OFFICER TO BE CONSIDERED-INFORMATION RECEIVED FROM INVESTIGATION WING SHOWING THAT ASSESSEE HAD TRADED IN SHARES WITH BENEFICIARY OF SEARCHED BOGUS COMPANY- ASSESSEE DISCLOSED FULLY AND TRULY ALL MATERIAL FACTS NECESSARY FOR ASSESSMENT- REASONS CANNOT BE SUPPLEMENTED BY AFFIDAVIT-NOTICE UNSUSTAINABLE INCOME-TAX ACT, 1961, 55. 147, 148.

12. 434 ITR 621 (Guj) Bharatkumar Nihalchand Shah vs ACIT

REASSESSMENT -NOTICE-VALIDITY-CONDITION, PRECEDENT FOR ISSUE OF NOTICE-REASON TO BELIEVE INCOME HAD ESCAPED ASSESSMENT-INFORMATION RECEIVED FROM INVESTIGATION WING-ASSESSING OFFICER NOT APPLYING HIS

MIND TO INFORMATION-SANCTION NOT OBTAINED FOR NOTICE-NOTICE NOT VALID-INCOME TAX ACT, 1961, ss. 147, 148.”

18. Relying on the above judicial precedents the Ld. AR prays for quashing of the reassessment proceedings.

19. Per contra the Ld. DR drew reference to the recorded reasons (*page – 2 of the assessment order*) to submit that , the contention of the Ld AR is not correct because it is very much evident from records that the AO after receipt of information from DDIT (inv) , has applied his mind and has further investigated the materials on record and has formed his independent opinion and thereafter has proceeded to record the reasons to believe.

20. The recorded reasons are reproduced for ready reference:

"Return of income was filed by the assessee for the A.Y. 2011-12 on 30.09.2011, declaring an income of Rs. 48,95,113/ The assessee is engaged in paddy shelling and running an extraction unit

2. *As per information provided by the DDIT(Inv.), Karnal, a search u/s 132 of the Act was conducted at the premises of Sh. Hitesh Jain Prop. M/s Mittersain Rajesh Kumar, Karnal on 23.05.2017. Sh. Hitesh Jain in his statement admitted that he was running 40 shell concerns and was engaged in providing accommodation entries through these concerns. Sh. Hitesh Jain further admitted that his concerns were not engaged in actual delivery of goods but only bills were being issued in lieu of commission.*

3. *On further investigation, it was found that Sh. Hitesh Jain was operating one such shell concern under the name M/s Devinder Kumar Deepesh Kumar, Naya Bazar, Delhi. It was found that this concern maintained a bank account No. 0195256000771 and that the assessee i.e. M/s Nasa Agro Industries Pvt. Ltd., Fazilka deposited various amounts on different dates totaling to Rs. 51,57,053/- in this bank account during the year under consideration. In view of the statement of Sh. Hitesh Jain, it is revealed that the amount was deposited by the assessee to obtain purchase bills of the amount without actually taking delivery of the goods. Hence, the amount of Rs. 51,57,053/- represents bogus purchases of the assessee, which were debited to its profit & loss account to reduce tax incidence.*
4. *In view of the above facts, I have reason to believe that an amount of Rs. 51,57,053/- which was chargeable to tax in the case of the assessee for the assessment year 2011-12 has escaped assessment within the meaning of section 147 of the Act. To assess this income and also any other income chargeable to tax which comes to my notice subsequently in the course of assessment proceedings under this section, a notice u/s 148 is issued for the A.Y. 2011-12."*

21. Thereafter he further relied on the jurisdictional High Court in the case of *Gurera Gas Cylinders P Ltd vs CIT [2002] 258 ITR 170 (P & H)* to submit that the reasons recorded shows clearly that the AO has further investigated and has applied his mind to the information received and has formed an opinion before recording reasons and at this stage the court cannot go into the sufficiency or adequacy of the reasons.

22. He further referred to the following jurisdictional High Court cases in support of his argument that post amendment w.e.f. 01/04/1989, AO has powers to cover cases even in cases of full disclosure of material facts:

“(1) *Belief can be reached in any manner, and is not qualified by a precondition of faith and true disclosure of material facts by the assessee*

(Jawand Sons vs CIT 18 November, 2009(P&H)- It is also held that satisfaction arrived at by any relevant Under Section 147 of the Act, after its amendment with effect from 1.4.1989, wide power has been given to the Assessing Officer even to cover the cases where the assessee had fully disclosed the material facts. The only condition for action is that the Assessing Officer should have reason to believe that the income chargeable to tax had escaped assessment. Such belief can be reached in any manner, and is not qualified by a precondition of faith and true disclosure of material facts by the assessee as contemplated in the pre amended Section 147 (a) of the Act the Act.

(2) *If satisfaction is arrived at on the basis of any relevant material, such satisfaction cannot be assailed,*

Tilak raj bedi vs JCIT (2009) 319 ITR 385-P&H- The power of reassessment can be validly exercised if satisfaction is arrived at after following due procedure that income had escaped assessment. Such satisfaction may involve change of opinion but was not at par with 'mere change of opinion. If satisfaction is arrived at on the basis of any relevant material, such satisfaction cannot be assailed.’”

23. Referring to the above jurisdictional High Court decisions, he submitted that independent application of mind by the A.O. is very much evident in this case and proceeding has been validly commenced.

24. We are of the opinion that in the instant case the AO has made some further investigation and evidence of application of mind to the information and materials on record is there, and it is not a case of total non - application, and adequacy of materials cannot be an issue at this stage.

25. Ground No-2 is on merits regarding the main issue of submission of documentary evidences as proof of actual physical movement of goods from the seller (Mr. Hitesh Jain (*Prop of M/s Devinder Kumar Deepesh Kumar*),to the buyer Nasa Agro Ind Pvt Ltd (*the assessee in this case*) .To prove the genuineness of purchase of goods , copies of invoices issued by seller (*are placed in pb page – 83 to 135*) *Davinder Kumar Deepesh Kumar (TIN No : 07120358142)* , supported by declaration of transport of goods to and from the State of Punjab (form VAT – XXXVI), stamped by the authorities at the arrival barrier, along with other particulars of VAT RC registration numbers, of seller and buyer , (*but without any consignment note of transporter*) , evidence of payments through bank channel , printout of selling dealer TIN details in the name of *Devinder kumar Deepesh Kumar, Naya Bazar , Delhi 100006 , valid RC as on 13th March, 2013 (pb page 81)* to show existence of active dealer profile under VAT , during the transaction period *FY 2010-11*, and corresponding entries in regular books of accounts .

26. Referring to the above documentary evidences the Ld. AR submitted that no inconsistency has been pointed out by the AO in books of accounts and other evidences filed as proof of actual movement of goods and each consignment of trucks entering the state of Punjab is supported by VAT – XXXVI forms which contains RC number of seller and buyer both and there is no reason to doubt the physical movement of goods

and as such the addition made on account of alleged bogus purchase is absolutely arbitrary and may please be deleted.

27. The Ld. DR, on this issue is not agreeable and has pointed out to some discrepancies contained in *VAT form – XXXVI* , where in some of the cases the RC number of the SELLER (*as per invoice*) does not match with the RC number of the *consignor* mentioned in the declaration of entry submitted at the check post barrier.

28. Brief summary of the discrepancy are as follows:

<i>Some of the Mismatch in RC number of Seller found from paper book</i>			
<i>VAT No of SELLER CONSIGNOR Davinder Kumar Deepesh Kumar , Delhi VAT 7120358142</i>	<i>VAT No of Buyer Assessee : Nasa Agro 3551000354</i>	<i>Invoice No and Date : and Form XXXVI</i>	<i>Amount involved :</i>
<i>VAT 0712535612 (Page - 88 of pb)</i>	<i>3551000354</i>	<i>Bill No 1326 dated 16/11/2010 Form No 0184338</i>	<i>2,18,363.00</i>
<i>VAT 74654361 (page 96 of PB)</i>	<i>3551000354</i>	<i>Bill No 1370 dated 24/11/2010 Form No 178313</i>	<i>1,92,120.00</i>
<i>VAT 786978600 (PB PAGE 134)</i>	<i>3551000354</i>	<i>Bill No 1479 dt 11/01/2011 form 0208378</i>	<i>2,03,970.00</i>

VAT 74754361 (pb page 90)	3551000354	Bill no 1371 dt 24.11.2010 Form 0179966	1,86,120.00
All different Consignor VAT			8,00,573/-

29. He further submitted that in some of the cases the RC number of the seller, is perfectly matching with the consignor number in *Form XXXVI*, and in some case the consigner number which should be of the seller (*as per the corelating sale bill*) does not match at all, (*as presented above*) and in the remaining cases the consignor numbers in the *forms xxxvi* are illegible (*cannot be read*) .

30. He further submitted referring to the said declaration of inward movement of goods , that in the instant case , the main issue is the requirement of proof of actual physical movement of the goods into the *State of Punjab* and proof of actual delivery, of such goods to the assessee (*buyer*) and in order to establish the same the assessee has submitted evidence in his *paper book* , but unfortunately , in the instant case , discrepancy are apparent on the face of such evidence relied upon by the assessee, in as much, the inward transport documents , contained in the assessee paper-book , indicates to the fact that at least some of the purchase bills are not genuine and can be termed as *bogus purchase* and he prayed that the order of the Ld CIT (A) may be upheld.

31. **Ground No 3**, relates to non availability of opportunity of *video hearing* in course of first appeal , which we think is not the subject matter before the tribunal now, where the assessee has been represented by his Ld AR and heard at length, with reference to his paper book filed.

32. **Ground No 4 (already discussed above)**

33. **Ground no 5 :** Here the Ld A/R of the assessee has prayed that in case the alleged purchases are treated as bogus, in such a situation, he prays that the entire purchase alleged as bogus amounting to *Rs. 51.57 lakhs* should not be disallowed but only the profit element embedded in such transactions be subjected to tax at a fair percentage and he has also relied on a comparative case, in support of his argument, and has voluntarily admitted to an addition of five percentage of alleged bogus purchase.

34. The Ld. DR however, is not agreeable on this issue , and he drew reference to the decision of *Hon'ble Bombay High court in the case of PCIT vs Drisha Impex Pvt Ltd dated 7th April, 2025 (ITA No 1240 with ITA No 2087 of 2018)*, and submitted that the entire purchase being bogus needs to be disallowed u/s 69C as unexplained expenditure and has prayed for sustaining the order of the Ld. first appellate authority.

35. We have heard the rival submissions and considered the materials on record. We are of the opinion that the decisions relied upon by the Ld DR are distinguishable on facts.

36. In the case of *Drisha Impex Pvt ltd (supra)* there is a specific finding that suppliers of goods are not traceable and address are also not known, the *respondent assessee* has expressed inability to even produce its own books of accounts, *summons to suppliers u/s 133(6)* has returned unserved, ledger A/c of suppliers from whom goods purchased was not produced on the ground that the data is lost, no stock register maintained , total non cooperation of the *assessee* and all vital information, documents and paper works were missing, but in the instant case before us the assessee has produced *evidences of purchase* in course of original proceedings where no defects were found on enquiry and verification and they were again produced in reassessment proceedings along with regular books, bank entries, purchase and sales invoices and day to day stock registers , which records *inward and outward flow of traded goods* fully reconciled with accounts , and has cooperated fully with the department in all respects at all times and no discrepancy was found by AO in such books of accounts regularly maintained *vis a vis* audited financials and no adverse findings in respect of books produced has been pointed out . Further, in the instant case the identity of the sellers are beyond doubt and search has been carried out at their premises and the seller is very much traceable.

37. However, the only adverse observation in respect of movement of goods has been pointed out by the Ld DR , from the documents of *inter State movement of goods* , *VAT form XXXVI* , which are part of the assessee's own paper book and the same has been specifically segregated (*as above*). In some of the instances , as quantified above, the dates and invoice number specified in the transit *form XXXVI* , the VAT (TIN) number of the consignor, as entered *in the form XXXVI* , does not match with the *VAT number* of the seller *Devender Kumar Deepesh Kumar* , as printed in the sale bill (*and also in the printout of the State Government system dealers details*).

38. This mismatch raises suspicion regarding the connecting sales invoice issued by the seller in respect of those particular consignment covered by the mismatched declaration , and point towards the suspicion that all invoices cannot be accepted at face value considering the fact that many invoices covered by the form *XXXVI* are *illegible* (*and cannot be deciphered*) and some of the invoices covered by the *form XXXVI* are apparently matching with the correct VAT/ RC number of the seller.

39. Moreover, on the face of such specific identification of discrepancy pointed out by the Ld DR, from the contents of the assessee own paper book , the argument of the Ld. DR suggesting bogus purchase cannot ruled out, disregarded or brushed aside, and on the other hand , *natural justice* demands that the assessee should also be allowed an opportunity of clarification of this discrepancy , because nothing on this matter is

explained in the written submission filed by the Ld AR, and this clarification requires verification of documents and inward way bills, which will require sufficient time.

40. As such we are of the opinion that in the interest of justice this matter should be remanded to the Ld first appellate authority , for fresh adjudication on the issue which has now cropped up apparently in respect of the above mentioned purchase invoices *vis a vis* the state Government inward transport *VAT form XXXVI*, which for all practical purpose , is a vital evidence to prove physical movement of goods from *Delhi to the State of Punjab* , and the discrepancies pointed out by the Ld DR, cannot be ignored and needs satisfactory clarification.

41. As such we remand the matter to the Ld first appellate authority for fresh adjudication and the assessee will be allowed reasonable opportunity of being heard and the assessee is also directed to file necessary explanation and clarification regarding the discrepancies pointed out, along with satisfactory evidence and the notice of hearing to be issued as per provisions of section 282 of the Act 61 and also through *registered email id* of the assessee company.

42. We have not expressed any opinion on merits of the case and all legal issues are left open.

43. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 26.09.2025

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