

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

**BEFORE SH. MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND
SH. UDAYAN DASGUPTA, JUDICIAL MEMBER
(Physical Hearing)**

**I.T.A. No. 695/Asr/2024
Assessment Year: 2014-15**

M/s Pankaj Jindal Contractor, Near Vidya Bharti School, Mansa. [PAN:-AAJFP8008L] (Appellant)	Vs.	DCIT-Circle-1, Bathinda. (Respondent)
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Appellant by	Sh. Sudhir Sehgal, Adv.
Respondent by	Sh. Charan Dass, Sr. DR

Date of Hearing	16.12.2025
Date of Pronouncement	05.01.2026

ORDER

Per: Udayan Dasgupta, J.M.:

This appeal is filed by the assessee against the order of Id. CIT (A), NFAC, Delhi, passed u/s 250 of the Act, 1961 vide order dated 17.10.2024 which has emanated from the order of AO, NFAC, passed u/s 147 r.w.s 144B of the Act, vide order dated 17.09.2021.

2. Grounds of appeal taken by the assessee in form 36 are as under:

“1. The Ld. CIT(A) NFAC has erred on facts and law in dismissing the appeal of the assessee, vide order u/s 250 of the Act dt.

17.10.2024, filed against the order u/s 147 r.w.s. 144B of the Act Dt. 12.09.2021 in which the income of the assessee has been assessed at Rs. 71,03,069/- while making the addition of Rs. 43,39,999/-.

2. That the Ld. CIT(A) NFAC has erred on facts and law in dismissing the appeal of the assessee, vide order u/s 250 of the Act dt. 17.10.2024, because the proceedings-initiated u/s 147/148 of the Act are void ab initio as the notice u/s 148 of the Act has not been served in accordance with the provisions of Section 282 of the Act.

3. That the Ld. CIT(A) NFAC has erred on facts and law in dismissing the appeal of the assessee, vide order u/s 250 of the Act dt. 17.10.2024, because the proceedings-initiated u/s 147/148 of the Act are void ab initio as the proceedings have been initiated on account of change of opinion & further no tangible material came in possession of the AO subsequent to the passing of the original order u/s 143(3) of the Act.

4. That the Ld. CIT(A) NFAC has erred on facts and law in dismissing the appeal of the assessee, vide order u/s 250 of the Act dt. 17.10.2024, because the proceedings-initiated u/s 147/148 are void ab-initio as there was mechanical approval of the Pr. CIT with regard to reopening of the case u/s 148 and, as such, proceedings u/s 148 are liable to be quashed in view of the judgement of the Hon'ble Apex Court in the case of CIT vs Goyanka Lime and Chemical Ltd. as reported in [2015] 237 Taxman 378(SC).

5. *That the Ld. CIT(A) NFAC has erred on facts and law in dismissing the appeal of the assessee, vide order u/s 250 of the Act dt. 17.10.2024, because the proceedings-initiated u/s 147/148 of the Act are void ab initio as the copy of reasons recorded by the AO to initiate the proceedings were not provided to the assessee.*

6. *That the Ld. CIT(A) NFAC has erred on facts and law in dismissing the appeal of the assessee, vide order u/s 250 of the Act dt. 17.10.2024 because the proceedings-initiated u/s 147/148 of the Act are void ab initio as the proceeding have been initiated to settle the audit objection.*

7. *The Ld. CIT(A) NFAC has erred on facts and law while confirming the action of the AO of disallowing Rs. 2663573/ on account of alleged violation of the provisions of Section 40A(3) of the Act by making payment exceeding Rs. 20,000/- in cash without appreciating the submissions of the assessee.*

8. *The Ld. CIT(A) NFAC has erred on facts and law while confirming the action of the AO of making the addition of Rs. 16,76,426/ on account of alleged difference in the account of M/s Ramesh Kumar & Co. without appreciating the submissions of the assessee.*

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

3. Brief facts emerging from records are that the assessee a partnership firm is engaged in the business of execution of civil contracts. Regular return for the year under appeal filed u/s 139(1) along with audited financials, were subjected to scrutiny and assessment completed u/s 143(3), dated 9th November, 2016, on a total

income of Rs. 27.63 lakhs (which included *adhoc additions of Rs.3.50 lakhs on carriage of materials and machine rent, Rs. 1.50 lakhs on interest A/c, Rs.1.20 lakhs on A/c of unvouched expenses*).

3.1 Subsequently, the case was reopened vide notice u/s 148 dated 10th June, 2019 (*flowing from revenue audit objections dated 16th January, 2019 , as per evidence contained in pb page -22 and 23)* and reassessment completed with proper representation by the assessee as per procedure , on a total income of *Rs.71.03 lakhs* vide order dated 17/09/2021 (*with addition of Rs.26.63 lakhs u/s 40A(3) on a/c of cash payments made above stipulated sums for machine rent, material purchase and carriage expenses and a further addition of Rs. 16.76 lakhs u/s 68 on a/c of difference in ledger balance with one Ramesh Kumar & Co*).

4. The matter carried in first appeal has been dismissed by the Id. CIT(A) by upholding both the additions on merits by observing as follows:

“In view of the above facts, it is pertinent to note that the assessee has made cash payments on various dates in excess of Rs.20,000/- per day to a person as per details given in above table for expenditure claimed under the head Machinery rent of Rs. 5,31,280/-, purchase of material/payments on account of carriage of Rs. 16,43,302/- and Rs.4,88,991/- on account of purchase of material 6.05% which is not allowable as per the provisions of 40A(3) of the Act. As per provisions of Section 40A(3) where the assessee expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be

allowed in respect of such expenditure. In this regard, the appellant has stated that these payments were not made to a single person and payment to single person per day was less than Rs. 20000/-. However, the appellant could not furnish any documentary evidence in support of its claim. Therefore, the expenditure claimed as discussed above totalling of Rs. 26,63,573/- (Rs. 16,43,302/-+Rs.5,31,280/-+ Rs.4,88,991/-) is disallowed u/s 40A(3) of the IT Act, 1961 by the Assessing Officer. During the course of appellate proceedings also, the appellant has not submitted any supporting documents for his contention. The contention of the appellant remained unjustified and unsubstantiated. Hence, the Assessment order is upheld and the ground is noted as dismissed.

Ground 08: In this ground of appeal, the appellant objected the Ld. AO NFAC erred on facts and law while arbitrarily making addition of Rs. 16,76,426/- on account of alleged difference in the account of M/s Ramesh Kumar & Co. without rebutting the explanation of the assessee. The contention of the appellant has been considered. I have gone through the facts and found that the assessing officer observed that there is credit balance of the party as on 31.3.2014 at Rs.26,40,785/- whereas as per copy of account of the assessee appearing in the books of account of M/s. Ramesh Kumar & Co., the debit balance is Rs.9,64,359/-, From the facts noted above, it is clear that credit balance of M/s. Ramesh Kumar & Co. in the books of that party and in the books of assessee is

different and while preparing balance sheet the total amounts of credits has been taken at Rs. 1,83,44,539/- which also includes credit balance of M/s. Ramesh Kumar & Co. at Rs.26,40,785/- whereas the actual credit balance of this party is at Rs.9,64,359/- which clearly means that the credit balance of Rs. 16,76,426/- representing assessee's income from undisclosed sources introduced in the name of M/s. Ramesh Kumar & Co.

During the course of assessment proceedings, the assessee stated that Rs. 1500000/- was received from Mrs. Bindu Jindal, Partner of the firm as on 19.07.2013 but due to clerical mistake of the accountant, the entry was wrongly credited to M/s Ramesh Kumar & Co. The reply of the appellant has been considered but not found tenable because even if assuming that the said mistake has occurred, then also credit balance of M/s. Ramesh Kumar & Co. in the books of that party and in the books of appellant is different and the explanation offered by the appellant is nothing but only afterthoughts. In view of the facts as discussed above and as the explanation offered by the appellant is not satisfactory about the nature and source of the amount so credited, the amount of Rs. 16,76,426/- is treated as unexplained cash credit by the AO. During the course of appellate proceedings also, the appellant has not submitted any supporting documents for his contention. 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 before the tribunal on the grounds contained in the memo of appeal. At the onset the Ld. AR of the assessee withdrew grounds No 2 (*disputing service of reassessment notice*) and ground No 4 (*alleging mechanical approval by PCIT*) as **not pressed**.

6. The Ld. AR of the assessee has filed a paper book containing copies of audited accounts with schedules, copies of recorded reasons, original assessment order u/s 143(3) dated 09/11/2016, copies of various letters, correspondence, explanations and submissions filed in course of reassessment along with copies of ledger A/c of expenses claimed in profit and loss A/c and regarding the legal issues taken up in the *grounds No 1 and 3*, the Ld AR of the assessee submitted that the reassessment proceedings has been initiated on the basis of change of opinion because both the issues, firstly the issue of disallowance of expenditure being hit by the provisions of section 40A(3) has been thoroughly examined by the AO in course of original proceedings which is evident from the body of the original order dated 09/11/2016 where the AO has examined the same and has observed as follows:

“2. *The assessee firm engaged in the business of civil contractor and during the year it has shown net profit of Rs.2113070(after claiming interest and salary to partners)on gross receipts of Rs. 117146681. During the course of assessment proceedings it was noticed that the assessee firm has debited an amount of Rs.33368963 under the head labour, Carriage material amounting to Rs.5431087/-, machinery rent amounting to Rs.4978420/-which could not subjected to complete verification as it was seen that some of the payments were made in cash and were supported by self prepared vouchers on which complete addresses*

of the receivers are not mentioned. When confronted as to how these expenses could be subjected to complete verification. It was stated by the Ld. counsel of the assessee firm that the vouchers have been maintained as per trade practice and it is practically not possible to retain/procure each and every bill. The submission put forth by the assessee firm have been considered. After discussion with the representative of the assessee firm, he offered for an addition of Rs. 350000/- to cover any possible leakages of the revenue. Keeping in view the forgoing facts an addition of Rs.350000/-is made and the same is added back to the Income returned by the assessee firm.”

6.1 He further submitted that it is the cash payment of Rs.5,31,280/- (A/c machinery rent), and carriage of materials Rs. 16,43,302/- which has formed the basis of this reassessment proceedings , has already been examined in original proceedings and as evident from the ledger A/c of machine rent , payments to each individuals are less than Rs.20,000/- and same is with respect to “Carriage of Material A/c” where as per ledger A/c on assessment records , there is no single payment on a single date to any individual exceeding the stipulated limit , and the same has also been examined in original proceedings as evident from the assessment order itself.

6.2 He further submitted that after full scrutiny of all accounts vis a vis books of accounts produced in course of scrutiny , and in order to cover up any revenue losses has made an addition of Rs.3.50 lakhs , which points to towards the fact that the AO has applied his mind in course of original proceedings and was fully satisfied that there has not been any cash payment to any single payee above the stipulated limit so as to attract the provisions of section 40A(3).

6.3 Regarding the second issue of unsecured loans, it is submitted by the Ld. AR that in course of original proceedings the said issue has been looked into and the same is evident from the body of the assessment order (para- 3) which is reproduced below:

3. During the course of assessment proceedings, it has been noticed that the assessee firm has debited an amount of Rs.2378634 on account of intt. paid to bank and other parties. It is also seen that in the following mentioned cases the assessee firm has mentioned the intt.paid to them @ 12% whereas as per calculation the intt. paid is more than 12% :-

S. No.	Name of the persons to whom the intt. has been paid	Intt.due @ 12%	Intt. paid	Excess intt. paid
1	Bhola Nath HUF	86520	91758	5238
2	Raj Kumar HUF	92040	99521	7481
3	Rakesh Kumar HUF	14468	19144	4676
4	Rakesh Kr. S/O Bhola Nath	56525	104025	47500
5	Ramesh Kr. and Co.	299000	371674	72674
6	Ramesh Kr. HUF	90235	97565	7330
7	Vikas Jindal HUF	93030	100100	7070

The counsel of the assessee firm was asked to explain as to why the intt.paid more than 12% may not be added back in the income of the assessee firm. No plausible explanation was filed by the assessee firm to establish his claim of intt. Therefore, the intt. on the loans given, more than 12% is disallowable out of intt.claimed by the assessee firm which works out to Rs. 150000/-and the same is being added to the returned income of the assessee firm.

6.4 The Ld. AR further submitted that, the AO after examination of all documentary evidences, has applied his mind and has made a categorical observation in the foot note of the assessment order as follows:

“Foot Note:

1. The case was selected for scrutiny under CASS on the reasons 'Mismatch in amount paid to related persons u/s 40A(2)(b)reported in Audit Report and ITR'. The case has been examined w.r.t.reasons for selection of cases for scrutiny.

2. Addition in capital accounts of the partners and genuineness of unsecured loans have also been verified w.r.t. books of account

and nothing adverse has been noticed except made as per assessment order.”

7. Referring to above the Ld. AR argued that reopening in the instant case after four years on the same issues which has already been considered and decided in regular assessment, tantamount to change of opinion, in absence of any tangible material being gathered by the AO post assessment u/s 143(3), and as such the same is bad in law and deserves to be deleted and in support of his argument he relied on the following decisions:

- i. CIT and another vs. Canara bank as reported in 460 ITR 6 (SC).*
- ii. Chief Administrator Jalandhar Development Authority vs. DCIT, Circle-3, Jalandhar in ITA No. 377 to 379/Asr/2023 & 3/Asr/2024*
- iii. Basic Clothing P Ltd. vs. ITO 155 taxmann.com 507 DEL HC order dated 19.09.2023*
- iv. Jetair Pvt. Ltd. Vs. DCIT and others reported in [2023] 458 ITR 462 (Bom).*
- v. Cliantha Research Ltd. Vs. DCIT, Ahmedabad reported in [2013] 35 taxman.com 254 (Delhi).*

8. Regarding **Ground No 5** the Ld AR submitted that in course of reassessment proceedings, even though manual return of income has been filed in response to notice u/s 148 (*on line filing of return being not possible due to technical glitches*) , copy of recorded reasons has not been issued by the AO in spite of repeated requests by the assessee , as a consequence of which the assessee was debarred from raising objections to notice u/s 148 , and non issue of recorded reasons is against the settled principles of law and has vitiated the entire reassessment proceedings and the

reassessment order cannot be sustained. In support of his argument he relied on the following for support:

“i. GKN Driveshafts (India) Ltd. v. ITO (SC)

Mandatory to furnish reasons and decide objections before reassessment.

ii. Principal Commissioner of Income-tax vs. V. Ramaiah [2019] 103 taxmann.com 202 (SC)

Where High Court upheld Tribunal's order quashing reassessment proceedings ground that reasons recorded by assessing authority for reopening assessment were never communicated to assessee, SLP filed against said decision was to be dismissed

iii. Baldev Singh Giani vs. Commissioner of Income-tax [2001] 119 Taxman 922 (Punjab & Haryana)

Section 148 of the Income-tax Act, 1961 Income escaping assessment Issue of notice Whether recording of reasons under section 148(2) and communicating them to assessee is mandatory and where same were not found on record, notice issued under section 148 would have to be treated as nullity-Held, yes

iv. CIT v. Videsh Sanchar Nigam Ltd. (2012) 340 ITR 66 (Bom)

Where reasons recorded for reopening of assessment, though repeatedly asked by assessee, were furnished only after completion of assessment, reassessment order could not be upheld.

5. Ujagar Holdings (P.) Ltd. vs. Income Tax Officer [2017] 88 taxmann.com 857 (Delhi Trib.)

Section 148 of the Income-tax Act, 1961 Reassessment - Notice of (Recording of reasons)-Assessment year 2006-07 Where despite repeated letters requesting to provide copy of reasons recorded or grounds on which assessment was reopened, no such reasons were provided to assessee, reassessment completed by Assessing Officer could not be sustained.

Accordingly, since the case of the assessee has been concluded without providing reasons for reopening of the case, the assessee order deserves to be quashed.”

9. Regarding **Ground No 6** the Ld AR submitted that in the instant case , reassessment on the basis of audit objection is legally invalid in absence of any tangible material gathered post assessment , and all materials regarding expenses incurred were made available to the AO in original proceedings and are all existing in assessment records , on which due application of mind has been made by the AO , and the revenue audit is not the authority to hold a judicial view on the decision of the AO. In support of his contention, he relied on the following for support:

“i.ACIT vs. Adani Power Rajasthan Ltd. [2024] 169 taxmann.com 725 (SC).

ii. ACIT vs. Adani Power Maharashtra Ltd. [2024] 165 taxmann.com 455 (SC)”.

10. Regarding **grounds 7 and 8** on the merits of the case the Ld AR submitted that all payments as evident from the copies of ledger accounts filed are less than the stipulated limit of *Rs. Twenty thousand*, to each individual , each day and are all

supported by invoice , which has all been examined in course of original proceedings and the same are not hit by the provisions of section 40A(3) and the same is as per reflection in cash book where names of different individuals are clearly mentioned in respect of each payment and there is nothing to disbelieve the said entries in regular books.

“23. Further, regarding difference between credit balance of unsecured loan party namely M/s Ramesh Kumar and Co. in the books of that party and in the book of assessee, it was explained to the Ld. AO as well as to the CIT(A) that due to clerical mistake of accountant, a sum of Rs. 15,00,000/- was wrongly credited to the ledger account of M/s Ramesh Kumar & Co Instead of ledger account of partner Smt. Bindu Jindal. It is also explained that to rectify the above mistake, in the Immediate next year the assessee has reversed this entry of Rs. 16,26,000/- (Rs. 15,00,000/- interest of Rs. 1,26,000/-) from the ledger account of M/s Ramesh Kumar and Co. and transferred it to the ledger account of Smt. Bindu Jindal. To justify the same the following paper are forming par to paper book.

a. Copy of ledger account of Smt. Bindu Jindal in the books of assessee firm for the F.Y. 2013-14 (year under consideration) and F.Y. 2014-15 alongwith bank statement of Smt. Bindu Jindal forming part of paper book at at pages 89 to 91.

b. Copy of ledger account of M/s Ramesh Kumar and Co. in the books of assessee firm for the F.Y. 2013-14 (year under consideration) and F.Y. 2014-15 forming part of paper book at pages 92 to 93.

c. Copy of ITR and computation and bank statement of M/s Ramesh Kumar and Co. forming part of paper book at pages 94 to 97.

d. Copy of bank statement of assessee depicting receipts of Rs. 15,00,000/- from Smt. Bindu Jindal forming part of paper book at page 98.”

11. The Ld. DR relied on the order of the CIT (A) on merits of the case and has relied on various judicial decisions in the matter of *audit objections* and has referred to the decision of the *Hon'ble Apex court in CIT vs PVS Beedies Pvt Ltd 237 ITR 13 (SC)* to submit that in this case factual error has been pointed out by the internal audit party relating to cash payments above the permissible limits and such internal audit party information was valid in law. Furthermore, reference was also drawn to the decision of the *Hon'ble Apex court* in the case of *Indian and Eastern Newspaper Society v CIT [1979]119 ITR 996 (SC)* to submit that the internal audit party performs administrative functions and draws the attention of the AO to the applicable provisions and makes him aware of the same, and in the instant case he submitted , that is what has been, actually done, and there is nothing wrong in the same.

11.1 Thereafter, the Ld. DR further relied on the jurisdictional High court in the case of “*Jawand and Sons v CIT Ludhiana*”, *ITA / 479 of 2009 dated 18/11/2009*, to submit that the proceedings u/s 147 has been rightly invoked because income has escaped assessment in the instant case.

12. Regarding non supply of recorded reasons the Ld. DR referred to the *Supreme Court decision in the case of GKN Driveshafts (India) Ltd vs ITO, 259 ITR 19 [2003]* to submit that the assessee in the instant case has not filed return in response to notice u/s 148 of the Act 61, (*though a manual paper return was filed*) and in

absence of a technically valid return u/s 148 , being filed , the AO was legally justified in refusing to issue the recorded reasons, before completion of assessment proceedings and all the legal decisions cited by the Ld AR are factually different because in all cases cited , return was filed in response to 148 notice or letters were filed to treat the original return as return u/s 148 , which is not the case here.

12.1 He concluded his submission with a prayer for sustaining the appellate order, because according to him the internal audit report is a *tangible material* on the basis of which reassessment proceedings can be commenced.

13. We have heard the rival submissions and considered the materials on record and we find that in the instant case the reopening is *after four years* from the end of the assessment year, and it is to be seen whether there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for the relevant assessment year. On perusal of the factual position we find that full set of books of accounts along with audited financials and copies of ledger accounts of “ *Machinery Rent* ”, *Purchase A/c and Carriage of Material A/c* has been produced and examined in details along with supporting bills / vouchers *vis a vis* entries in regular cash book and the ledger A/c contains the break up and the names of the payees to whom cash has been paid and each single entry to a single person per day was less than stipulated limit (*eg 23/07/2013 Satpal Singh Rs.10,000/- and Mela Singh Rs.10,475/-*) and so forth and so on .

13.1 We also find the AO has specifically applied his mind to the expenses debited in accounts such as *labour charges, carriage material , machinery rent* , against which he has given a categorical finding that payments were made in cash and were supported by self-made vouchers, which has been maintained as per the trade practice considering the fact that the assessee is engaged in civil construction and admittedly it is not possible to produce each and every bill, which calls for

maintenance of self-made vouchers, and to cover possible leakages a disallowance of Rs. 3,50,000/- was made on ad hoc on the above account. Similarly, the payments of interest to parties has also been examined by the AO and has been discussed in detail in para -3 of the assessment order u/s 143(3), which also includes the party "*Ramesh Kumar and Co*" the difference in closing balance of the said party, as available in assessment records, being one of the recorded reasons.

14. Regarding the difference of Rs. 16.26 lakhs in ledger A/c closing balance of "*Ramesh Kumar & Co*", we find that the same is just an error in accounting entry, where the amount of Rs.15 lakhs transferred through bank channel by the partner *Bindu Jindal* to the PFAS, from her HDFC bank a/c on 19/07/2013, has been wrongly credited in the ledger A/c of *Ramesh Kumar and Co* (*instead in the capital A/c of Bindu Jindal, partner*), resulting in closing balance of Rs. 26.40 lakhs in *Ramesh Kumar & Co*, unsecured loan A/c, creating a corresponding effect in the *Bindu Jindal Partner capital A/c* showing *overdrawn balance of Rs.11.50 lakhs*, as on year end (*in partners schedule of capital*), but the overall liability in audited balance sheet as on 31/03/2014, remains the same, and the said accounting error has been rectified in the following year vide *rectification of errors*. This error is very transparent and apparent on the face of the ledger A/c vis a vis the bank statement, and has neither any effect on closing cash balance nor any effect in total liability reflected in balance sheet of the assessee firm.

14.1 As such we are of the opinion that in the instant case all materials has been properly disclosed in original proceedings and no material facts and documents has been withheld and no fresh or tangible materials has come to the possession of the AO post assessment, and the AO has completed the original proceedings after due application of mind and as such we are of the opinion that in absence of any tangible material or fresh material brought on record the reopening in the present case

tantamount to change of opinion , which is not permissible under law in the light of the judgment of the *Hon'ble Apex court in the case of CIT v Kelvinator India Ltd [2010] 320 ITR 561 (SC)*. As such, we hold the initiation of reopening proceeding vide issue of notice u/s 148 is legally not valid and the same is quashed.

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

Order pronounced on 05.01.2026 under Rule 34(4) of the Income Tax Appellate Tribunal Rules 1963.

Sd/-

(MANOJ KUMAR AGGARWAL)

Accountant Member

AKV

Sd/-

(UDAYAN DASGUPTA)

Judicial Member

Copy of the order forwarded to:

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

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By order