

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHANDIGARH

HYBRID HEARING

BEFORE HON'BLE SHRI RAJPAL YADAV, VICE PRESIDENT
AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं. / ITA No.48/CHANDI/2025
(निर्धारण वर्ष / Assessment Year: 2022-23)

M/s Malbros International Pvt. Ltd. Village Mansoorwal Tehsil Zira Head Office Old Cantt Road, Faridkot – 151203	बनाम/ Vs.	DCIT Central Circle-2 Ludhiana
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AADCM-7203-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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2. आयकर अपील सं. / ITA No.463/CHANDI/2025
(निर्धारण वर्ष / Assessment Year: 2022-23)

DCIT Central Circle-2 Ludhiana	बनाम/ Vs.	M/s Malbros International Pvt. Ltd. Village Mansoorwal Tehsil Zira Head Office Old Cantt Road, Faridkot – 151203
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AADCM-7203-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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3. आयकर अपील सं. / ITA No.49/CHANDI/2025
(निर्धारण वर्ष / Assessment Year: 2022-23)

M/s Om Sons Marketing Pvt. Ltd. Quila Chowk, Old Cantt Road, Faridkot, Punjab-151203	बनाम/ Vs.	DCIT Centre Circle-2 Ludhiana
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACO-8962-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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4. आयकर अपील सं. / ITA No.193/CHANDI/2025
(निर्धारण वर्ष / Assessment Year: 2022-23)

DCIT Centre Circle-2 Ludhiana	बनाम/ Vs.	M/s Om Sons Marketing Pvt. Ltd. Quila Chowk, Old Cantt Road, Faridkot, Punjab-151203
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACO-8962-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee By	:	Shri Sudhir Sehgal (Advocate) – Ld. AR
Revenue By	:	Sh. Abhishek Pal Garg (CIT) – Ld. DR (Virtual)

सुनवाईकीतारीख/ Date of Hearing	:	27-10-2025
घोषणाकीतारीख / Date of Pronouncement	:	13-01-2026

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid cross-appeals with respect to two assessees, admittedly, have identical facts and issues. First, we take up cross-appeals of M/s Malbros International Pvt. Ltd. for Assessment Year (AY) 2022-23 which arises out of an order of learned Commissioner of Income Tax (Appeals)-5, Ludhiana [CIT(A)] dated 02-12-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s 143(3) of the Act on 26-03-2024.

1.2 The ground raised by the assessee read as under: -

1.a). That the Ld. CIT(A) has erred in treating the purchases of Rs. 6,60,00,000/- from some parties as bogus and rejecting the contention of the assessee that all such purchases are backed by documentary evidence of bills from respective parties and other evidences and the payment in respect of purchases having been made through banking channels to the parties concerned, which has been confirmed by the respective parties as well and, therefore, treating the said purchases as bogus is against the facts and circumstances of the case.

b). That the finding of the Ld. CIT(A) about the alleged bogus purchases of Rs.6,60,00,000/- is again not sustainable based on the statement recorded at the back of the assessee, for which, no cross-examination has been allowed.

c). That the finding of the CIT(A) in holding the purchases to the tune of Rs.6,60,00,000/- as bogus is not justified on the basis of only whatsapp chat, which is not admissible as evidence as per the recent judgment of Hon'ble Apex Court.

- d). That the Ld. CIT(A) has also erred in sustaining the addition of Rs.1,62,88,800/- by applying the G.P. rate of 24.86% on the purchases of Rs. 6,60,00,000/-.
2. Notwithstanding the above said ground of the appeal, the finding of the Ld. CIT(A) about the alleged profit embedded in such purchases is misconceived and consequently, the application of gross profit rate of 24.86% as applied on the purchases of Rs.6,60,00,000/- is not justified, since the rate at which, the Rice Nakku had been purchased from the doubtful parties, is the same as purchased from the parties, from whom, the purchases have not been doubted by the Ld. CIT(A).
- 3.a). That the Ld. CIT(A) has erred in invoking the provisions of section 145(3) and rejecting the books of accounts of the assessee, which books of accounts have been accepted by the Assessing Officer during the course of assessment proceeding.
- b). That the finding of the Ld. CIT(A) about the rejection of books of accounts is against the facts and circumstances of the case, specially, when no notice as mandatorily required u/s 251(2) having been issued by the Ld. CIT(A) for enhancement and, thus, any finding without giving that notice u/s 251(2) is illegal and deserves to be quashed.
4. a) That the Ld. CIT(A) has erred in confirming the addition of Rs.9,40,75,924/- u/s 69C on account of certain 'Tally data', which is not reliable and is unauthentic.
- b). That the Ld. CIT(A) has failed to appreciate that the authenticity of such data as recovered from the 'hard disk from the possession of the ex-employee, is again not justified specially when the Unit had been closed in July, 2022 and also no cross examination have been allowed of the ex-employee from whom such hard disc had been recovered from his place.
- c). That even from the premises from where hard disc has been recovered did not belong to company, at all and no computer was also inventoried from that premises and, as such, since the hard disc having been recovered from third party, onus slips to the department about such alleged data of the hard disc as found from the ex-employee.
5. That the appellant craves leave to add or amend any grounds of appeal before the appeal is finally heard or disposed off.

1.3 The assessee has filed additional grounds of appeal on 18-06-2025

which read as under: -

1. That the Ld. AO has erred in law and on facts in framing the assessment u/s 143(3) of the Income Tax, 1961 without fulfilling the mandatory conditions prescribed under section 148 read with Explanation 2 to clause (iv) thereof, particularly by failing to record a valid and proper satisfaction note prior to initiating proceedings based on documents allegedly seized from another premises – such recording being a sine qua non for using such material against the assessee – rendering the assessment order bad in law and liable to be quashed.
2. That the Ld. AO has further erred in relying on documents seized during a search conducted on another person by making additions in the hands of the assessee without obtaining the prior approval of the Principal Commissioner of Income Tax (PCIT) thereby rendering the assessment illegal, void ab initio and without jurisdiction.
3. That the assessment framed u/s 143(3) is bad in law, as it pertains to a year immediately preceding search year where the mandatory approval as prescribed under section 148B of the Income Tax Act, 1961 has not been followed. That in the absence of

compliance with the provisions of section 148B read with CBDT issued the manual of office procedure in February 2003, the assessment is vitiated and liable to be annulled.

4. That even the approval as sought by the assessing officer of the order u/s 143(3) from the Addl. CIT is non est / bad in law and the granting of the approval of the order u/s 143(3) by the Addl. CIT is null and void and thus, assessment as framed u/s 143(3) vide order dated 26.03.2024 deserves to be quashed.

5. That the Ld. AO has relied upon the material found from the residential premises of Shri Prem Singh as seized from first floor, opp. Jain Old Talwandi Road, Zira, Firozpur and the adverse view has been drawn by the AO leading to various addition on the basis of material seized from third party premises is void ab initio and without recording any satisfaction by the AO concerned.

6. That it was incumbent of the Assessing Officer of the searched and the AO concerned to record a satisfaction about the material ought to be used against the assessee before confronting the same to the assessee for making addition in the case of the assessee.

Since additional grounds are merely legal grounds which do not require appreciation of new facts, the same are admitted for adjudication in terms of decision of Hon'ble Apex Court in the case of **National Thermal Power Co. Ltd. (229 ITR 383)**.

1.4 The grounds as raised by the revenue read as under: -

1. Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in reducing the addition of bogus purchase from Rs.103,79,51,710/- made by AO to Rs.6,60,00,000/-?

2. Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.10,84,62,625/ ignoring the facts of the case and statements of Sh. Prem Singh?

3. Whether upon facts and circumstances of the case, the Ld CIT (A) was justified in deleting addition of Rs.10,84,62,625/ by ignoring the fact that the copy of trial balance was found and seized from residential premises of Sh. Prem Singh who when confronted, deposed that PML Sale account pertains to out of books sale of Country Liquor?

4. The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.

1.5 The Ld. AR advanced arguments on legal grounds as well as on merits and referred to various judicial decisions to support the same. The copies of the same have been placed on record. The Ld. AR contended that as per amended provisions, the assessment should have been framed u/s 148 for which requisite satisfaction of specified authority

would be required. In the absence of such a satisfaction, entire assessment proceedings would be bad-in-law. The Ld. AR filed written submissions in support of his arguments. Reliance has been placed on various decision of this Tribunal in support of legal grounds. The Ld. CIT-DR also advanced arguments and controverted the legal grounds assailing assumption of jurisdiction of Ld. AO. For the same, Ld. CIT-DR placed on record Board Circular mandating compulsory selection of cases for scrutiny in search matters. The Ld. CIT-DR contended that Ld. AO was duty bound to frame the assessment u/s 143(3). The Ld. CIT-DR also contended that the search on assessee-group cover all important persons including ex-employees of the assessee. The purpose of search action would be to collect information. The Ld. CIT-DR also supported the assessment order on merits. Having heard rival submissions, oral as well as written and upon perusal of case records including various judicial decisions as cited before us, our adjudication would be as under.

Assessment Proceedings

2.1 The assessee being resident corporate assessee is stated to be belonging to *Oasis group* which was subjected to search action u/s 132 of Income Tax Act, 1961 by the department on 18-05-2023. The assessee is stated to be engaged in manufacturing and trading of liquor and allied products. The basic raw material for the assessee is *Rice Nakku* and distillery of the assessee is grain-based industry. Simultaneous searches were also carried out at the residential premises of assessee's ex-employee i.e., Shri Prem Singh wherein certain digital data in the shape of Tally Data, Hard disk and loose papers were found and seized and a separate Panchnama was drawn for Shri Prem Singh.

The statement of Shri Prem Singh was also recorded u/s 132(4) during search. As per assessee's version, no business was being carried out at its factory premises after July, 2022 due to agitation by the farmers raising environmental concerns. The staff of the assessee was stated to have taken various items / papers / data from assessee's premises without the knowledge of the assessee after the closure of factory premises. The said digital data as well as loose papers coupled with the recorded statements were analyzed and ultimately relied upon by Ld. AO to make various additions in the hands of the assessee. The Ld. AO also referred to the statement of Shri Prem Singh to make all these additions. Post-search investigation, another employee Shri Rajinder Singh was called by the investigation team and his statement was also recorded which has been used to corroborate the findings in the assessment order. The data from his mobile phone was extracted. His statement and data so extracted has been used by Ld. AO to support the impugned additions.

2.2 The assessee had already filed its return of income for this year on 31-10-2022 declaring income of Rs.207.35 Lacs. Pursuant to search action, the case was picked up for compulsory scrutiny in terms of CBDT guidelines F.N.225/66/2023/ITA-II dated 24-05-2023 and a scrutiny notice u/s 143(2) was issued by Ld. AO on 31-05-2023 which was followed by notices u/s 142(1) wherein the assessee was required to file various submissions and explanations. It transpired that the assessee was running a distillery at Zira District of Ferozepur, Punjab. By analyzing the tally data as well as cash vouchers found during search on Shri Prem Singh, it was alleged by Ld. AO that the assessee made bogus

purchases from various suppliers. The data also indicated cash expenses / cash receipts not recorded in the regular books of the assessee. The Ld. AO referred to statements recorded from ex-employees of the assessee to reach the said conclusion. The various additions as made by Ld. AO were as under.

Addition of alleged bogus purchases

2.3 The first addition as made by Ld. AO was on account of profit element in alleged bogus purchases of *Rice Husk* and *Rice Nakku* from several parties for which the payments were made through banking channels. These parties include M/s Krishna Agro, M/s Shri Sai Baba Foods, M/s Bharat Trading Co. etc. It was noted that though the payment to these suppliers was made through RTGS, however, cash was allegedly received back from these parties against RTGS so made by the assessee. Such evidences of cash receipt were found from mobile of Shri Rajinder Singh who acted as GM (procurement). The modus operandi was that the assessee would book purchase of raw material like *Rice Nakku* and *Rice Husk* which is required for manufacturing of liquor and corresponding payment would be made through banking channels. In return, these suppliers would charge certain commission for these entries and pay back the assessee in cash. Such conversations of cash receipt were found from *whatsapp Chat* as extracted from the mobile phone of Shri Rajinder Singh. By analyzing these chats, Ld. AO cited instances of cash receipts of Rs.6.60 Crores from various suppliers of the assessee. To support the same, Ld. AO analyzed the cash vouchers as found from the premises of Shri Prem Singh. As per these vouchers, the aggregate receipts and payments for supplies aggregated to Rs.103.97 Crores. On

these observations, Ld. AO alleged that the assessee booked bogus purchases which were paid through bank and subsequently, cash was received against the same by paying commission to the parties. These cash receipts were recorded by Shri Prem Singh. The Ld. AO referred to various instances to support this allegation and also referred to the statement of Shri Rajinder Singh, in this regard.

2.4 In response to show-cause notice, the assessee, vide its reply dated 21-03-2024, refuted the allegations of Ld. AO and brought on record various instances to demonstrate that Tally data as referred to by Ld. AO was incomplete, unauthentic and no reliance could be placed on the same. The assessee refuted the allegation of Ld. AO by contending as under: -

“Regarding Rs.27,62,51,258/- and cash vouchers mentioned in Sr No.1.7,1.8 and Annexure-E, it is payment made for ‘Rice Nakku’ and ‘Rice Husk’ purchased, which can be duly verified from our ERP software as explained under point no.1. There are two types of vouchers found at premises pink vouchers & white voucher. Upon analyzing the vouchers, it was found that the persons who prepared the vouchers have entered the bank payments on both sides of cash book i.e., the payments made through cheques / RTGS / NEFT were entered on credit side of the cashbook and to ensure double entry, a similar contra / receipt entry was posted on debit site through pink voucher. This is in line with the old system of preparing a ‘combined cashbook’. The bank transactions are recorded on both sides of the cashbook, although, it does not affect the cash balance, the same is verifiable from the C-5 (location code) seized material. All the transactions so far identified by us are duly recorded in our regular books of accounts and done through banking transactions. Therefore, the question of treating these genuine bank entries as alleged ‘bogus purchases raw materials’ is factually incorrect. These are payments towards broken ‘Rice Nakku’ and ‘Rice Husk’ purchases made through banking channels. We are attaching sample invoices and weigh slips which are being produced for your kind consideration. As stated earlier, the person who has entered the transactions in this tally has prepared the same on old basis under which bank transactions are entered on both sides debit and credit side of combined cash / bank book, whereas in our regular books of accounts, these transactions are entered correctly. As such, these are not cash transactions but regular banking transactions for purchase of raw material, for which, complete documents are available. Thus, no addition of Rs.26,44,57,209/- is called for. Following documents are attached for your reference:

- i. ledger of suppliers mentioned above is attached
- ii. Sample purchase invoice, Weightment slips are attached
- iii. Bank statement extract containing payments mentioned in Annexure

a) Further, Sr No. 1.9 and 1.10, your good self has drawn a total presumption about the adjustment of cash against the purchase of 'Rice Nakku' and 'Rice Husk' to the tune of Rs.103.79 Crores without any evidence just on presumption and on the basis of certain unreliable data in the said tally data of the earlier years. In the tally data, purchase of 'Rice Nakku' and 'Rice Husk' is booked to the tune of Rs.110.54 Crores and alleged receipts against that are Rs.103.79 Crores. Against above contention we are discussing some facts based on financials of the year under consideration. 'Rice Nakku' is procured in A.Y. 2022-23 amounting to Rs.154,53,58,572/- and the 'Rice Husk' procured in A.Y. 2022-23 amounting to Rs.31,41,41,016/-. On consumption of Rice Nakku, finished product ENA / Ethanol has been manufactured to the tune of 6,45,28,925 PL, converted to Bulk Litres. it comes to 3,73,27,267 Bulk Liters (including redistillation) and its sales amounts to Rs.1,71,10,17,504/- and Sales for PML / IMFL amounts to Rs.70,09,22,215/- duly recorded in the books of accounts for year under consideration.

b) W.r.t. alleged contentions of such high amount of bogus purchases i.e., Rs.103,79,51,710/-, it may be submitted that out of total purchase of Rice Nakku Rs.154,53,58,572/- and Rice Husk Rs.31,41,41,016/-, it is not possible & feasible at all to produce such high quantity of ENA / Ethanol. Further, TDS u/s 194Q is duly deducted, while making the payment through RTGS. Our Ethanol sale is done exclusively to government concern OMCs (Oil marketing companies) like BPCL, HPCL and IOCL which is taxable item under GST attracting 5% tax rate and to prove the sale of ENA / Ethanol Sales ledgers and sample purchase orders & GST returns of OMCs are attached herewith for your kind consideration. Further, there are purchases of Rice Nakku from Food Corporation of India, a Central Govt. undertaking from whom purchases have been made in the financial year 2021-22 to the tune of Rs.42.86 Crores and in tally data, such purchases are reflected at only Rs.2.10 Crores and which proves that 'Tally data' is unreliable and cannot be relied upon"

The assessee also demonstrated various instances to controvert the allegation of Ld. AO and finally stated that tally data was incomplete, unauthenticated and therefore, no reliance could be placed on such data. In support of its contentions that the purchases were genuine, the assessee furnished ledger extracts of the suppliers, copy of purchase bills, vouchers, e-way bills and transportation receipts. The evidences of payment through banking channels were also furnished. The assessee also provided inward register maintained at its registered premises with date, name of supplier, GST number, taxable value, GST, weigh bridge receipt indicating inward time when the goods were taken in factory, signature of transporters, vehicle numbers, confirmation from sellers of

goods etc. On these facts, pleadings were made that the purchases were genuine and duly substantiated by documents and therefore, the same could not be held to be bogus purchases.

2.5 However, the above contentions could not find favour with Ld. AO. The contentions of the assessee were rejected. Finally, in the light of seized material from Shri Prem Singh and their respective statements, Ld. AO rejected the plea of the assessee to accept the purchases as genuine purchases. The Ld. AO also referred to the statement of Shri Pawan Bansal (Chief Administrative Officer of the assessee) to support its allegation. The alleged bogus purchases were thus quantified at Rs.103.79 Crores.

2.6 In the background of these facts, Ld. AO alleged that the assessee had made purchases to reduce taxable profits and only bills were obtained from bill providers. The payments were made but equivalent amount, after reducing commission, was received back by the assessee. In the regular books, the assessee reflected purchases of Rs.181.38 Crores out of which inflated purchases were held to the extent of Rs.103.79 Crores which translated into 57.2% of total purchases. Therefore, the benefit of estimation-based profit embedded in the purchase cost was to be given to the assessee. Finally, Ld. AO estimated this profit @12% on alleged bogus purchases of Rs.103.79 Crores and made addition of Rs.12.45 Crores.

Addition of Unexplained Expenditure u/s 69C

2.7 The tally data indicated that the assessee generated cash receipts from sale of by-products, scrap sales etc. which aggregated to Rs.922.26 Lacs. Against these receipts, the assessee made payment of Rs.940.75

Lacs which was held to be unexplained expenditure and added to the income of the assessee u/s 69C. The Ld. AO referred to the statement of Shri Prem Singh while arriving at aforesaid conclusion of unexplained expenditure.

Addition on Account of Gross Profit

2.8 On the basis of seized Trial Balance, Ld. AO alleged that the assessee made out-of-books sales of Rs.43.9 Crores. The Ld. AO applied GP Rate of 24.68% on the same and made an addition of Rs.10.84 Crores in the hands of the assessee.

Other Additions / disallowances

2.9 The Ld. AO added back late deposit penalty of Rs.2,546/- as well as CSR expenditure for Rs.5,31,386/- and made aggregate disallowance of Rs.5,33,932/-. The Ld. AO also disallowed late payment of employees contribution to PF / ESI u/s u/s 36(1)(va) for Rs.9,81,006/-.

2.10 The various additions as made by Ld. AO while framing the assessment could be summarized as under: -

No.	Nature of Addition	Amt. (Rs. in Lacs)
1.	Estimated Profit of 12% against alleged bogus purchases	Rs.1245.54 Lacs
2.	Addition of unexplained Expenditure u/s 69C	Rs.940.75 Lacs
3.	Addition of Gross Profit on out of books sales	Rs.1084.62 Lacs
4.	Disallowance u/s 37	Rs.5.33 Lacs
5.	Disallowance u/s 36(1)(va)	Rs.9.81 Lacs

Aggrieved as aforesaid, the assessee assailed the assessment so framed in first appeal.

Appellate Proceedings

3.1 The assessee assailed the assessment on legal grounds as well as on merits by way of elaborate written submissions which have already been extracted in the impugned order. It was stated that the assessee had a distillery located at Zira, District Ferozepur. The assessee-company was engaged in manufacturing of Grain based ENA, Ethanol and Country Liquor. The unit was carrying on the said manufacturing activity since 2007 and during the initial years, only ENA and Country Liquor was being produced and the manufacturing of Ethanol was started subsequently by linking to the old plant in the year 2021. Subsequently, entirely a new plant was commissioned for manufacturing of Ethanol in the month of February, 2022. However, the entire unit had to be closed down due to farmers' agitation and subsequently, the Government of Punjab ordered for closure of the plant in whole in December, 2022.

3.2 The assessee further pointed out that it was maintaining day-to-day stock register and all the production was being carried out under the strict supervision of State Excise Officials who were stationed at the manufacturing unit of the assessee day and night. The manufacturing as well as sales was carried out under the supervision of the State Excise officials. The sales were carried out only on the basis of permit issued by State Excise Department which would be forwarded to Excise Officials sitting at the factory premises and only the manufactured liquor and Ethanol would be dispatched to the parties concerned. The assessee further stated that it was maintaining all the purchase records viz. purchase invoices, lorry receipts, weighment receipts in respect of purchase of Rice Nakku. When the grain reached the factory, the same

would be recorded in the Grain Procurement Register which would be authenticated by Excise Officials. The register would record day-to-day opening balance of the grain, grain purchased during the year, consumption and day-to-day closing stock of the grain. The Ld. AO did not doubt anything or pointed out any defects in respect of the same. The complete detail of delivery vehicles, quantity, weightment of grain was maintained. The copies of purchase invoices were furnished along with inward grain receipts along with sample copies of the Lab Report for testing of the *Rice Nakku*. The confirmed copies of accounts of the suppliers were also furnished. The books of the assessee were duly audited as required under law.

3.3 It was further contended that when the search happened at the main business premises, the unit had since been closed in July, 2022 due to agitation by the farmers. The manufacturing unit was closed and at the time of search, the factory was locked and none of the employee was present at the time of search. No manufacturing activity was happening at the premises. The ex-employees of the assessee took records to their residences without the knowledge of the management and therefore, no reliance could be placed on this material. The main raw material for the assessee was *Rice Nakku* for which the assessee duly maintained Grain Procurement Register on day-to-day basis. The said register would be authenticated by Excise Officials who were present at the factory premises and the purchase of *Rice Nakku* would be recorded therein. The copy of this register was duly furnished by the assessee along with sample copies of invoices which contained the requisite details viz. transport receipt, vehicle number, quantity of *Rice Nakku*,

Weightment slips at the factory premises on arrival of the vehicles. Besides this, the assessee furnished day-to-day production record which would be duly authenticated by Excise Officials. These records recorded day-to-day production and dispatch of the finished products by the assessee. Thus, the assessee assailed the allegation of alleged bogus purchases as made by Ld. AO on the basis of incomplete and un-authenticated data.

3.4 On further merits, the assessee pointed out that Ld. AO referred to *Whatsapp Chat* of ex-employee Shri Rajinder Singh. The same was used along with Tally data which was recovered from the residential premises of Shri Prem Singh at Zira, Punjab. The Ld. AO relied upon certain data for FYs 2013-14 to 2016-17 to reach such a conclusion. The Ld. AO merely assumed that during this year, the assessee made alleged bogus purchases of Rs.103.79 Crores. However, no incriminating material was found for this year which would corroborate the receipt of cash from suppliers by the assessee. There was no evidence of payment being received back by the assessee. Thus, Ld. AO only assumed that since in the past, such practice was there and therefore, he had assumed such facts during this year also. Reference was made to the decision of Hon'ble Apex Court in the case of **Dhakeshwari Cotton Mills Ltd. (26 ITR 775)** holding the Ld. AO was not entitled to make guess work. In the case of **Umacharan Shaw & Bros. (37 ITR 271)**, it was held that suspicion could not take the place of proof. The said decision was applied by Hon'ble Punjab & Haryana High Court in the case of **Anupam Kapoor (166 Taxman 178)**. The impugned addition was merely on conjecture and surmises and without any findings of fact against the

assessee. In the case of **Omay Salay Mohammed Sait (37 ITR 151)**, it was held that additions on the basis of conjectures, suspicion and surmises would not be sustainable. In the case of **Lalchand Bhagat Ambica Ram (37 ITR 288)**, it was held by Hon'ble Apex Court that assessment could not be based in the background of the suspicion and in the absence of any evidence supporting the same. By taking support of these decisions, the assessee opposed extrapolation by Ld. AO based on Tally Data where bank entries were recorded on both sides of the cash book without any increase of any cash-in-hand in the tally cash book. It was further stated that Ld. AO erred by relying upon Tally Data of the earlier years and got misled by double column cash / bank book as was being maintained in the earlier years and wrongly concluded that the assessee was receiving cash against regular purchases. In fact, all the payments to the suppliers were made through banking channels. The assessee opposed reliance on the statement of Shri Rajinder Singh and asserted that no such addition could be made merely on the basis of statements alone as held in various judicial decisions. The assessee also asserted that no opportunity of cross-examination was ever provided to the assessee and therefore, no authenticity could be placed on such statement. On the issue of estimation of 12% against these purchases, the assessee opposed the same on the ground that Ld. AO did not reject the books of accounts u/s 145(3). The assessee thus vehemently assailed impugned estimated addition on alleged bogus purchases.

3.5 It was similarly assailed by the assessee that the addition of Rs.940.75 Lacs was made by considering Tally Data which was found during search on ex-employee Shri Prem Singh. It was pointed out that

the assessee's unit was closed since July, 2022 and the search happened almost after 10 months of closure of unit. All the employees had to be terminated upon closure and no such data was received by search team from directors or existing employees of the assessee. Under these circumstances, the authenticity of Tally Data could not be ascertained. Similar arguments were advanced on estimated addition of gross profit of Rs.1084.62 Lacs. The Ld. CIT(A), after due consideration of assessment record as well as assessee's detailed submissions, rendered its adjudication from para-5 onwards of the impugned order.

3.6 On the issue of addition of alleged bogus purchases, it was observed by Ld. CIT(A) that Ld. AO did not made addition of entire bogus purchases but only added profit element embedded therein. During proceedings, the assessee furnished all the documents which related to the payments of Rs.103.79 Crores of all the parties and all the payments were through banking channels only. The Tally Data include substantial purchases made from FCI (a Govt. Agency) and there could not be any bogus purchases from a Government Organization. The contention that there would be equal amount of debit and credit in double entry system had merits and such entries could not be the basis for treating the purchases as bogus. There was no evidence with respect to the amount of Rs.103.79 Crores entirely being bogus. The total purchases of the assessee were much more than this amount. Further, the Tally Data was incomplete. However, the evidence with respect to cash received back for Rs.6.60 Crores was found from the mobile phone of Shri Rajinder Singh. Therefore, this amount was to be treated as bogus purchases on which Ld. CIT(A) applied GP rate of 24.68% and deleted the remaining

addition. The impugned addition, was thus, sustained to the extent of Rs.162.88 Lacs. Aggrieved as aforesaid, the assessee as well as revenue is in further appeal before us.

3.7 On the issue of addition of unexplained expenditure for Rs.940.75 Lacs, it was observed by Ld. CIT(A) that there was a seized document indicating cash expenditure. The assessee was unable to explain how these transactions were accounted for in its books of accounts. Therefore, this addition was confirmed against which the assessee is in further appeal before us.

3.8 On the issue of addition of Gross Profit for Rs.1084.62 Lacs, it was observed by Ld. CIT(A) that this addition was made on the basis of a Trial Balance found and on the basis of documents which reflected cash sales. However, the assessee contended that it was a rough Trial Balance and the authenticity of the same could not be established, Further, the assessee made much more sales as mentioned in the said Trial Balance. In the seized Trial Balance, the figure of the sales was mentioned on debit side and as per accounting treatment, the sales are never shown in the debit column. It was a fact that the Trial Balance reflected Sales of Rs.38.32 Crores on debit side whereas the assessee reflected sales of more than Rs.290 Crores during this year. On examination of Trial Balance, no such figures matched with the books of the assessee company. Also, there was no such figure of sales of any of the party as mentioned in Tally Data. Therefore, this document was only a dumb document which could not be the basis of impugned addition. Accordingly, this addition was deleted against which the revenue is in further appeal before us.

Our findings and Adjudication

4. From the facts, it emerges that the assessee-entity was engaged in manufacturing of grain-based ENA, Ethanol and Country Liquor. The manufacturing of Ethanol was started during 2021 and a new plant was commissioned for manufacturing of Ethanol in the month of February, 2022 but the unit was closed down to farmers' agitation and finally the government ordered for the closure of the whole plant in December, 2022. The assessee-group was subjected to search action on 18-05-2023 when the plant had already been closed down. Pertinently, no documents or incriminating material has been found from business premises of the assessee. However, an ex-employee of the assessee Shri Prem Singh was subjected to an independent search by the department on the same date wherein certain loose sheets, Tally data etc. has been found which form the whole basis of impugned assessment on the assessee. A separate *Panchnama* has been drawn with respect to search on Shri Prem Singh. Going by this material as well as statement of Shri Prem Singh, Ld. AO made allegation of bogus purchases by the assessee. Post search, another ex-employee Shri Rajinder Singh was called by the investigation team and his statement was also recorded which has been used to corroborate the findings in the assessment order. The data extracted from his mobile phone has also been used by Ld. AO to support the impugned additions.

5. We find that the return of income for this year was already been filed by the assessee on 31-10-2022. Pursuant to search action, the case was picked up for scrutiny and the assessment has been framed. First, we take up the legal grounds as urged by Ld. AR since the same assail

the very jurisdiction of Ld. AO in making an assessment u/s 143(3) of the Act. It has been stated that while framing the impugned assessment, Ld. AO has relied upon and utilized various documents found and seized from the residential and office premises of third parties namely Shri Prem Singh and Shri Rajinder Singh. These documents include digital data and loose papers as found during search on third parties. The reliance of such material, in the absence of any valid satisfaction recorded u/s 148 read with Explanaion-2(iv) would render the assessment bad-in-law and accordingly, liable to be quashed. To support the same, Ld. AR has submitted following tabulation: -

Name of searched person along with the premises from whom such data was recovered	Name of Digital Device	Nature of Addition	Nature of Data recovered from the digital device and alleged as incriminating material	Relevant Page of Assessment Order
Prem Singh	Digital Data	Bogus Purchase	Recovered from his residence	27
	Digital Data	On account of Bogus Purchase	Alleged Bogus purchases from inaccurate tally data seized from his residence	36-53
	Digital Data	Unexplained expenditure u/s 69C	Found and seized from his residence	53-63
	Digital Data	On account of Gross Profit	Found and seized from his residence	63-81
Rajinder Singh	Digital Data	Bogus Purchase	Extracted from the mobile of ex-employee, Shri Rajinder Singh during post search assessment proceedings and statement	4-29

6. On the basis of above tabulation, Ld. AR asserted that AO was mandatorily required to record requisite satisfaction with the prior approval of Pr. CIT to the effect that document / digital data as seized u/s 132 in the case of other persons viz. Shri Prem Singh and certain data as recovered from the mobile phone of Shri Rajinder Singh during post search and information contained thereto pertained to the assessee. Since, no such satisfaction was recorded by AO and no prior approval as statutorily required has been obtained by Ld. AO, the same would render the assessment to be without jurisdiction. Our attention has been drawn to Explanation-2(iv) to Sec.148. This Explanation provide that, in case where material belonging to or pertaining to the assessee is found during a search on another person, the AO is mandatorily required to record proper satisfaction that such material pertains to the assessee and accordingly, required to obtain prior approval of Ld. Pr. CIT / CIT to initiate any action against the assessee. To support the same, reference has been made to various decisions of this Tribunal taking the same view. The Ld. AR stated that memorandum explaining the provision of Finance Bill, 2021 categorically provide that for search operations conducted on or after 01-04-2021, a new assessment procedure is to be followed particularly under the provisions introduced through Sec.148 and Sec. 148B read with amended Scheme of reassessment under Finance Act, 2021. In the present case, search has bene conducted on 18-05-2023 which is after 01-04-2021 and therefore, as per amended law, the assessment or reassessment for the years failing within period immediately preceding the search year must be initiated and completed through the new assessment procedure only. As against this, Ld. AO

has framed the assessment u/s 143(3) which is not applicable in the present context. Therefore, the assessment is invalid and without the authority of law. The Ld. AR stated that the requirement of new procedure is not shown to have been fulfilled in the present case.

7. The Ld. AR further asserted that in the present case, no approval u/s 148B was obtained by Ld. AO despite the fact that the assessment was completed pursuant to search action. As per the amended provisions as applicable post 01-04-2022, AO is mandatorily required to obtain prior approval u/s 148B from prescribed authority before passing any assessment order based on search proceedings. The seized material including the documents seized from the third parties (Shri Prem Singh and Shri Rajinder Singh) was never forwarded to approving authority. The provisions of Sec.148B, as per amendment by Finance Act, 2022, provide that no order for assessment or reassessment or recomputation under this section shall be passed by an AO below the rank of Joint Commissioner, in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or Clause (iv) of Explanation 2 to Sec.148 apply, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director. No such approval has been obtained in the present case. Thus, the assessment order passed u/s 143(3) is in violation of express requirements of Sec.148B and therefore, liable to be quashed on this score also. Even otherwise, the purported approval was obtained and the assessment order was passed on the very same day and therefore, the assessment would be bad-in-law since the approval was taken without sharing the seized material and other document. The approval taken for

administrative purpose was mechanical one and taken in perfunctory manner without any application of mind. Reference has been made to various judicial decision of this Tribunal taking the same view in favour of the assessee. It has further been stated that the approval as granted by Addl. CIT was faulty since the said approval has been granted for the order to be passed u/s 143(3) which is evident from copies of approval as sought by DCIT, Central Range u/s 143(3) vide letter dated 24-03-2024 and the same was approved b Addl. CIT vide letter dated 26-03-2024. There was no application of mind by Addl. CIT since the data or other digital record as relied upon to make the assessment were not forwarded to him. This being so, the assessment would be liable to be quashed.

8. The Ld. AR also advanced arguments on merits and stated that the basic raw material for the assessee was *Rice Nakku* since the assessee was engaged in grain-based distillery. The assessee had maintained complete day-to-day stock register and the production activity was carried on under direct supervision of State Excise officials stationed at the manufacturing unit of the assessee day and night. Entire procurement, production and sale was carried under the strict supervision of State Excise officials. The sales were made on the basis of permit issued by the State Excise department which was forwarded to Excise personnel deputed at the factory premises and only then country liquor and Ethanol was dispatched to the customers. The assessee has maintained all the relevant records viz. purchase invoices, lorry receipts, weighment receipts for procurement of *Rice Nakku*. The receipt of raw material was entered in 'Grain procurement register' which was authenticated by the Excise Officials. The same contained day-to-day

opening balance, grain purchased and consumed during the year and day-to-day closing stock of the grain. The Ld. AO did not doubt on the same. The copies of purchase invoices, built giving details of vehicles, weight and weightment of grain at factory premises was also already furnished to Ld. AO along with inward gate receipts along with sample copies of Lab Report for testing of *Rice Nakku* etc. The confirmed ledger copies of suspicious suppliers were also furnished which are kept on page nos. 422 to 438 of the paper book. It was stated that the assessee made sales to oil marketing companies and the same were duly accepted. The sales and purchase of the assessee was duly disclosed in the GST returns and none of the documentary evidences has been doubted by Ld. AO. The payments to all the suppliers were made through banking channels. The Ld. AR also stated that the assessee's accounts were duly audited as required under law and no flaw was found by Ld. AO in the books of the assessee. Rather the whole assessment is merely based on third-party material. No opportunity of cross-examination has ever been granted to the assessee and therefore, the additions could not be sustained on merits. No independent enquiry has been conducted by Ld. AO from any of the parties concerned. The statement of third parties as made u/s 132(4) could not bind the assessee. No presumption could be made and no conclusion could be drawn against the assessee on the basis of third-party evidences. Pertinently, similar addition of bogus purchases as made by Ld. AO for AYs 2016-17 & 2017-18 stood deleted in first appeal. Similar arguments were made for addition of unaccounted expenditure of Rs.940.75 Lacs. The Ld. AR also referred to the findings of Ld. CIT(A) on the issue of deletion of addition of alleged out-of-books

sales. The Ld. CIT-DR, on the other hand, drew attention to the findings of Ld. AO and justified the assessment so made on the assessee.

9. After due consideration of material facts on record as well as arguments of Ld. AR, we find substantial merit in legal arguments as urged by Ld. AR. The arguments of Ld. AR are duly backed up by various judicial decisions taking the same view. The pertinent legal ground as raised by Ld. AR is that the assessment has been framed u/s 143(3) without fulfilling the mandatory conditions prescribed u/s 148 read with Explanation 2(iv) thereof. Another pertinent legal issue is that mandatory approval as required u/s 148B has not been obtained from the competent authority even though the impugned AY was immediately preceding the search assessment year. Another line of argument is that approval as obtained by Ld. AO from Addl. CIT before passing the assessment order was invalid one since the approval ought to have been obtained u/s 148B of the Act which was not done in the present case. Further, whatever approval was taken, the same was mechanical and without application of mind. All these legal issues, as rightly been pointed out by Ld. AR, has adequately been dealt with by co-ordinate bench of Chandigarh Tribunal in the case of **M/s Homelife Buildcon Pvt. Ltd. (ITA No.880/Chd/2024 & ors. dated 17-07-2024)**. We find that on identical facts, the coordinate bench held as under: -

22. The core question before the Bench is whether, in the facts and circumstances of the case, the assessment ought to have been framed under section 143(3) or under section 147 of the Income-tax Act, 1961. From the plain reading of the statutory provisions and in light of Explanation 2 to section 148, it becomes abundantly clear that the legislature has widened the scope of reassessment, particularly through the Finance Act, 2021, which introduced significant changes to the reassessment regime. These amendments explicitly include instances involving third-party search material and make it incumbent upon the

Assessing Officer (AO) to follow the procedure under section 148, including obtaining prior approval from the Principal Commissioner of Income Tax (PCIT).

23. In the present case, the AO proceeded to frame the assessment under section 143(3) despite relying heavily on material found during searches conducted on third parties. The AO, instead of complying with the jurisdictional preconditions laid down under the reassessment provisions, proceeded without recording the mandatory satisfaction and without obtaining prior sanction from the competent authority. This conduct not only, violates the express mandate of law, but also renders the assessment a jurisdictional error. The AO has, in fact, gone a step further by bypassing the legal safeguards embedded in section 147, thereby vitiating the assessment proceedings ab initio.

24. Furthermore, a plain reading of the Finance Act, 2021 and the Explanatory Memorandum to the Finance Bill clearly indicates that the legislative intent was to bring all searches conducted on or after 1st April 2021 within the ambit of the new reassessment regime under section 147 of the Income-tax Act, 1961. This new regime was introduced through significant amendments to section 147 and section 148, along with the insertion of Explanations 1 and 2, and the concept of "information suggesting escapement of income" was explicitly defined. From the reading of Explanation 2 to Section 147, it is evident that in cases where a search is initiated on or after 1st April 2021, the Assessing Officer shall be deemed to have information, which suggests that income chargeable to tax has escaped assessment for three assessment years immediately preceding the assessment year relevant to the previous year, in which, the search is initiated, provided that books of account, documents, assets, bullion, jewellery, or other valuable articles are seized or requisitioned in the course of the search. This deeming provision is not limited only to the person searched, but also extends to "other persons", provided that due procedure under the law-specifically, the recording of satisfaction that such seized material belongs to the assessee and obtaining prior approval from the PCIT-is followed.

25. In the present case, where the AO has admittedly relied upon material seized during searches conducted on other persons, i.e., Sh. Ravi Kapoor and Sh. Ajay Kumar Prabhakar, it was mandatory for the AO to invoke the provisions of section 147 and not to bypass the statutory framework by proceeding under section 143(3). Granting such unfettered powers to the AO to rely on third-party material without adhering to the safeguards under section 147 would defeat the very purpose of the amendment and open the floodgates to arbitrary assessments.

26. The relevant extract Memorandum explaining the finance bill is reproduced as under:-

(ii) Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.

(vi) Further, in search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year, in which, the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted."

27. The notice issued under section 143(2) was also produced by the AR. Upon perusal of the said notice, it is evident that the assessment under section 143(3) was initiated solely for the purpose of verifying the return of income filed by the assessee. In such circumstances, the importing and reliance upon material seized from third-party searches, namely, those conducted on Sh. Ajay Kumar Prabhakar and Sh. Ravi Kapoor, goes beyond

the jurisdiction conferred under section 143(3). Particularly, where the applicable law—Explanation 2 to section 148 (as amended by the Finance Act, 2021) mandates prior approval from the Principal Commissioner of Income Tax (PCIT) before initiating reassessment proceedings on the basis of such material, the failure to comply with that requirement renders the assessment legally untenable.

28. In the present case, the AO did not issue a notice under section 148, nor did he follow the due process of law under the new reassessment framework, including recording of satisfaction and obtaining prior sanction from the PCIT. Therefore, the assessment framed under section 143(3), because of being based on third-party material without adhering to statutory safeguards, is bad in law. The AO was only empowered to verify the return of income and restrict his scope of inquiry accordingly; he was not permitted to expand the assessment by importing and relying upon third-party seized material without following the mandatory procedure laid down under the law.

29. Furthermore, there exists a mandatory statutory requirement that in all cases involving search-related assessments falling within the assessment year, immediately preceding the year of the search, the prior approval of the Joint Commissioner is required under section 148B of the Income-tax Act, 1961. In the present case, the Assessing Officer (AO) has proceeded without obtaining such approval, which is a clear violation of the procedural safeguards envisaged under the law and, as such, vitiates the assessment proceedings. In the present case, approval has been granted for assessment framed u/s 143(3) only.

The relevant provision of section 148B reads as under:

Prior approval for assessment, reassessment or recompilation in certain cases.

148B. No order of assessment or reassessment or recompilation under this Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation 2 to section 148 apply except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director.

30. A comparison of the requirement of approval under section 153D and section 148B is drawn, from which it is evident that approval under section 153D was earlier required only in cases where assessments were completed under section 153A/153C and also for search year. However, under the amended provisions, approval under section 148B is now required in all cases where proceedings are initiated pursuant to a search, requisition, or survey, or where asset/material/documents found during such search pertain to or relate to another person. In such cases, the Assessing Officer must take the approval under section 148B from the specified higher authority.

Aspect	Section 153D	Section 148B (with Explanation 2 to Section 148)
Applicable Period	Search initiated between 01.06.2003 to 31.03.2021	Search/survey initiated on or after 01.04.2021 but before 01.09.24
Context	Search assessment under Section 153A/153C	All cases where assessment/reassessment is based in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation 2 to section 148
Triggering Event	Search or requisition on the assessee under Sections 132 /132A or material is used against assessee from third party search	1. Search/requisition 2. Survey (except under 133A(2A)) on assessee 3. Search/requisition on another person, but

		assets/documents relate to assessee
Purpose of Approval	Supervisory check in search assessments to ensure fairness and oversight	assessments to ensure fairness and oversight Prevent misuse of powers in reassessment based on search/survey-related information under new regime
Who gives approval	Joint Commissioner (mandatory)	Any of: Joint Commissioner / Addl. Commissioner / Joint Director / Addl. Director
Aspect	Section 153D	Section 148B (with Explanation 2 to Section 148)
Deeming Presumption	Not expressly stated	Explanation 2 creates a legal presumption: AO is deemed to have information suggesting income escaped assessment in specified cases

31. This requirement has also been explicitly discussed in the Explanatory Memorandum to the Finance Bill, 2022, which emphasizes the need to protect taxpayer rights by ensuring that no reassessment is carried out without proper sanction and due process. It is further seen that the Joint Commissioner has not even been supplied seized material relied upon as seized from third-party in the present assessment. There exists a prescribed procedure under which such seized material (including material found from third-party premises) is to be forwarded to the approving authority at least 30 days in advance of granting approval. This procedural safeguard is crucial to prevent arbitrary and unregulated use of third-party material.

32. In the present case, there is no evidence to demonstrate that the prescribed procedure was followed, or that the Joint Commissioner was apprised of the seized material by forwarding copies of the documents found from the third party prior to framing the assessment. **The complete failure to comply with the mandatory provisions of section 148B renders the reassessment not only procedurally defective but also without jurisdiction.**

33. Even we find while framing the assessment under section 143(3), the Assessing Officer (AO) has, on the last page of the assessment order, referred to an approval obtained from the supervisory authority. However, a bare perusal of this approval shows that it was obtained in reference to F. No. 299/36/2020/1DAR/INV3(3)/577 dated 15.07.2022, i.e., in accordance with the CBDT Circular dated 15th July 2022, and not under the mandatory provisions of section 148B of the Income-tax Act, 1961.

At the outset, it is important to note that the approval so obtained does not mention or consider any of the seized materials sourced from the third party. searches conducted on Sh. Ajay Kumar Prabhakar and Sh. Ravi Kapoor, despite the AO having heavily relied on those materials in framing the additions. The approval merely states that the appraisal report was considered, without any reference to the original documents seized or to the statutory procedure outlined under section 148B.

It is pertinent to refer to the Manual of Office Procedure in February 2003, which lays down a mandatory protocol: that in all search cases, especially where material pertains to persons other than the one searched, such material is to be forwarded in original to the approving authority, and a draft order is required to be submitted for approval at least 30 days in advance. In the present case, the approval letter was issued by the DCIT only on 22nd August 2023, which clearly contravenes this procedural requirement. **This procedural**

lapse is further compounded by the judgment of the Hon'ble Supreme Court in Serajuddin and Co. case, [2024] 163 taxmann.com 118 (SC) wherein it was held that in search cases, strict adherence to the approval protocol as laid down in the departmental Manual of Office Procedure in February 2003 and law is essential to uphold the validity of the assessment.

34. Thus, from the above, it is quite evident from the approval granted by the Addl. CIT(Central), there is no mention or consideration of the seized material sourced from the third party, namely Sh. Ajay Prabhakar and Sh. Ravi Kapoor, though, we find that in the assessment order and in the order of CIT(A), both the authorities have heavily relied upon on such seized material and it only states that the appraisal report have been considered without any reference to any original documents seized for statutory procedure outlined has 16 u/s 148. Thus, in view of above, the assessment as framed by Assessing Officer vide order dated 24.08.2023 is quashed.”

The coordinate bench, on identical facts, held that Ld. AO proceeded to frame the assessment u/s 143(3) despite relying heavily on material found during searches conducted on third-parties. The AO, instead of complying with the jurisdictional preconditions laid down under the reassessment provisions, proceeded without recording the mandatory satisfaction and without obtaining prior sanction from the competent authority. The said conduct not only violates the express mandate of law but also renders the assessment jurisdictionally erroneous. A plain reading of the Finance Act, 2021 coupled with Explanatory Memorandum to the Finance Bill clearly indicate that the legislative intent was to bring all searches conducted on or after 01-04-2021 within the ambit of the new reassessment regime u/s 147 of the Income-tax Act, 1961. This new regime was introduced through significant amendments to Sec.147 and Sec.148, along with the insertion of Explanations-1 and 2 and the concept of "information suggesting escapement of income" was explicitly defined. From the reading of Explanation-2 to Section 147, it would be evident that in cases where a search is initiated on or after 01-04-2021, AO shall be deemed to have information, which suggests that income

chargeable to tax has escaped assessment for three assessment years immediately preceding the assessment year relevant to the previous year, in which, the search is initiated, provided that books of account, documents, assets, bullion, jewellery, or other valuable articles are seized or requisitioned in the course of the search. This deeming provision is not limited only to the person searched, but also extends to "other persons", provided that due procedure under the law specifically, the recording of satisfaction that such seized material belongs to the assessee and obtaining prior approval from the PCIT is followed otherwise the assessment would be bad-in-law. It was further observed by the bench that AO relied upon material seized during searches conducted on other persons and therefore, it was mandatory for Ld. AO to invoke the provisions of Sec.147 and not to bypass the statutory framework by proceeding u/s 143(3). Granting such unfettered powers to the AO to rely on third-party material without adhering to the safeguards u/s 147 would defeat the very purpose of the amendment and open the floodgates to arbitrary assessments. It was further observed by the bench that assessment u/s 143(3) was initiated solely for the purpose of verifying the return of income as filed by the assessee. In such circumstances, the importing and reliance upon material seized from third-party searches would go beyond the jurisdiction conferred u/s 143(3) particularly, where the applicable law i.e., Explanation-2 to section 148 (as amended by the Finance Act, 2021) mandates prior approval from the Principal Commissioner of Income Tax (PCIT) before initiating reassessment proceedings on the basis of such material. The failure to comply with such requirement would render the assessment legally

untenable. The Ld. AO did not issue a notice u/s 148 nor did he followed the due process of law under the new reassessment framework, including recording of satisfaction and obtaining prior sanction from the PCIT. Therefore, the assessment framed u/s 143(3), because of being based on third-party material without adhering to statutory safeguards, would be bad-in-law. The AO was only empowered to verify the return of income and restrict his scope of inquiry accordingly and he was not permitted to expand the assessment by importing and relying upon third-party seized material without following the mandatory procedure laid down under the law. It was mandatory statutory requirement that in all cases involving search-related assessments falling within three assessment year, immediately preceding the year of the search, the prior approval of the Joint Commissioner u/s 148B would be required. However, Ld. AO proceeded without obtaining such approval which is a clear violation of the procedural safeguards envisaged under the law which would vitiate entire assessment proceedings. In the present case, approval was taken to frame assessment u/s 143(3) only. As against this, the provisions of Sec.148B mandate prior approval of specified authority. These provisions provide that no order of assessment or reassessment or recomputation under this Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation-2 to Sec.148 apply except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director. The bench further observed that under the amended provisions, approval u/s 148B would be required in all cases where

proceedings were initiated pursuant to a search, requisition, or survey, or where asset / material / documents found during such search pertain to or relate to another person. In such cases, the Assessing Officer must take the approval u/s 148B from the specified higher authority. This requirement was explicitly discussed in the Explanatory Memorandum to the Finance Bill, 2022, which emphasizes the need to protect taxpayer rights by ensuring that no reassessment is carried out without proper sanction and due process. The Joint Commissioner was not even supplied with seized material as relied upon by Ld. AO. There exists a prescribed procedure under which such seized material (including material found from third-party premises) is to be forwarded to the approving authority at least 30 days in advance of granting approval. This procedural safeguard is crucial to prevent arbitrary and unregulated use of third-party material. There was no evidence to demonstrate that the prescribed procedure was followed, or that the Joint Commissioner was apprised of the seized material by forwarding copies of the documents found from the third party prior to framing the assessment. The complete failure to comply with the mandatory provisions of section 148B renders the reassessment not only procedurally defective but also without jurisdiction. The bench further observed that while framing the assessment u/s 143(3), the AO has, on the last page of the assessment order, referred to an approval obtained from the supervisory authority. However, this approval was obtained in reference to F.No.299/36/2020/1DAR/INV3(3)/577 dated 15-07-2022, i.e., in accordance with the CBDT Circular dated 15-07-2022 and not under the mandatory provisions of section 148B of the Income-tax Act, 1961. It was

to be noted that the said approval did not mention or consider any of the seized materials sourced from the third party despite the fact that AO heavily relied upon that material while making the additions. The approval merely states that the appraisal report was considered, without any reference to the original documents seized or to the statutory procedure outlined under section 148B. Pertinently, the manual of office procedure issued in February 2003 lays down a mandatory protocol that in all search cases especially where material pertains to persons other than the one searched, such material is to be forwarded in original to the approving authority and a draft order is required to be submitted for approval at least 30 days in advance. In the present case, the approval letter was issued by the DCIT only on 22-08-2023 which clearly contravenes this procedural requirement. This procedural lapse is further compounded by the judgment of the Hon'ble Supreme Court in **Serajuddin and Co. case (163 Taxmann.com 118)** wherein it was held that in search cases, strict adherence to the approval protocol as laid down in the departmental Manual of Office Procedure in February 2003 and law is essential to uphold the validity of the assessment. It was quite evident from the approval as granted by Ld. Addl. CIT that there was no mention or consideration of the seized material sourced from the third party though both the lower authorities heavily relied upon such seized material. The approval merely states that the appraisal report has been considered but without any reference to any documents seized from third parties. Finally, on the given facts, the bench quashed the assessment order. We find that similar facts exist in the present appeal before us. No change in facts could be demonstrated by revenue.

10. We further find that the above decision has subsequently been followed and a similar view has been taken by another co-ordinate bench in **Jamna Dass Nikkamal Jain Saraf Private Ltd. (ITA No.403/Chd/2025 & ors.)**. Faced with similar facts / situation, the bench observed that the impugned AY being one of the three preceding years would fall under Explanation 2(iv) to Sec.148. The Explanation provide that if a search is initiated then the AO shall be deemed to have information suggesting escapement of income for the three AYs immediately preceding the AY relevant to the previous year in which the search is initiated. Therefore, the only permissible statutory course was to issue notice u/s 148 and obtain prior approval u/s 148B before passing assessment order. Since the AO completed the assessment u/s 143(3) without issuing the notice u/s 148 the assessment proceedings so initiated could not be validly continued and completed after a search u/s 132 has been conducted in the case of an assessee without following the required procedure of Sec.148, Explanation-2. Though the provisions of Sec. 143 provide the general framework for regular assessment, the provisions of Sec. 147 & 148 (post-2021 regime) deal with reassessment based on information suggesting escapement of income including that unearthed during a search. A plain reading of Sec.143(2) would show that such a notice could be issued only when a return of income was furnished u/s 139 or in response to notice u/s 142(1). It empowers the AO to scrutinize that return if he considers that income has been understated or tax was underpaid. However, when a search u/s 132 takes place and materials are found indicating possible escapement of income, the statute envisages a different route for carrying out assessment or

reassessment u/s 147 r.w.s. 148 which is special mechanism for bringing to tax the income discovered in consequence of a search. Although Sec.148 (inserted w.e.f. 01.04.2021) does not begin with a non-obstante clause similar to the erstwhile section 153A, its context and Explanation-2 makes it clear that where a search is initiated, the jurisdiction thereafter must flow through this special channel, subject to prior satisfaction and approval of the Principal Commissioner or Commissioner. The legislative intent is to ensure that when a search is carried out, the assessment is framed under the specific provisions meant for such cases and not under the general provision of Sec.143(3). This position finds substantial support from the ratio of various decisions of Hon'ble High Court and Hon'ble Supreme Court unanimously holding that once a search was conducted and proceedings were triggered u/s 153A, the AO could not continue parallel proceedings u/s 143(3) or u/s 147 for the same AY since the entire assessment for that year stands merged in the search assessment. The Courts emphasized that the existence of a special procedure for assessment consequent to a search is a complete code in itself and therefore, ordinary assessments abate and could not co-exist with the search-based assessment. Therefore, AO must act u/s 148 (which now performs the role formerly assigned to Sec. 153A) rather than continuing with a pending Sec.143(3) proceeding. The legislative intent was to prevent multiplicity of proceedings and ensure that only one comprehensive order is passed, factoring in both the pre-search and post search materials. This rationale is further reinforced by the well-settled principle of *generalia specialibus non derogant* i.e., the special provision overrides the general provisions of the Act. Therefore, the special

provisions of Sec.148 must prevail over general provisions of Sec.143. Allowing the AO to continue and conclude proceedings u/s 143(3) after a search would defeat this legislative scheme and render the safeguards, such as prior approval of the specified authority, redundant. The bench also observed that the statutory approval was sought by Ld. AO on 31-03-2024 and the same was granted by Addl. CIT on the same date on which the draft assessment order was forwarded by AO. The revenue could not demonstrate that the voluminous seized material was actually forwarded to the approving authority, nor was it shown that the Ld. Addl. CIT made any independent examination thereof. It was difficult to comprehend that a meaningful consideration of such voluminous material in a single day had taken place. The grant of approval was not an empty formality as it would have the trapping of a quasi-judicial function by the competent authority. The approval authority is bound to apply its mind, which reflects the application of its mind and the documents submitted to it. The record shows that there was a tiring hurry for granting the approval without looking into the contents of the underlying documents and placing on record the replies, if any, received in the office and the queries raised by the Addl. CIT. The bench then referred to the decision of Tribunal in the case of **AB Alcobev Pvt. Ltd. (ITA Nos. 356/Chd/2024 & ors.)** and the decision in **Pushpanjali Construction Pvt. Ltd. (ITA No.1001/Del/2025)** wherein it was held that approval granted in a mechanical manner without application of mind renders the assessment order invalid. Once the statutory approval suffers from non-application of mind, the consequential assessment cannot survive in the eyes of law. On these facts, the assessment order was held to be without jurisdiction

and the assessment order was held to be passed without taking the approval from the competent authority as envisaged under the Act. The approval was mechanical one and was not in accordance with law. Finally, the assessment order was quashed on legal grounds. We find that the above said legal propositions squarely apply to the facts of the present case before us.

11. The Ld. CIT-DR has referred to CBDT Circular F.No.225/66/2023/ITA-II dated 24-05-2023 to state that the jurisdiction was validly acquired by Ld. AO. However, the said circular merely in the nature of guidelines for compulsory selection of returns for complete scrutiny during the financial year 2023-24. After going through the Circular, we find that this circular merely contains parameters for compulsory selection of returns for complete scrutiny. The relevant clause 2(ii) which apply to the facts of present case, provide that assessment in search & seizure cases / requisition cases u/s 132 / 132A conducted on or after 01-04-2021 shall be selected with prior administrative approval of Pr. CIT / Pr. DIT / CIT / DIT concerned who shall ensure that such cases are transferred to central charges u/s 127 of the Act within 15 days of service of notice u/s 143(2) / 142(1) of the act by the jurisdictional AO. The same is thus merely administrative in nature and prescribe a procedure to be followed in search cases which have been conducted after 01-04-2021. The same do not address the various legal issues as raised by Ld. AR before us and which have been enumerated in preceding paragraphs. Therefore, this circular does not render any assistance to the case of the revenue.

12. Finally, considering the entirety of facts and circumstances of the case, we would hold that the assessment ought to have been framed under special provisions of Sec.148. To undertake the same, approval of specified authority as envisaged u/s 148B was required to be taken which is not shown to have been taken. Further, the approval of appropriate authority stood vitiated for application of mind. The procedure as required under the provisions of Sec.148 is not shown to have been fulfilled in the present case. The approval as sought by Ld. AO of the order u/s 143(3) is non-est / bad in law and the granting of the approval of the order u/s 143(3) by the Addl. CIT is null and void and thus, assessment as framed u/s 143(3) vide order dated 26-03-2024 deserves to be quashed on various legal grounds. We order so. Since the assessment order has been quashed on legal grounds, delving into the merits of the case has been rendered mere academic in nature. However, for the sake of completeness we deal with the merits of the additions also which has been raised in these cross-appeals.

13. We find that the whole of the assessment is based in Hard Disk, Tally data and loose papers as found during search on assessee's ex-employee and his statement as recorded u/s 132(4). However, it is a fact that no business was being carried out by assessee at its factory premises after July, 2022 due to agitation by the farmers raising environmental concerns. The staff of the assessee is stated to have taken various items / papers / data from assessee's premises without the knowledge of the assessee after the closure of factory premises. The said digital data as well as loose papers coupled with the recorded statements form the very basis of impugned assessment in the hands of

the assessee. Post-search investigation, statement of another employee Shri Rajinder Singh was recorded which has been used to corroborate the findings in the assessment order. The data from his mobile phone was extracted. His statement and data so extracted has been used by Ld. AO to support the impugned additions. On the basis of the same, Ld. AO made allegation of bogus purchases of *Rice Husk* and *Rice Nakku* from M/s Krishna Agro, M/s Shri Sai Baba Foods and M/s Bharat Trading Co. It has been alleged that the payment made to these suppliers have been routed back to the assessee against commission. However, no independent enquiries have been conducted by Ld. AO from any of the suppliers to bring on record corroborative evidences to support the allegations. The assessee amply demonstrated that the seized Tally data was incomplete, unauthentic and no reliance could be placed on the same. The assessee also explained that two types of vouchers were being maintained. The person making the vouchers entered the bank payments on both sides of cash books i.e., the payments made through cheques / RTGS / NEFT were entered on credit side of the cashbook and to ensure double entry, a similar contra / receipt entry was posted on debit side through pink voucher. The same was in line with the old system of preparing a 'combined cashbook'. The bank transactions would be recorded on both sides of the cashbook, although, it would not affect the cash balance. Thus, a valid explanation was furnished by the assessee with respect to different vouchers as referred to by Ld. AO. Further, in support of its purchases, the assessee furnished plethora of documents viz. ledgers of the suppliers, purchase invoices, e-way bills, weightment slips, transportation receipts and bank statement evidencing

payments through banking channels. The assessee purchases 'Rice Nakku' and 'Rice Husk' for Rs.181.38 Crores out of which substantial purchases to the extent of Rs.103.79 Crores has been held to be alleged bogus purchases. On consumption of raw material, the assessee has produced ENA / Ethanol which has been sold to oil marketing companies for Rs.171.10 Crores. The sales of liquor have been shown to be Rs.70.09 Crores. The sales turnover has been accepted by Ld. AO. It is quite logical that without purchases there could not be any sales. The purchase includes purchases of Rice Nakku for Rs.42.86 Crores from government undertaking FCI which could not be held to be bogus. The assessee also furnished Godown inward register containing complete details of supplies as received by the assessee. The purchases as well as sales transactions have been carried out under strict supervision of Excise officials stationed at the manufacturing unit of the assessee. The sales were carried out only on the basis of permit issued by State Excise Department. The assessee has maintained all purchase records and nothing deficient has been pointed out by Ld. AO in the same. The grain procurement register contained complete details of delivery vehicles, quantity, weighment of grain, vehicle number etc. The assessee has maintained quantitative details and the books have duly been audited as required under law. The assessee also furnished day-to-day production record. If the loose papers and incomplete data as relied upon by Ld. AO is ignored, nothing would be left with Ld. AO to support the impugned addition of alleged bogus purchases. Pertinently, none of the supplier has been confronted by Ld. AO and no independent enquiry is shown to have been done from any of the suppliers. It is trite law that no addition could

be made on mere presumption, conjectures and surmises. By furnishing plethora of documents, the assessee, in our considered opinion, had duly discharged the onus of substantiating its purchase. The onus was on Ld. AO to corroborate the findings of alleged bogus purchases. However, nothing of that sort emanates from assessment records. This being so, the estimated addition so made by Ld. AO by applying profit rate of 12% could not be sustained in law *in toto*. For the same very reasons, the additions as sustained by Ld. CIT(A) could also not be upheld. Pertinently, similar addition made by Ld. AO for AYs 2016-17 & 2017-18 stood deleted by first appellate authority itself. Considering all these facts, the impugned addition stand deleted in *toto*. We order so. The assessee succeeds in its corresponding grounds. The grounds raised by the revenue stand dismissed.

14. The addition of unexplained expenditure u/s 69C for Rs.940.75 Lacs has similarly based on incomplete and unreliable Tally data and the statement of Shri Prem Singh only. All these evidences are merely third-party evidences which could not be relied upon to make the impugned addition in the hands of the assessee. The assessee's unit was closed since July, 2022 and the possibility of data being tampered with could not be ruled out. In the absence of any independent corroboration of the data as relied upon by Ld. AO, no such addition could be made in the hands of the assessee. The assessee has not been afforded any opportunity of cross-examination of Shri Prem Singh which violates guiding principles as laid down by Hon'ble Apex Court in the case of **Andaman Timber Industries vs. CCE (281 CTR 0241)** holding that not allowing assessee to cross-examine witnesses by adjudicating authority though statements

of those witnesses were made as basis of impugned order, amount to serious flaw which make impugned order nullity as it amounts to violation of principles of natural justice. In the present case, we find that such an opportunity of cross-examination has never been provided by Ld. AO to the assessee which would make the impugned addition nullity. Hence, on the given facts, this addition could not be sustained in law. We order so. The corresponding grounds of appeal stand allowed.

15. The addition of Rs.10.84 Crores, being gross-profit on alleged out-of-books sales has been deleted by Ld. CIT(A) on the observation that the same was based on rough Trial Balance, the authenticity of which could not be established. The assessee reflected much higher sales than reflected in this Trial Balance. This Trial Balance could not be relied upon since the sales figures were reflected in debit column which is never the case. The reflected sales of Rs.290 Crores were much more than sales figures of Rs.38.32 Crores as mentioned on the debit side. No other figures of Trial Balance matched with the regular books of the assessee. There was no figure of sale of any of the party as mentioned in Tally data. In our considered opinion, the document has rightly been held to be dumb document only which could not be relied upon to make the impugned addition in the hands of the assessee. The adjudication of Ld. CIT(A) thus finds our concurrence. The corresponding grounds as raised by the revenue stand dismissed. The assessee succeeds on merits. The revenue's appeal, stand dismissed accordingly.

16. The assessee's appeal stand allowed whereas the revenue's appeal stand dismissed.

Cross Appeals of M/s Om Sons Marketing Pvt. Ltd.

17. Facts as well as issues, in these appeals, are admittedly, substantially the same. It was an admitted position that the adjudication of cross-appeals in the case of M/s Malbros International Pvt. Ltd. would have an equal application to these cross-appeals also. The assessee has raised similar grounds as well as additional grounds of appeals. The revenue has also filed similar grounds. In this background, the appeals are disposed-off as under.

18. In the assessment order, going by mobile extracts of Shri Rajinder Singh, Ld. AO made disallowance u/s 37 for Rs.730 Lacs and also made another addition u/s 69C for Rs.125.48 Lacs. The assessee had filed regular return of income u/s 139(1) on 31-10-2022 at Rs.28.35 Crores. In the case of this assessee, Ld. AO made full disallowance of alleged bogus purchases u/s 37(1) for Rs.730 Lacs on the ground that these purchases constitute only 2.8% of total purchases. The Ld. AO also made addition of alleged unaccounted cash payments for Rs.125.48 Lacs on similar facts. The same was based on mobile data of Shri Ravinder Nath who happen to be an employee of M/s Vijeta Beverages Ltd. and M/s Calex Papers Pvt Ltd. The Ld. CIT(A) estimated addition of 30.28% on alleged bogus purchases for Rs.730 Lacs and also confirmed addition of Rs.125.48 Lacs. The same has led to cross-appeals before us.

19. The assessee has raised similar legal grounds in its appeals. It was an admitted fact that the facts of these legal grounds were pari-materia the same. This being so, we would hold that the assessment ought to have been framed under special provisions of Sec.148. To undertake the

same, approval of specified authority as envisaged u/s 148B was required to be taken which is not shown to have been taken. Further, the approval of appropriate authority stood vitiated for application of mind. The procedure as required under the provisions of Sec.148 is not shown to have been fulfilled in the present case. The approval as sought by Ld. AO of the order u/s 143(3) is non-est / bad in law and the granting of the approval of the order u/s 143(3) by the Addl. CIT is null and void and thus, impugned assessment as framed u/s 143(3) deserves to be quashed on various legal grounds. We order so. The assessee succeeds in its corresponding grounds of appeal.

20. On merits also, we find that the assessee has furnished plethora of documents in support of its purchase transactions. The Ld. AO has merely relied upon third-party evidences without making any independent enquiries on the same. The allegation of bogus purchases lack corroboration. Therefore, the addition of alleged bogus purchases stand deleted in *toto*. The addition of Rs.125.48 Lacs as sustained in the impugned order is merely on extract of mobile data of Shri Ravinder Nath who happens to be employee of other entities. While making this addition, Ld. AO has referred to the statement of ex-employee Shri Prem Singh. In earlier appeals, we have already held that such an addition which is merely based on third-party evidence could not be sustained. Similar analogy would apply here. This addition stands deleted. The assessee succeeds on merits. The appeal of the assessee stand allowed whereas the revenue's appeal stand dismissed accordingly.

Conclusion

21. ITA Nos.48 & 49/Chandi/2025 stand allowed whereas ITA Nos.463/Chandi/2025 & 193/Chandi/2025 stand dismissed.

Order pronounced on 13th January, 2026.

-Sd-
(RAJPAL YADAV)
VICE PRESIDENT

-Sd-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Dated:

आदेश की प्रतिलिपि अग्रेषित /Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT CHANDIGARH