

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'F', NEW DELHI

Before Sh. S. Rifaur Rahman, Accountant Member
&
Sh. Sudhir Kumar, Judicial Member

ITA Nos. 1882 & 1883/Del/2021 :Asstt. Years: 2011-12 & 2012-13

DCIT, CENTRAL CIRCLE-18, New Delhi	Vs	JAGAT AGRO COMMODITIES PVT. LTD., IPSO, LEGAL, H-35, FIRST FLOOR, JANGPURA EXTN., NEW DELHI – 110 019 (PAN: AAACJ1718M)
(APPELLANT)		(RESPONDENT)

Assessee by: **Sh. Salil Agarwal, Sr. Adv., Sh. Shailesh Gupta,
Adv. & Sh. Uma Shankar, Adv.**
Revenue by: **Ms. Monika Singh, CIT(DR)**

Date of Hearing: 15.01.2026	Date of Pronouncement: 29.01.2026
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ORDER

Per Sudhir Kumar, Judicial Member:

These appeals filed by the Revenue are directed against the separate orders of the Ld. CIT(A)-27, New Delhi both dated 09.08.2021 relating to assessment years 2011-12 & 2012-13. Since common issues have been raised in both the appeals, except the difference in figures, therefore, we are dealing with the facts of assessment year 2011-12 as a lead case by reproducing only its grounds as under:-

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in restricting the addition of Rs. 34,03,20,389/- made by the AO to Rs. 2,38,22,427/- by estimating GP @7% as done by AO, without appreciating

the fact that investigation wing has found that during search and survey in the case of the entry operators who have given entries to the assessee were engaged in providing accommodation entries through non-genuine purchase and non-genuine sales to the assessee.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in restricting the additions made by the AO without appreciating the fact that the assessee must be raising non-genuine purchase and non-genuine sale bills to evade its true income and earning income at higher rate.
3. The appellant craves leave to add, alter or amend any / al the grounds of appeal before or during the course of hearing of the appeal.

2. Brief facts of the case are that the assessee is a partnership firm and is engaged mainly in the business of trading of rice and a small percentage of trading of paddy. It has filed its return of income on 27.9.2011 declaring total income of Rs. 6,75,76,760/-. A search and seizure operation u/s. 132 of the Act was conducted by the Investigation Wing in Jagat Group of Cases on 14.09.2010. The scrutiny assessment was completed u/s. 143(3) of the Act vide order dated 28.3.2013 at total income of Rs. 9,22,81,070/- after making various additions. A survey operation u/s 133A of the I.T. Act, 1961 was conducted by the Investigation Wing on 09.03.2016 in the case of Sh. Sant Lal Aggarwal, Director of the assessee company and certain incriminating documents in the form of loose papers and digital data were impounded. Further, information was also received from DDIT (Inv.), Karnal that a search action u/s. 132 of the I.T. Act was conducted at the premises of Sh Hitesh Jain, Prop. Of M/s Mittersain Rajesh Kumar, Karnal and during the

course of search incriminating documents seized which shows that Shri Hitesh Jain has been involved in providing accommodation entries in the form of purchases with the help of its various bogus / paper concerns. The assessee had made certain purchases of form entities controlled by Shri Hitesh Jain. Based on this information, the AO reopened the assessment proceedings u/s. 147 of the Act and notice u/s. 148 of the Act was issued on 30.3.2018. AO had made certain observations, made enquiries, issued SCN and concluded on the issue of bogus purchases in the assessment order and finalized on 27.12.2018. AO had referred to certain incriminating documents found from the servers impounded during the survey, which reflect the unaccounted payment of rent partly by cash and cheque. The AO had concluded in the assessment that the purchases of Rs. 34,03,30,389/- made by the assessee and debited in the P&L account were held to be from non-existent / entry operator entities and accordingly added 100% of this amount to the total income of the assessee. There were unaccounted estimated cash payment of Rs. 89,34,250/- (@50% of rent) on account of rent and it was added u/s. 69C of the Act. Against the above action of the Assessing Officer, assessee preferred appeal before the Ld. CIT(A), who vide order dated 9.8.2021 partly allowed the appeal of the assessee. Aggrieved, the Revenue is in appeal before us. However, at the time of hearing, the Assessee has filed an application under Rule 27 of the ITAT Rules, 1963 in both the appeals by stating the following common contentions:-

“1. The captioned appeal filed by the revenue is fixed for hearing on 20.8.2025. In this regard, it is most humbly submitted that the assessee seeks to file the grounds of cross objections (down below), even otherwise, the same

may be taken as legal ground being raised under Rule 27 of I.T. Rules as the same was also taken up before Ld. CIT(A) and decided against the assessee. It is further, submitted that the said additional ground can be taken at any stage of the proceedings even de horse Rule 27 of I.T. Rules. Reliance is placed on the judgement of Hon'ble High Court of Bombay in the case of Peter Vaz and others vs. CIT reported in 326 ITR 616.

2. *It is thus, prayed that the respondent be permitted to make its submission in respect of the contention as we being specifically raised before the Ld. CIT(A) and was also decided by him in his impugned order. It is thus prayed, this application be taken as a notice of motion to raise the following legal ground, in support of the order of the Ld. CIT(A):*

Additional Ground No. 1 *That the Ld. CIT(A) has grossly erred in law and on facts in sustaining the initiation of proceedings under section 147/148 of the Act and, further completion of assessment under section 147 r.w.s. 143(3) of the Act without satisfying the statutory pre conditions for initiation of the proceedings (mechanical and wrong approval u/s. 151 of the Act) and, completion of assessment under the Act.*

Additional Ground No. 2 That further, ld. CIT(A) has failed to appreciate the fact that no material / statement / investigation report was ever confronted neither any cross examination was provided with regards to the alleged accommodation entry provider on the basis of which reasons were recorded, as such the instant

proceedings, so initiated being with non application of mind and without any tangible material, are bad in law and without jurisdiction.

Additional Ground No. 3 That even otherwise, rejection of books of accounts u/s. 145 of the Act and application of GP rate is unjust and arbitrary, as all the documentary evidences with regards to sales and purchase were produced before lower authorities and identical nature of business has also been accepted in past assessment years, as such, the addition so made and sustained is misconceived in law and contrary to material available on record.”

4. *It is submitted that this submission is being made in view of Rule 27 of the Income Tax Appellate Tribunal Rules and is otherwise well settled proposition of law that the respondent is entitled to raise a legal ground at any stage of the proceedings even though he may not have filed an appeal against such order. The judicial pronouncement are as under:-*

1. *83 ITR 223 (Bom) (B.R. Bamsi vs. CIT)*
2. *129 ITR 475 (All) (Moralia & Sons vs. CIT)*
3. *220 ITR 398 (Ker) 9CIT vs. Cochin Refineries Ltd.)*
4. *176 CTR 406 (Gau) (Assam Company (I) Ltd. vs. CIT)*
5. *102 ITD 189 (Del) (ITO vs. Gurvinder Kaur)*
6. *284 ITR 80 (SC) CIT vs. Varas International P. ltd.*

7. *149 Taxmann 456 (Guj) KharidVechanSangh Ltd. vs. CIT.*

8. *397 ITR 282 (All) CIT vs. Jindal Polyester Ltd. The respondent thus prays that it be permitted to urge the aforesaid grounds as raised and mentioned in para 2 above.*

3. We have carefully considered the prayer for admission of additional grounds and heard both the sides on these issues. In our considered opinion in the light of the Hon'ble Apex Court decision in the case of NTPC Ltd. vs. CIT (1998) 229 ITR 0383 (SC), we admit the aforesaid additional grounds raised by the assessee as the same are purely legal grounds and go to the root of the matter.

4. At the outset, Ld. Sr. Counsel for the assessee in support of the aforesaid Additional Ground No. 1 so raised in Rule 27 application by the assessee-respondent, stated that on this issue there is clear non-application of mind by AO in the reasons recorded as the same have been recorded on the basis of information received from the ADIT (Inv.), without there being any tangible material whatsoever and fishing and roving enquiries not permissible and also approval granted by the PCIT is a mechanical approval and hence, initiation of proceedings under section 147 of the Act on this ground is invalid.

5. Per contra, the Ld. Departmental Representative relied upon the order of the AO and submitted that AO has applied his mind properly while finalizing the assessment, after obtaining necessary approval from the competent authority, hence, the order of the Ld. CIT(A) may be set aside and appeal of the Revenue may be allowed.

6. We have carefully considered the submissions of the parties and also verified, material available on record and the case laws cited.

7. For the purpose of deciding the Additional Ground relating to non application of mind by the AO in the reasons recorded, as the same recorded on the basis of information received from the ADIT (Inv.), without there being any tangible material whatsoever and fishing and roving enquiries as well as approval granted by the PCIT is without application of mind are concerned, we find that on perusing the reasons recorded that no specific / tangible material with regard to assessee company for the assessment year, which can prove that there is escapement of income in the hands of the assessee. It is noted that out of the three reasons recorded by AO, addition was made on only one ground viz. alleged rent expense paid in cash, however, no addition was made on other two reasons, hence, the addition made account of alleged bogus purchases by the AO of a sum of Rs. 34.03 crores is not sustainable. It is further noted that there is no specific material with regard to assessment year 2011-12 neither any addition was made of the said sum in the reassessment order dated 27.12.2018. It is further noted that on the basis of which reopening was initiated was a document namely, page no. 57 found during the survey of Jagat Group on 9.3.2016, wherein, it was alleged that assessee has paid part payments of rent expense in cash. Again no specific material for AY 2011-12 is there and no expense with regard to rent and godown expense was paid in cash by assessee company, rather all the expenses were paid either through bank account or through journal entry. It is noted that approval accorded u/s. 151 of the Act by the PCIT is also without application of mind as no rent expense has been paid in cash, no escapement of income alleged with regard to transactions with Sh. Hitesh Jain in reasons recorded, no statement of Sh. Hitesh Jain on record of the AO and no material with regard to AY 2011-12 found as a result of survey on Jagat group, thus estimate of 2% of total sales made in reasons recorded is completely unjustified and without any basis. It is settled law that mere receipt

of letter/ information from another officer/ investigation wing does not constitute to be a tangible material and reopening on the basis of the same is not justified. Hence, the reassessment order is hereby quashed in view of the aforesaid discussions.

10. Since we have quashed the impugned reassessment order, as aforesaid, by allowing the additional ground, the Appeal filed by the Revenue has become in-fructuous. Resultantly, the Revenue's Appeal for assessment year 2011-12 is dismissed as such.

11. As far as appeal relating to assessment year 2012-13 is concerned, our aforesaid decision relevant to assessment year 2011-12 will apply *mutatis mutandis* to this appeal as well. Accordingly, the appeal related to assessment year 2012-13 is also dismissed.

12. In the result, both the appeals of the Revenue are dismissed in the aforesaid manner.

Order Pronounced in the Open Court on 29/01/2026.

Sd/-

Sd/-

(S. Rifaur Rahman)
Accountant Member

(Sudhir Kumar)
Judicial Member

Dated: 29/01/2026

SR BHATNAGGAR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR