

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR
BEFORE DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER
AND SHRI SUDHIR PAREEK, HON'BLE JUDICIAL MEMBER**

**ITA No. 840/Jodh/2025
(Assessment Year – 2017-18)**

Lal Chand Choudhary S-8, Transport Nagar, Jaisalmer - 345001 PAN No. AAOPC 6671 K		ACIT/ DCIT, Circle, Barmer
Assessee by	Shri Rajendra Jain, Advocate and Smt. Raksha Birla, CA (Physical)	
Revenue by	Shri Lalit Kumar Bishnoi, Addl. CIT-DR (Virtual)	
Date of Hearing	29.01.2026.	
Date of Pronouncement	09.04.2026.	

ORDER

DR. MITHA LAL MEENA, A.M.:

This appeal is filed by assessee against the order of Commissioner of Income Tax, Appeal Jaipur-5 [hereinafter referred to as CIT(A)] dated 10.09.2025 with respect to Assessment Year 2017-18.

2. At the outset, the Ld. Counsel for the assessee has submitted that the notice issued u/s 143(2) by the AO was not issued in one of the three formats which were specifically prescribed, in spite of the fact that the CBDT had issued specific instructions vide instruction no. F. No. 225/157/2017/ITA-II dated 23.06.2017 in this regard. The Ld. Counsel argued that in this case notice issued u/s 143(2) was not in the specifically prescribed format and so it was

not in accordance with the aforesaid instructions of the CBDT. Accordingly, he pleaded that assessment framed consequently is invalid and void ab initio. In support, he placed reliance on the judgments delivered by Hon'ble ITAT Kolkata Bench in the case of Tera Unemployed Engineers Co-Operative Society Ltd. ITA No. 674/KOL/2024, A.Y. 2014-15 dated 06.05.2025 and Hon'ble ITAT Delhi bench in the case of Anita Garg ITA No. 4053/Del/2024, dated 30.07.2025.

3. Accordingly, the Ld. Counsel for the assessee pleaded that the assessment order passed by the AO may be quashed.

4. The Ld. DR on the other hand relied on the impugned order but he failed to rebut the contentions of the Ld. AR and furnish a contrary judgment on legal issue as regards to the defective notice u/s 143(2) of the Act.

5. We have heard the rival submissions and perused the material placed on record and case law cited before us. The Ld. Counsel for the assessee contended that the notice issued u/s 143(2) dated 12.09.2018, issued by the AO was in violation of CBDT instructions dated 23.06.2017 (APV Pg. No. 46 & 47), as it was not in specific format prescribed. This fact was not controverted by the Revenue before us.

6. The instruction issued by the CBDT, regarding a use of specific format for issue of notice u/s 143(2), is not binding on ITAT. It may be binding on the income tax authorities. Therefore, we are not inclined to agree with the contention of the Ld. AR that a technical error on the part of AO that a notice u/s 143(2) not issued in specific format prescribed by CBDT, rendered the assessment order bad in law or void-ab-initio. We consider it appropriate to decide the appeal on merits.

7. After giving thoughtful consideration on the merits of the case, perusal on record and written submissions filed before us, it is noted that the assessee has raised two issues in the present appeal as regards to the addition of Rs. 70,42,500/- u/s 69A of the Act and Rs. 43,34,000/- with respect to cash realization out of sales and debtors treated as un-explained cash credits u/s 68 of the Act.

8. Assessee is engaged in the business of proprietorship concern namely M/s Mohangarh Construction Company and a petrol pump named M/s L.R. Filling Station. In the construction company, the appellant assessee execute contract work awarded by the Government, Semi Government and Private parties where part of the contract work has been sublet to petty contractors. In the business of petrol pump, the income is earned from the sale of petrol product of IOC where purchases are made through banking channels and also

subject to verification of the official of IOC as well as DSO. The assessee has also been authorized dealer of Mahindra Tractors with the head office in Jaisalmer and branch office at Barmer having further various sale counters at Shiv, Ramsar, Sherava, Chohtan, Dhorimanna, Gudamalani, etc.

9. The Ld. AR submitted that the assessee had maintained day to day books of account where the transactions are duly recorded and supported with the bills and vouchers duly verifiable from the bank statements. The AR contended that assessee has maintained day to day stock register in respect of petroleum product and stock of tractors, business of tractors and books of accounts so maintained in respect of both the business activities are subject to audit u/s 44AB of the Act. The appellant assessee has furnished the requisite information, explanation in documentary evidences as required by the AO during the assessment proceedings that adverse observations have been made by either of the lower authorities, the AO/the CIT(A).

10. The AR further submitted that the assessee has also produced the bills and vouchers, books of accounts and other documentary evidences before the AO for verification of the transactions carried out by the assessee. However, the AO without giving any reasons, made an addition of Rs. 70,42,500/- u/s 69A and 43,34,000/- u/s 68 of the Act. The Ld. CIT(A) has summarily rejected

the submissions of the assessee by observing that the sales registers and debtors realization submitted lack corroborative evidence providing cash receipt from customers and that the VAT records are however while acknowledging the VAT receipts but these do not conclusively proved that the amount deposited are free from suspicion, especially considering anomalous cash deposits during demonetization period. Likewise, he observes that VAT acceptance of derive over does not preclude scrutiny or addition under the Income Tax Act while sustaining the addition u/s 68 and 69 of the Act.

11. The Id. Counsel for the assessee had explained with evidence the cash received on sale of tractors and debtors etc. with the supporting documentary evidences before the AO. The AO had made general observation without pointing out any specific discrepancy either with respect to the sale invoices/transactions expect date, month and year of manufacturing of tractor and accordingly, he had presumed that certain bills issued by the appellant are not genuine to reject the books of accounts for invoking provisions of Section 145(3) of the Act.

12. The Ld. AR had further explained with evidence that the assessee had received the delivery of tractors from the company and thereafter it had sold the same as evident from the purchase bills. The description of Engine No. And

Chasis No., as recorded in the sale invoices are duly verified from the purchase bills and RTO registration certificate. It is worthwhile to mention here that while registration of tractors before the RTO and the sale invoices of the tractors as given by the appellant to customer were duly attached with the same. The AO had also verified these vital facts and accordingly he had not made any adverse comment in this regard. The AR for the appellant has also explained that such tractors were available on stock and on the basis of same the Chasis No. and the Engine No. of such tractors were mentioned in the sale bills. The AO had not made any adverse observation with respect to the stocks available of such tractors before issuing the sale invoices.

13. The Ld. AR argued that the assessee's books of accounts are duly audited and the complete purchases made during the year under consideration were duly recorded in the books of account and duly supported by the bills issued by the company. The AR argued that the AO without recording any satisfaction rejected the books of accounts in contravention to provisions of Section 145(3) of the Act, is not justified. In support, he placed reliance on the judgments of Hon'ble Jurisdictional High Court of Rajasthan in the case of Malani Ramjivan Jagannath Vs. Assistant Commissioner of Income Tax 207 CTR 19 (Raj).

14. He further placed reliance on the judgments of CIT Vs. Gotan Lime Khanij Udyog reported in 256 ITR 243 where it was held that even if technically it is held that provisions of Section 145(3) are applicable still the arbitrary addition cannot be made. The AR had requested that assessee's sales may be accepted genuine and addition may be deleted.

15. The Ld. DR on the other hand relying on the order of the lower authorities.

16. From the records, it is seen that the AO had made general observations without proper verification of the submissions filed by the appellant assessee during the course of assessment proceedings where some of the observations are contrary to the factual evidence available on record some contradictory observation made by the AO are briefly discussed here under:

i. The Id AO had pointed out that the applicant had sold the tractor bearing Chassis & Engine No RKXB000039 on 22.10.2016. However, in registration certificate the Chassis & Engine No are same as recorded in sale bill but the date/year of model was reported 12/2016. It was explained that the appellant had obtained the delivery of such tractors from the company M/s Mahendra & Mahendra on 28.06.2016 and same was available in stock as evident from the bill of such company. Therefore, the allegation made by Id AO was contrary to evidences on record. Further also the bill

issued by appellant is part of document while obtaining registration certificate by such party.

ii. It is relevant to mention here that during the assessment proceeding the Id AO had directed the appellant to provide complete details and addresses of RTO Office where such tractor was registered, the appellant had provided the same and the Id AO had verified the facts and had not found any adverse information or material in contrary to claim of appellant. The date & year of model was due to mistaken or any other reasons. Further also the registration had been done by customer and no involvement of appellant. The appellant had purchased such tractor from the company in the month of June, 2016 as evident from bill issued by company and as such the observation made by Id AO in the order is not justifiable and also against the principle of natural justice.

iii. That in respect of party No 4,7,10,11,13 and 14, as reported in Page 12 & 13 of the order, the appellant having stock of tractors and out of same had sold the tractors to various parties. The copies of bills issued by company are enclosed herewith which proves beyond doubts that the observation made by Id AO is not only contrary to claim of appellant but also unsustainable in eye of law. Therefore, I humbly request kindly consider the same in right perspective and judicious manner and oblige.

17. It is seen that copy of the sale bills with respect to the purchase of tractors from Mahindra & Mahindra were made available on record during the course of assessment proceedings and some of them were produced for the perusal of the bench (Paper Book Pg. No. 69 to 96) which conclusively proves

that the alleged sales made by the appellant were genuine as per record being duly supported with the documentary evidences. This shows that AO had not made little efforts to verify the true and correct facts either from the office of the RTO or the M/s Mahindra & Mahindra while making un-lawful and unjustified allegations against the appellant assessee which is in contravention to the principles of natural justice.

18. It is seen that from the copy of the bills furnished by the assessee in respect of the sale of tractors to the customers that the complete discription of the amount of sales were recorded by the assessee and these sales were duly verifiable from the books of account. It is also seen that appellant assessee had furnished complete details of the cash received out of the sales and debtors realization before the AO which has not been appreciated in right perspective and in judicious manner by the AO for the year under consideration.

19. It is also noted that the payment which were received through banking channel from the same customers during the period from 25.10.2016 to 08.11.2016 were treated as genuine but the cash received from them were questioned as bogus and un-explained money by AO without giving logical or rational reason for such observation. In our view, when the AO had accepted the sales and purchases declared by the appellant in its books of account as

genuine then the payment received through cash on sale of tractors etc. are to be accepted as genuine. In the cases of the cash deposited during demonetization period, we are of the considered opinion that the addition made merely based on deviation in the ratio of cash sales and cash deposit to that of earlier period is not justified.

20. Hon'ble Delhi High Court in the case of Agson Global Pvt. Ltd. Vs. ACIT (2022) 325 CTR 001 held that addition made on sole ground of deviation in the ratio of cash sales and cash deposits during demonetization period as improper and unlawful.

21. In the present case, the VAT authorities had also accepted the declared purchases and sales of the applicants and that the sums so realised by the applicant has duly been credited in the cash book. The ledger extract of these entities as placed on record duly substantiate the same. In our view, in the present case, the provision of Section 69A could not be applicable because the provisions of Section 69A could be invoked only where the assessee's found to be the owner of any money or bullion etc. which is not recorded in the books of accounts but the same is not the case of the present assessee as in the present case, the assessee has realised debtors during the year which have duly been credited in the books of accounts. Thus, there is no un-explained

money found within the meaning of Section 69A as the cash receipt were shown out of debtor realization which were duly accounted debtors and accordingly the provisions of Section 69A could not be invoked. Thus, the addition of Rs. 70,42,500/- made u/s 69A is deleted. This ground of appeal is allowed.

22. Without prejudice to non-applicability of Section 69A of the Act to the present case, it is pertinent to mention that by making such alleged addition by the lower authorities, the Department has been taxing the income of the assessee twice, firstly as the sales/business of tractors, debtors etc. as duly recorded in the books of accounts where the assessee had declared the profit of such transaction in the return of income and secondly, the AO has made further addition by treating the same as bogus transactions which certainly amount to double taxation of same income which is not permissible under law. In the present case, the assessee has already offered the income derived out of the sales of tractors and debtors realization hence, the onus has been discharged by it and same income cannot be taxed again.

23. The next issue pertains to addition of Rs. 43,34,000/- as un-explained cash creditors u/s 68 of the Act.

24. It is seen that during the assessment proceedings, the appellant had produced the records and relevant documentary evidence which established beyond doubts that the appellant had received the cash from debtors as it is normal practice in such line of business where the truck or bus drivers had purchased the petroleum products on credit basis and after certain period they have paid the same as evident from sale bills itself which are on record. The sales declared by appellant was accepted and profit earned on such sales was treated as genuine by Id AO but in consequence to such sales the cash received was not accepted is not justifiable.

25. From the record, it is clear that in the business of IOCL authorized dealership (petrol pump), the sales percentage, cash balance cannot remain uniform from year to year or month to month, as comparison made by the Id AO for making addition on assumption and presumption basis. It is also noted that the allegation made by the AO is also in contravention to the instruction issued by the Board of Direct Taxes bearing No. 286/2/2003 IT(Inv) dated 10/03/2003 and disregarded the decision of Hon'ble Madras High Court in the case of CIT v/s S. Kader Khan Son reported in 300 ITR 157 (Mad) which was approved by the Hon'ble Supreme Court in the case of CIT v/s S. Kader Khan Son reported in 352 ITR 480 and CIT and V/s Vijay Nagindas Mehta Hon'ble

Supreme Court Reported on 335 ITR (ST) 1, that the appellant firm is also assessed to tax with VAT authority.

26. We find that the sales and purchase made by appellant firm are duly disclosed before VAT authority and genuineness of such business activities had not been doubted by VAT authority, where the VAT authorities had accepted the purchase and sale as genuine.

27. In our view, considering the peculiar set of the fact of present case, no adverse view can be drawn by the department as held by Hon'ble Madras High Court in the case of CIT V/s Smt. Sakuntala Devi Khetan (2013 (352) ITR 484 (Mad)), wherein it has been clearly held that the Assessing Officer has to adopt the figures and turnover finally assessed by the sales tax authorities.

28. Similar issue was also considered in the case of CIT - Vs - Anandha Metal Corporation (2005 273 ITR 262 (Mad)), and judgment delivered in favour of the assessee. Again, the Hon'ble Madras High Court in the case of CIT V/s Shri Shaik Usman Ali on 14 February, 2022, T.C.A. Nos 103 & 104 of 2014 held as under:-

"The learned counsel for the Assessee has brought to the notice of this Court the decision rendered by this Court in T.C.A.No. 1526 of 2007, dated 25.02.2015, relating to the same assessee (for the Assessment year 2001-2002), where under, relying

upon the decision reported in 2013 (352) ITR 484 (Mad) (Commissioner of Income Tax vs. Sakuntala Devi, Khetan), it has been held that the Assessing Officer has to adopt the figures and turn over finally assessed by the Sales Tax Authorities. This decision is binding upon the Revenue. Therefore, the contention of the Revenue that it has powers to tinker with the stock estimated by the Sales Tax Authorities cannot be accepted. Therefore, the appeal filed by the Revenue fails."

29. Hon'ble ITAT Delhi Bench in the case of Padam Sarup Goel, ITA No.56/Del/2024, dated 23/09/2024, has observed as under:

The issue before us is with respect to addition of Rs.43,33,636/- made on account of cash deposits during the demonetization period. It is an admitted fact that the appellant/assessee, running a petrol pump (petrol & diesel), has made cash sales as well as credit sales. It has maintained sales vouchers and filed VAT returns. We find force in the arguments/contentions/submission of the Ld. Counsel. There is no logic/justification on the part of the AO for preparing cash flow chart without giving set off of the opening cash in hand on beginning of each month and also in drawing the adverse inference in respect of negative cash balance for the month of Nov., 2016 and not for other months as mentioned above.

Before us, the Revenue has not placed any material on record to demonstrate that the details of cash sales and the opening cash in hand on beginning of each month declared by the appellant/assessee are fictitious/bogus. The purchases are entirely from PSU. Further, the Revenue has also failed to place any material on the record to demonstrate that the VAT returns of the relevant year had not been accepted by the

VAT Authority. Hence, following the reasoning given in the co-ordinate Bench decision in the case of Ramesh Kochar, ITA No. 171/Del/2022 dated 26.04.2022, we hereby hold that this case is squarely covered by the decision of Ramesh Kochar (supra). Accordingly, the considered view that the addition of Rs.43,33,636/- under section 69A of the Act is uncalled for and the CIT(A) is not justified in confirming the same. Consequentially, we interfere with the order of the Ld. CIT(A) and delete the addition of Rs.43,33,636/-. 9. In the result, appeal of the assessee is allowed."

30. In our view, the AO/CIT(A) has committed error in applying the provisions of section 68 of the Act as the assessee had not received any fresh loan or advances from any persons or parties and that the amount which was credited in the books of accounts are merely in the nature of realization of debtors. Further, the sales made to respective parties are duly recorded where the Ld AO had not raised any doubt.

31. Accordingly, we hold that the provisions of section 68 as applied by Ld AO in respect of realization of debtors is in contravention to the provisions of the law. We, therefore, hold that the impugned order of the Ld. CIT(A) is infirm and perverse to the facts on record. Thus, the addition of Rs. 43,34,000/- is deleted. This ground of appeal is allowed.

32. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 09/04/2026.

Sd/-

**(SUDHIR PAREEK)
JUDICIAL MEMBER**

Sd/-

**(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER**

Dated : 09/04/2026.

Nimisha Sr. PS

True Copy

Copies to :

- (1) The appellant.
- (2) The respondent.
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

BY ORDER,