

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

HYBRID HEARING

BEFORE HON’BLE SHRI LALIET KUMAR, JM
AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकरअपीलसं./ ITA No.838/CHANDI/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)

Income Tax Officer Ward 1 Jind-126102.	बनाम/ Vs.	Shri Vikas Jain Nav Bharat Steel & General Industries Indira Bazar, Jind-126102.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AEQPJ-3689-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

2. CO No. 28/Chandi/2025
[In ITA No.838/Chandi/2024]

Shri Vikas Jain Nav Bharat Steel & General Industries Indira Bazar, Jind-126102.	बनाम/ Vs.	Income Tax Officer Ward 1 Jind-126102.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AEQPJ-3689-E		
(Cross Objector)	:	(Respondent)

Assessee by	:	Shri Suresh Gupta (CA) – Ld. AR
Revenue by	:	Smt. Tarundeep Kaur (CIT) – Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	01-09-2025
घोषणाकीतारीख / Date of Pronouncement	:	11/11/2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by revenue for Assessment Year (AY) 2018-19 arises out of an order of learned Commissioner of Income Tax

(Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 10-06-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 147 r.w.s 144B of the Act on 27-03-2023.

The grounds of appeal read as under: -

1. The Ld. CIT(A) has erred in deleting the addition of Rs.7,67,89,408/- made by the faceless assessment unit on account of bogus purchase made by the assessing of Rs.7,38,35,970/- and commission paid by the assessee at Rs.29,53,438/- totalling to Rs.7,67,89,408/-.
2. The Ld. CIT(A) has erred in deleting the addition of Rs.7,67,89,408/- because mere transactions routed through the banking channel is not sufficient evidence to prove the genuineness of transactions.
3. The Ld. CIT(A) has erred in deleting the addition of Rs.7,67,89,408/- because the modus operandi adopted by the assessee, as clearly accepted / explained before the officers of DGCI by the entry operator that all such transactions are routed through the banking channel but not the genuine business transactions.
4. The Ld. CIT(A) has erred in deleting the addition of Rs.7,67,89,408/- because the payments through banking channel does not give certificate to the assessee that the transaction made by him were genuine. Support is drawn from the decision of Hon'ble ITAT, Jaipur in the case of M/s Kachwala Gems Vs. JCIT (ITA No.134/JP/2002 dated 10.12.2003), affirmed by the Hon'ble Supreme Court in the case of M/s Kachwala Gems Vs. JCIT (2006) 206 CTR (SC) 585; 288 ITR 10 (SC), in which it has been held that even payment of account payee cheque is not sufficient to establish the genuineness of the purchases. When the entry operator himself accepted that he had given only accommodation entries to the beneficiaries from their bogus concerns as well as through detailed enquiry / investigation, it has been established that the above transaction has only been carried out for the purpose of providing accommodation entries to various beneficiaries.
5. The Ld. CIT(A) has erred in deleting the addition of Rs.7,67,89,408/- because the initial burden was on the assessee to prove the genuineness of the transactions with necessary documentary evidences, which the assessee had failed to discharge. The assessee merely tried to hide behind the fact that he has recorded these transactions in his books of accounts and payments took place through the banking channel, which are not the sufficient evidence to prove the unreal transactions as real one as such requirements fulfilled by the entry operator with the help of beneficiary to give color to bogus transactions as real one.

1.2 The assessee has filed cross-objection and has taken following grounds: -

1. The reassessment is invalid and without jurisdiction as the declared income of the assessee exceeds Rs.15,00,000/- and on that basis, the jurisdiction lies with Circle not with ITO, Jind in accordance with the CBDT instruction No.1/2011 F.No.187/12/2010-IT(A-1) dt:03.01.2011 and hence the reassessment initiated vide notices u/s 148 / 148A by the AO i.e. ITO is invalid, illegal and without jurisdiction.
2. The reassessment is invalid and without restriction as the notice u/s 148 dated 31.03.2022 has been issued by JAO in violation of provisions of Section 151A of the IT Act notified by CBDT through notification dated 29.03.2022 and therefore, the reassessment proceeding need to be quashed.
3. The impugned reassessment is invalid and without jurisdiction as the said assessment is completed without completing complying with the legal requirements of the provisions of section 147 / 148A(b) / 148A(d) / 151 / 148 / 149(1) / 151A of the Income Tax Act therefore, such assessment is void ab initio and liable to be quashed.
4. The addition of Rs.7,67,89,408/- being purchases, which according to AO being bogus and subjected to tax u/s 69C of IT Act. This action is unsustainable in law being outside the ambit of Sec.69C of IT Act in view of the same is accounted in books of accounts. Such illegality in invoking wrong section for making addition to income is a jurisdictional error which is incurable u/s 292BB of IT Act.
5. The Ld. AO has erred both in law and in facts of the case in making addition of Rs.7,67,89,408/- u/s 69C of IT Act treating such purchases as bogus purchases without rejecting the books of accounts u/s 145(3) of IT Act.

The assessee initially filed application u/r 27 of ITAT Rules, 1963 on 14-05-2025 assailing reassessment jurisdiction on legal grounds. Subsequently, the assessee has preferred cross-objections on similar grounds.

1.3 The Ld. CIT-DR advanced arguments supporting the assessment as framed by Ld. AO. The Ld. AR, on the other hand, drew attention to factual finding of Ld. CIT(A) in the impugned order. The Ld. AR also advanced legal arguments as taken in assessee's cross-objections. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

2.1 In the assessment order, the assessee is alleged to have undertaken bogus purchases of Rs.738.35 Lacs from an entity namely

M/s Jai Bhagwati Sales Corp. (prop. Shri Vikas Jain PAN AHQPJ-3832-L). The Ld. AO alleged that Income Tax Return as filed by the assessee was not commensurate with such transactions. Pursuant to receipt of information of fake claim of input tax credit (ITC) by M/s Jai Bhagwati Sales Corp. (in short 'JBS') as per its GST returns wherein it transpired that M/s JBS was not doing any value addition and was involved in fraudulent passing of ITC to the recipients by issuing only invoices / bills without actual movement of goods, such an allegation was made. The proprietor of M/s JBS did not comply with the summons issued by investigation wing of the department. The assessee had undertaken purchases for Rs.738.35 Lacs and accordingly, the case was reopened by issuance of notice u/s 148 on 31-03-2022 which was followed by notices u/s 143(2) and 142(1) wherein the assessee was directed to file the requisite details in support of such purchase transactions.

2.2 The assessee, *inter-alia*, furnished audited financial statements, computation of income, bank statement, party-wise sales, month-wise purchases and sales. However, as per Ld. AO, the assessee failed to furnish transportation documents, delivery challans etc. for purchases made from M/s JBS. Notices issued u/s 133(6) to M/s JBS did not elicit any response. Going by investigation findings, Ld. AO disallowed said purchases along with estimated unaccounted commission payment by the assessee on these transactions @4% of Rs.738.35 Lacs which translated into another addition of Rs.29.53 Lacs.

2.3 Before Ld. AO, the assessee raised legal objections to reassessment jurisdiction on the ground that it duly filed supporting bills and transport vouchers along with bank statement and accordingly, the notice u/s 148 was issued on mere surmises, suspicion, conjectures and with non-application of mind. It was also stated that it made purchases of Rs.58.97 Crores during the whole year, the complete details of which was placed by the assessee at the time of furnishing of reply to notice issued u/s 148A(b). The purchases were duly supported by purchase invoices, transport documents, bank statements etc. Non-compliance of notice u/s 133(6) by M/s JSB could not lead to rejection of books in the light of documentary evidences as furnished by the assessee. With respect to specific purchases made from M/s JSB, the assessee furnished copies of bills, transportation documents, bank statements, detail of transporter, date of transportation, vehicle no., weight, from and to destination and transport payment details etc. Therefore, these purchases were established to be genuine.

2.4 However, Ld. AO rejected the aforesaid submissions of the assessee in the background of the fact that the proprietor of M/s JSB admitted before DGCI of carrying out bogus sales. Finally, the aggregate amount of Rs.767.89 Lacs was added to the income of the assessee u/s 69C and the assessment was framed which was subjected to further challenge in the first appeal.

Appellate Proceedings

3.1 The assessee assailed the reassessment jurisdiction on legal grounds as well as on merits by way of elaborate written submissions

which have already been extracted in the impugned order. The Ld. CIT(A) rejected the legal grounds as urged by the assessee by observing that the case was reopened by following due procedure after taking due approval from approving authority.

3.2 On merits, the Ld. CIT(A) noted the various documents furnished by the assessee. It was observed that all transactions were carried out through banking channels which was one of the evident proofs for genuineness of the transactions. The assessee had filed substantial evidences with regard to purchase made from M/s JSB during the course of assessment proceedings which could not be denied / controverted by Ld. AO. The assessee was engaged in trading of steel and iron products under proprietorship concern M/s M.M. Impex which made purchase of Rs.58.97 Crores from various suppliers including M/s JSB. The assessee made sales of Rs.60.19 Crores. The books of accounts were duly audited and the assessee duly filed GST returns for this year. An order was passed under GST by appropriate authorities for this year on 06-10-2022 wherein GST authorities accepted the transactions of the assessee without any discrepancy. The copy of GST order passed in Form GST ASMT-12 was extracted in the impugned order. When the GST department accepted sales and purchases of the assessee, the impugned additions as made by Ld. AO u/s 69C could not be sustained and accordingly, the same was deleted. Aggrieved, the revenue is in further appeal before us assailing deletion of addition on merits. The assessee, in its cross-objection, is aggrieved by rejection of legal grounds.

Our findings and Adjudication

4. From the facts, it emerges that the assessee is engaged in trading of steel and iron products in proprietorship concern M/s M.M. Impex. This entity is duly registered under GST and an order was passed by GST authorities on 06-10-2022 wherein GST authorities have accepted sales and purchases transactions of the assessee without any discrepancy. No excess claim of Input Tax Credit (ITC) has been noted by the authorities against the assessee. The GST authorities have given a finding that no action was required in assessee's case. The same contradicts Ld. AO's claims of alleged bogus purchases against the assessee. Further, the assessee's books of accounts are duly audited and the assessee has maintained quantitative details of trading stock. No adverse remarks have been made by Tax Auditor on trading transactions. The assessee has made sales of Rs.60.19 Crores during this year. It is quite logical that without purchases, there could be no sales. Rejecting a part of the purchase transactions without disturbing sales turnover is without any logic. The sales turnover of the assessee has not been faulted with. The assessee has furnished sufficient documentary evidences like copies of purchase bills, transportation documents, bank statements, detail of transporter, date of transportation, vehicle numbers, weight, from and to destination and transport payment details etc. to Ld. AO in response to notice issued u/s 148A(b) which has been rejected merely on the fact that notice u/s 133(6) remained unresponsive. However, this fact alone could not be pitied against the assessee without there being any

corroborative evidences to support the allegation that the purchases made from M/s JSB were bogus, in any manner. The payments to the supplier have been made through banking channels. On these facts and circumstances, the impugned purchases along with estimated alleged commission could not be considered to be the income of the assessee. The case law of Hon'ble Apex Court in the case of **M/s Odeon Builders Pvt. Ltd. (418 ITR 315)** duly supports the adjudication of Ld. CIT(A). In that case, it was held by Hon'ble Court that addition based merely on third-party information as gathered by investigation wing could not be sustained for want of cross-examination and in a case where the assessee *prima facie* discharged the initial burden of substantiating the purchases through various documentations. Considering the totality of factual matrix, we find no reason to interfere in the adjudication of Ld. CIT(A) so far as the merits of the case is concerned. The appeal of the revenue stand dismissed.

5. One of the pertinent legal grounds as taken by the assessee in its cross-objection is that the reassessment proceedings have been initiated by Jurisdictional Assessing Officer (JAO) instead of Faceless Assessment Officer (FAO) which would vitiate entire assessment proceedings. The undisputed fact that emerges is that reopening notice u/s 148 (kept on page no.182 of the paper-book) has been issued by Ld. Assessing Officer, Ward-1, Jind on 31-03-2022 which is Jurisdictional Assessing Officer (JAO) for the assessee. However, this notice, in terms of notification of the Central Government dated 29-03-2022 u/s 151A sub-section (1) and (2) of the Income Tax Act, was

required to be issued by Faceless Assessing Officer FAO. The failure to do so would vitiate the entire assessment proceedings as per the lead decision of Hon'ble High Court of Punjab & Haryana in the case of **Jatinder Singh Bhangu (165 Taxmann.com 115)**, the substantive portion of which read as under: -

15. From the perusal of Section 151A, it is quite evident that scheme of faceless assessment is applicable from the stage of show cause notice under Section 148 as well as 148A. Clause 3 (b) of notification dated 29.03.2022 issued under Section 151A clearly provides that scheme would be applicable to notice under Section 148. Even otherwise, it is a settled proposition of law that assessment proceedings commence from the stage of issuance of show cause notice. The object of introduction of faceless assessment would be defeated if show cause notice under Section 148 is issued by Jurisdictional Assessing Officer. The respondents are heavily placing reliance upon office memorandum and letter issued by departmental authorities. It is axiomatic in tax jurisprudence that circulars, instructions and letters issued by Board or any other authority cannot override statutory provisions. The circulars are binding upon authorities and Courts are not bound by circulars. The mandate of Section 144B, 151A read with notification dated 29.03.2022 issued thereunder is quite lucid. There is no ambiguity in the language of statutory provisions, thus, office memorandum or any other instruction issued by Board or any other authority cannot be relied upon. Instructions/circulars can supplement but cannot supplant statutory provisions.

16. In the wake of above discussion and findings, we find it appropriate to subscribe view expressed by Bombay, Telangana and Gauhati High Court. The instant petitions deserve to be allowed and accordingly allowed.

17. The notices issued by Jurisdictional Assessing Officer under Section 148 are hereby quashed with liberty to respondent to proceed in accordance with procedure prescribed by law.

This case law has been followed by Hon'ble Court in so many subsequent decisions, the latest being the decision in **Om Satya Overseas (178 Taxmann.com 137; dated 29-08-2025)**. No change in facts has been demonstrated and nothing has been shown that the aforesaid decisions have subsequently been stayed by any higher appellate forums. Respectfully following this binding judicial decisions, we would hold that the impugned notice as issued by JAO u/s 148 on

31-03-2022 is liable to be quashed on this score only. We order so. The re-assessment proceedings as initiated against the assessee stand quashed for this very reason alone.

6. We also concur with yet another legal ground of Ld. AR that the impugned additions of alleged bogus purchases could not be made by invoking the provisions of Sec.69C. To invoke the provisions of Sec.69C, the basic pre-condition is that there should be some expenditure out of regular books of accounts which is not the case here. The impugned purchases, in the present case, have duly been recorded in the regular books and the payment thereof has been settled through normal banking channels only. It could not be said that the assessee incurred any expenditure which was not recorded in the regular books of accounts. There is no finding of cash exchange between the parties. Therefore, no such addition could have otherwise been made by Ld. AO by invoking the provisions of Sec.69C. The assessee succeeds on this score also. We order so. In the result, the assessee succeeds in its cross-objection. The petition filed u/r 27 has been rendered infructuous.

Conclusion

7. The revenue's appeal ITA No.838/Chandi/2024 stand dismissed. The assessee's cross-objection CO.28/Chandi/25 stand allowed.

Order pronounced on 11/11/2025

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Dated: 11/11/2025

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