आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री ललित कुमार, न्यायिक सदस्य एवं श्री कृणवन्त सहाय, लेखा सदस्य
BEFORE: SHRI. LALIET KUMAR, JM & SHRI. KRINWANT SAHAY, AM

आयकर अपील सं. / ITA No. 890/Chd/ 2025
निर्धारण वर्ष / Assessment Year : 2016-17

Vimal Alloys Private Limited PO: Mandi Gobindgarh, Vill: Sounti Amloh Road, Tehsil: Amloh, Mandi Gobindgarh	बनाम	The DCIT Circle, Patiala
स्थायी लेखा सं./PAN NO:		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate and Shri Vipen Sethi, Advocate

राजस्व की ओर से/ Revenue by : Dr. Ranjit Kaur, Addl. CIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 08/01/2026
उदघोषणा की तारीख/Date of Pronouncement : 21/01/2026

आदेश/Order

PER LALIET KUMAR, J.M:

This appeal filed by the assessee is directed against the order dated 22/05/2025 passed by the Ld. CIT(A), NFAC, Delhi pertaining to Assessment Year 2016-17, whereby the addition of Rs.55,02,640/- made by the Assessing Officer under section 69A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was confirmed.

2. In the present appeal, Assessee has raised the following grounds:

1. That the Ld. CIT (A)-NFAC, Delhi has erred in confirming the action of the Ld. AO in passing the order u/s 147/143(3) as notice issued u/s 148 of the Act is bad in law as it has been issued by Jurisdictional AO (JAO) instead of the AO-NFAC in the light of the of latest judgment of HIGH COURT OF PUNJAB & HARYANA in case of Jasjit Singh v.Union of India dated JULY 29, 2024.

2. That, without prejudice to the above and even otherwise, the Ld. CIT (A)-NFAC, Delhi has erred in confirming the action of the Ld. AO in passing the order u/s 147/143(3) without appreciating that the reasons are based on borrowed satisfaction and there is no independent application of mind by the Ld. AO and nor any enquiry have been made before issue of notice u/s 148.

3. That the information relied upon by the Ld. AO in the shape of so called EXCEL SHEET as well as approval sought for relevant authority for

reopening of the case had not been shared by the Ld. AO with the assessee which vitiates the assessment proceedings in the light of judgment of M/s Sabh Infrastructure Ltd. v. ACIT [(2017) 398 ITR 198 (Del)]. Further, the appeal u/s 151 as may have been granted by PCIT appears to be mechanical.

4. That the assessment order has been passed by the Ld. AO on the basis of third party information recovered from the premises of some third party in the shape of some EXCEL SHEETS during the course of survey at their premises and such third party information cannot be used as an evidence without any corroborating evidence to prove the allegation of the cash transaction by the assessee with M/s Futuristic Metal Trading Pvt. Ltd. in view of judgment of Hon'ble Chandigarh bench in the case of DCIT vs. Shri Amarjit Singh in ITA No. ITA No. 774/CHD/2023 (06.03.2025).

5. That no copy of the statement as may have been recorded of M/s. Futuristic Metal Trading Pvt. Ltd. had been provided to us and nor any opportunity to cross examine the statements of any third party relied upon by the Ld. AO has been provided to the assessee which violates the principles of natural justice and makes the assessment proceedings bad in law.

6. Notwithstanding the above ground of appeal the addition of Rs. 55, 27,640 as confirmed by the Ld. CIT (A) irrespective of the fact that it has been made by invoking incorrect provisions of section 69A of the Act as the assessee is not found to be owner of any móney, bullion, jewellery or other valuable article and provisions of section 69A of the Act are not applicable in case of alleged cash purchases being made by the assessee.

7. That the AO/Ld. CIT (A) has failed to appreciate that the assessee is maintaining complete day to day stock records in respect of material purchased from M/s. Futuristic Metal Trading Pvt. Ltd. and other parties and as such, the payments in respect of purchases from M/s. Futuristic Metal Trading Pvt. Ltd. have been made through banking channel and as such, there could be no occasion to receive the alleged cash receipts as being alleged by the AO/ CIT (A).

8. That the Ld. CIT(A) has erred in confirming the addition without appreciating the submissions filed by assessee and rejecting the explanation provided by assessee, which is illegal and against the principal of natural justice in the light of judgment of Sahara India (Firm) v. CIT [(2008) 300 ITR 403 (SC)].

9. That appellant crave leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

3. Briefly, the facts of the case are that the assessee is a private limited company engaged in the business of manufacturing and trading of iron and steel products. The return of income for the year under consideration was originally processed under section 143(1) of the Act. Subsequently, the assessment was reopened by issuance of notice under section 148 of the Act. The reopening was based on information received from the Investigation Wing in consequence to a search conducted on World Window Group, including Futuristic Metal Trading Pvt. Ltd., a concern alleged to be engaged

in providing accommodation entries and unaccounted cash transactions in scrap trade.

3.1 During the course of search proceedings at the premises of the said third party, an excel sheet titled "Cash & CH Report 14.11.17" was allegedly found. According to the Assessing Officer, the said excel sheet contained certain entries reflecting cash payments and unaccounted transactions purportedly relatable to the assessee. Relying solely on the said excel sheet, the Assessing Officer concluded that the assessee had made cash payments outside the books of account towards purchase of scrap material and accordingly made an addition of Rs.55,02,640/- under section 69A of the Act.

4. Against the order of the AO the assessee went in appeal before the Ld.CIT(A).

5. The Ld. CIT(A) upheld the addition by observing that the excel sheet constituted incriminating material found during search, that the assessee failed to rebut the same, and that the reopening was validly initiated on the basis of tangible material.

5.1 The Ld. CIT(A), while dismissing the appeal of the assessee, held that the excel sheet constituted incriminating material found during search proceedings. According to the Ld. CIT(A), the assessee failed to rebut the findings of the Assessing Officer with cogent evidence.

5.2 The Ld. CIT(A) further held that the reopening was valid as it was based on tangible material received from the Investigation Wing and that the Assessing Officer had valid jurisdiction over the assessee.

6. Aggrieved by the said order, the assessee is in appeal before the Tribunal.

7. During the course of hearing, the Ld. AR for the assessee made detailed and elaborate submissions and assailed the orders of the lower authorities on both legal and factual grounds.

7.1 It was submitted that the entire edifice of the addition rests solely on an excel sheet found from the premises of a third party, which neither belongs to

the assessee nor was found from its possession or control. It was argued that no effort was made by the Assessing Officer to establish that the entries contained in the excel sheet actually pertain to the assessee.

7.2 The Ld. AR further submitted that the excel sheet is nothing but an uncorroborated digital document, the author of which is unknown. No statement of the third party owning or maintaining the said excel sheet has been recorded to link the assessee with the alleged transactions. In the absence of such corroboration, the addition is legally unsustainable.

7.3 It was further contended that the Assessing Officer failed to provide the complete excel sheet and other underlying material relied upon for reopening and assessment. No opportunity of cross-examination of the third party was afforded to the assessee. Thus, the assessment suffers from gross violation of the principles of natural justice.

7.4 The Ld. AR also submitted that the reopening of assessment was based on borrowed satisfaction, as the Assessing Officer merely acted on the information received from the Investigation Wing without any independent application of mind. The reasons recorded do not demonstrate any live nexus between the alleged material and escapement of income in the hands of the assessee.

7.5 A specific legal objection was also raised regarding jurisdiction. It was contended that the reassessment proceedings were initiated and completed by the Jurisdictional Assessing Officer (JAO), whereas under the Faceless Assessment Scheme, such powers vested only with the Faceless Assessing Officer (FAO). In this regard, reliance was placed on the decision of this Bench in Vikas Jain v. ACIT, ITA No. 838/Chd/2024.

7.6 The Ld. AR further relied upon the decision of the Chandigarh Bench in Akbar Ali v. ACIT, ITA No. 868/Chd/2025, to submit that uncorroborated third-party excel sheets cannot form the sole basis of addition.

7.7 Ld. AR also submitted the written submission during the course of hearing content of which read as under:

1.The assessee concern is a private limited company engaged in a business of manufacturing of steel ingots, steel casting and metal rolling and the assessee is in same business since 1980 and regularly filing its return of income for past many years as per audited books of accounts of the assessee.

2.In the year under consideration i.e. AY 2016-17 the assessee has filed its original return of income declaring an income of Rs. 16,90,550/- against the total turnover of Rs. 67,57,30,991/- as per page 19 of PB and the books of account of the assessee are duly audited and assessee maintains regular stock register which is declared in the tax audit report at point no 35(b) at page 15 and 53 to 59 of PB and the complete financial statements of the assessee are ***placed at pages 1 to 59 of the PB.***

3.Further, the case of the assessee originallyselected for complete scrutiny u/s 143(3) of the Income Tax, Act, 1961 ('the Act') and assessment order dated 30.10.2018 passed with an addition of Rs. 2,72,365/- ***as per copy placed at pages 60-61 of PB****, which were later on deleted by the CIT(A) vide appeal order dated 09.05.2019.*

4.Later on the case of the assessee was selected for reopening on the basis of information of CIRU/VRU that 'Search and survey actions under the Income Tax Act, 1961 was conducted on 05.06.2018 inthe case of World Window Group (WWG) and related entities under section 132 and 133A of the Income Tax Act, 1961. During the search proceedings as one of the group concern of the WWG namely M/s. Futuristic Metal Trading Pvt ltd.(FMTPL), was surveyed by the department wherein an excel sheet namely 'Cash & CH report 14.11.17.xlsx' was found from the premises of the FMTPL, and the said excel sheet received was examined and it was alleged by the department that the beneficiaries and amounts mentioned in the column 'Cash' were not recorded by the assessee in its books of accounts and the assessee was one of the beneficiary as per the said excel sheet who have made cash transaction of Rs. 5502640/- with FMTPL and the show cause notice u/s 148A(b) issued to assessee dated 22.03.2023 ***as per copy placed at page 62-64 of the PB.***

5.The assessee filed an reply before the Ld. AO challenging the reopening in the case of the assessee on the followings issues as under:

a) On the issue of reopening based on borrowed satisfaction.
b) On the issue of reopening based on third party evidence.
c) On the issue of no satisfaction of searched party AO recorded before initiation of notice u/s 148A(b).
d) One the issue of challenging excel sheet as dumb document.

Further, it is also submitted that the assessee has filed various list of documentary evidences relating to purchases made by the assessee from doubtful party namely FMTPL and also assessee has filed its VAT returns in relation to prove the genuineness of the purchases and sales made by the assessee.

No disposal to the objections in order passed u/s148A(d)

6.*It is submitted that, thedetailed objections to the reopeningwere challenged by the assessee vide its reply dated 28.03.2023 consisting of 5 pages as per pages 65 to 69 were not considered by the AO and no specific disposal to the various objections as raised by the assessee have been disposed off by way of speaking order which is completely bad in law on the basis of judgement of Bombay Highcourt****M/s. Browntape Technologies Pvt Ltd vs. ACIT in Writ petition No. 627 of 2022*** *wherein assessee order passed u/s 148A(d) was set sided by the Hon'ble court for not disposing off the objection raised by the assessee. Copy of said judgement is* ***placed at pages 94-97 of the JS.****Further reliance is being placed on*

judgement of ***Amarpadma Credits (P.) Ltd. vs. Income-tax Officer [2025] 179 taxmann.com 144 (Gujrat) as per copy placed at pages 212 to 214 of JS-II wherein it is held as under:***

INCOME TAX : Where Assessing Officer issued reopening notice under section 148A(b) on ground that a search conducted upon a party revealed that said party provided accommodation entries in form of loan to assessee, since Assessing Officer failed to consider detailed reply filed by assessee to show cause notice issued under section 148A(b) along with relevant documents, impugned reopening notice issued to assessee would result in breach of principles of natural justice and same was to be quashed and set aside

Thus, since AO has not disposed off the detailed objection by way of speaking order the assessment deserve to be quashed.

7. Addition ground of appeal filed vide letter dated 27.12.2025- Not pressed

8. Further additional ground of appeal filed on 28.12.2025 challenging the of validity of notice issued u/s 143(2) as per separate set consisting of 50 pages:-

a) *It is submitted that, the assessee has taken an additional ground of appeal challenging the notice of 143(2) for the year under consideration case of the assessee was selected for CASS and notice u/s 143(2) was issued on assessee on 02.06.2023copy of said notice is placed at pages 2 to 4 of separate set without following the instructions of CBDT vide instruction circular F NO. 225/157/2017/ITA-II dated 23.06.2017 copy of which is at pages 5 to 9 of the separate set, and as per the said instruction, the A.O. while issuing the notice u/s 143(2), the AO needs to specify the category of the scrutiny selected under CASS (Computer Aided Scrutiny Selection) as to whether, it is a limited scrutiny, manual scrutiny or Complete Scrutiny Assessment. In the case of the assessee the instruction of CBDT referred above have not been followed, for which, we have taken an additional ground of appeal vide letter dated 31.10.2025 challenging the notice issued u/s 143(2), which is not as per the CBDT instructions and reliance is being placed on judgement of* ***Hon'ble ITAT Kolkata Bench 'A' in the case of Srimanta Kumar Shit vs. A.C.I.T. vide order dated 19.11.2024 relevant copy placed pages 45 to 55 of separate set and another latest judgement of Kolkata Bench in the case of M/s. Hind Ceramics Pvt. Ltd vs. DCIT vide order dated 06.05.2025 copy of which is placed at pages 38 to 44 of separate set,*** *wherein the appeal of the assessee have been allowed on this technical ground only and the Assessment Order as passed by the AO has been quashed. The facts in the above said case are similar to the facts in the case of the assessee, therefore, the judgments above need to be followed in the case of the assessee.*

b) *The issue in the case of Srimanta Kumar has been analysed at page 48 onwards to 53 and findings has been given at pages 54 to 55 separate set. Another judgement is at page 38 of the separate set and findings is at page 42 is being relied upon.*

This, it is prayed before your goodself that the further additional technical ground taken above may please be considered and assessment may please be quashed.

9.Notwithstanding the above facts, the reopening is otherwise bad in law on account of followings:

Non-Disclosure of any failure on the part of assessee

a) *Firstly it submitted that the reopening in the case of the assessee is wrong in the facts since the Ld. AO has failed to disclose the facts of original assessment proceedings while recording the reasons that the assessment have been already completed u/s 143(3) dated 30.10.2018, copy of said order is as at pages 60 to 61 of PB.Further, it is submitted thatin the reasons as recorded u/s 148A(d) which is beyond four years, there is no mention about original assessment proceedings and about any failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment, which is mandatory.*

b) *It is submitted that the assessment is sought to be reopened after four years and it is a mandatory condition and this being a sine–qua for formation of belief that the income of the assessee has escaped assessment because of the failure on the part of the assessee to disclose all the facts. Thus, in the cases where the assessment is sought to be reopened after four years and, therefore,* ***the Assessing Officer was obliged to examine the information received in the context of the facts on record. If such an exercise were to be done, it is likely that the Assessing Officer would have come to the conclusion that whether there was a failure to disclose truly and fully all material facts necessary for assessment.*** *The relevant text of the section if being produced hereunder: -*
"Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year ***by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."***

c) *It is submitted that, in the case of the assessee there is no such information relating to failure and nothing has been mentioned about the original assessment proceedings have been discussed by the AO in the reasons to believe. Reliance is being placed upon the following case laws in which various courts have held that where the reasons recorded fail to whisper that there was any failure on the part of the assessee to disclose fully and truly all material facts, in such a case, reopening beyond 4 years is bad in law: -*

[2023] 151 taxmann.com 411 (SC) SUPREME COURT OF INDIA Assistant Commissioner of Income-tax v. Virbac Animal Health India (P.) Ltd.*
…….High Court held that there was no failure on part of assessee to truly and fully disclose all material facts necessary for purpose of assessment which were carefully scrutinized by Assessing Officer during original assessment and thus, said reopening notice issued after four years on account of change of opinion was to be set aside - Whether special leave petition filed against order of High Court was to be dismissed - Held, yes [Para 3] [In favour of assessee]

[2023] 155 taxmann.com 290 (SC) SUPREME COURT OF INDIA Commissioner of Income-tax v. Canara Bank*

Section 36(1)(viia), read with section 148, of the Income-tax Act, 1961 - Bad debts, in case of banks (Reassessment) - Assessment years 2006-07 and 2007-08 - High Court by impugned order held that ***where notice under section 148 is to be issued after expiry of four years or before expiry of six years, assessee should have failed to disclose material facts, hence, where Assessing Officer had not even stated or alleged that there was failure on part of assessee to disclose fully and truly all material facts in respect of claim of deduction under section 36(1)(viia), Tribunal rightly held that reopening assessment initiated beyond four years was bad in law - Whether SLP filed by revenue against said impugned order was to be dismissed - Held, yes [Para 4] [In favour of assessee]***

[2015] 59 taxmann.com 391 (Punjab & Haryana) HIGH COURT OF PUNJAB & HARYANA State Bank of Patiala v. Commissioner of Income-tax*

Section 32, read with section 148, of the Income-tax Act, 1961 - Depreciation - Allowance/Rate of (Rate of depreciation/ATMs) - Assessment years 2005-06 to 2007-08 - Assessee bank installed ATMs, and claimed depreciation at rate of 60 per cent by treating it as computer - Assessing Officer sought to reopen case on ground that depreciation allowable on plant and machinery was to be allowed - Reasons for opening assessment which had already been concluded did not show that there was any failure on part of assessee to disclose fully and truly all material facts and thus, it was merely a change of opinion - Whether reassessment was justified - Held, no [Para 11] [In favour of assessee]

[2024] 159 taxmann.com 51 (Bombay)[29-01-2024]

*Section 37(1), read with sections 36(1)(iii), 36(1)(va), 43A and 147/148, of the Income-tax Act, 1961 - Business expenditure - Allowability of (Reassessment) - Assessment year 2015-16 - Assessee filed its return of income - Same was selected for scrutiny and assessment order was passed - After four years, Assessing Officer issued a reopeing notice on ground that assessee had claimed certain expenditures such as delayed remittance of employees contribution to employees provident fund on one occasion, consultancy for project, registrar and share transfer agent fees and finance cost of certain amount incurred to raise loan to invest in a loss making company which were not allowable as per different provisions of Act - **Itwas noted that a bare perusal of reasons recorded would indicate that there was not even an allegation in notice that there was failure to fully and truly disclose material facts necessary for assessment by assessee** - Entire basis for reopening was on perusal of records filed by assessee - Further, points raised in reasons recorded for reopening were also subject of consideration during assessment proceedings - **Whether where notice under section 148 was issued more than four years after expiry of relevant assessment year, proviso to section 147 would apply inasmuch as reassessment was not permissible unless there had been failure to truly and fully disclose necessary facts required for assessment - Held, yes** - Whether, therefore, impugned reopening notice issued after four years was to be quashed - Held, yes [Paras 5 and 9] [In favour of assessee]INCOME TAX : Where AO issued a reopening notice on ground that assessee had debited certain expenditures such as such as delayed remittance of employees contribution to EPF on one occasion, consultancy for project, registrar and share transfer agent fees, etc. which were not allowable as per different provisions under Income Tax Act, **since there was not even allegation in reasons recorded for reopening that there was any failure on part of assessee to fully and truly disclose all material facts necessary for assessment, impugned reopening notice issued after four years was to be quashed***

2021 (5) TMI 122 - GUJARAT HIGH COURT GHANSHYAMBHAI ADARBHAI PATEL VERSUS UNION OF INDIA

No new material surfaced during the reassessment proceedings on which the AO could have formed a requisite belief with regard to escapement of assessment and the assessee had disclosed all the materials fully and truly during the previous assessment proceedings. Under the circumstances, the impugned Notice under Section 148 of the Act dated 26.02.2019 assuming jurisdiction under Section 147 of the Act after the expiry of four years from the end of the relevant assessment year is clearly without jurisdiction of law and cannot be sustained in law. - Decided in favour of assessee.

Thus from perusal of above judgements, it is clear that the reasons recorded by the AO itself are invalid and thus the consequent assessment deserve to be quashed.

Notice u/s 148 was initiated by the jurisdictional assessing officer instead of NFAC as per amended provision of Finance Act 2021

10. It is hereby submitted that in the case of the assessee, the notice u/s 148 of the Act has been issued by the Circle-46(1), New Delhi and not by the Assessing Officer, Assessment Unit, National Faceless Assessment Centre ('NFAC'). Hence, the notice u/s 148 of the Act has not been issued by the Ld. AO, NFAC. In the case of the assessee, issuance of notice u/s 148 have been done by ***(JAO)*** *whereas, the assessment in the case of the assessee has been concluded by National Faceless Assessment Centre* ***(FAO)*** ***which is in gross violation of the prescribed procedure of faceless assessment in light of the notification of the Central Government , whereby the Central Government made the Scheme, vide notification No, CBDT Notification No 18/2022/F. No 370142/16/2022-TPL Part1 dated 29.03.2022 in exercise of powers conferred by sub sections (1) and (2) of section 151A of the Income Tax Act which abides that the issuance of notice u/s 148 of the Act was required to be issued by the automated allocation, i.e National Faceless Assessment Centre.***

a) *Reliance in this regard is placed on the judgments quoted here as under:-*

- ***JATINDER SINGH BHANGU VS. UNION OF INDIA AS REPORTED IN [2024] 165*** *TAXMANN.COM* ***115 (PUNJAB & HARYANA)***
- ***JASJIT SINGH VS. UNION OF INDIA AS REPORTED IN [2024] 165*** *TAXMANN.COM* ***114 (PUNJAB & HARYANA)***
- ***HEXAWARE TECHNOLOGIES LTD.VS. ACIT AS REPORTED IN [2024] 162*** *TAXMANN.COM* ***225 (BOMBAY)***

- ***Latest judgments of Hon'ble Chandigarh Bench in the followings cases:***

a) *M/s Seth Industrial Corporation vs. DCIT-Central Circle-3* ***in ITA No.1044/CHANDI/2024 vide order dated 16.10.2025 as per copy placed at pages 215-218 of JS-II.***

b) *Shri Vikas Jain vs. DCIT-Central Circle-3 in* ***CO No. 28/Chandi/2025 vide order dated 11.11.2025 as per copy placed at pages 219 to 229 of JS-II.***

Hence, in light of our above submissions, it is hereby submitted that the notice issued u/s 148 of the Act is INVALID and therefore, the assessment concluded on the basis of such invalid notice u/s 148 of the Act is void ab initio and hence, deserve to be quashed

Reopening Based on Change of Opinion is not permitted

11. *Further, our submission on the ground, where original assessment was already completed u/s 143(3) and the AO merely relied upon the information received. The said information was required to be corroborated and without verifying the facts that the assessment in the case of the assessee was already completed u/s 143(3) after examining books of the assesse and our reliance is being placed on judgement of jurisdictional High court having identical and similar circumstances as in the case of assessee, in the case of* ***Supertech Forgings (India) Pvt. Ltd vs. Pr. Commissioner of Income Tax-1, Jalandhar*** *in* ***ITA-101-2022 (O&M) (P&H), and the summary of the same case is as under alongwith the relevant extract from the judgement order:-***

Summary of the case

In the above said case, it is summarized as, the original assessment in the said case was completed u/s 143(3) on 12.06.2012, later on case of the assessee was

selected for reopening u/s 147 dated 30.03.2017 on account of statement recorded of the suppliers of that assessee and it has been alleged that the assessee has made bogus purchases from that supplier, further, CIT(A) has dismissed the appeal of the assessee and the Hon'ble Tribunal observed that AO has not applied his mind and merely relied upon the information received in the form of recorded statement of the supplier. The said information was required to be corroborated and verified on the AO admitting the facts that the assessment in the case of the assessee was already completed u/s 143(3) after examining books of the assessee, therefore, the appeal of the assessee was allowed by the tribunal.

Relevant extract of the Judgment

*"i. The same was very available in the assessment record of the assessee company for A.Y. 2010-11 which was subject matter of scrutiny assessment and on basis of this information, the assessment was completed and the additions were made. The same very information was admitted to be correct by Assessing Officer. Hence, the Assessing Officer could not be permitted to change his opinion based on same information in the view of the decision of the Hon'ble Supreme Court in Commissioner of Income Tax, Delhi vs. Kelvinator of India Limited [2010] 187 Taxmann 312." (**Refer page 3 of the Judgment Set-1**)*

12. *Similarly reliance is being placed on other judgments of the different High Court and Hon'ble Tribunal on the issue of reopening based on change of opinion after four years wherein no evidence of failure on the part of the assessee is proved then the reopening is bad in law as under:-*

*(a) Judgment in the case of **CIT vs. ICICI Bank Ltd**.,as reported in **31 taxmann.com 53 (Bom HC)***

"IT : Assessing Officer having allowed assessee's claim under section 36(1)(viii) in respect of fund based income, could not initiate reassessment proceeding by merely taking a view that income earned in non-fund business had been included in income earned in fund based activity and, thus, excessive deduction was allowed to assessee"

*(b) **Shiva Export vs ITO in [2009] 28 sot 512 (CHD)** wherein it is held*

"Wheather, on facts, it could be concuded that Assessing officer had not relied upon any material evidence, which could enable him to assume that income of assessee has excepted assessment than the reassessment made is liable to be quashed".

From perusal of above referred case laws, it is submitted that, the case of the assessee has similar/identical facts as per case laws referred above, wherein, assessment has been reopened after four years and it has been clearly laid down in the Act itself that the case cannot be re-opened beyond four years, unless, it is proved with corroborating and tangible material on record that proves there is any actual failure on the part of the assessee during original assessment.

Reopening based on Borrowed satisfaction

13. It is submitted that the case of the assessee was reopened based upon borrowed satisfaction and without conducting independent enquiry and same is lack of application of mind. Further, it is submitted that, in the case, it is just a suspicion of the CIT(A) and AO without being backed by any documentary evidence against the Assessee. In our considered view, mere information from investigating wing without bringing any concrete evidence on record cannot be a valid reason for reopening of a case and reliance is being placed on latest

*judgement of jurisdictional ITAT Chandigarh Bench 'A' Bench in the case of **Akbar Ali vs. JAO in ITA No. 868/CHD/2025 copy placed at pages 210 to 211 of JS-II wherein judgement of Gujrat High court followed and it is held as under**:*

5……In our considered view, mere information from Investigating wing without bringing any concrete evidence on record cannot be a valid reason for reopening of a case. We are strengthened by the order of the Hon'ble Gujarat High Court in the case of J.K. Bullions (P.) Ltd. vs. Deputy Commissioner of Income-tax [2024] 169 taxmann.com 590 (Gujarat).

6. Since no concrete evidence has been brought by the Assessing Officer for issuance of show cause notice to the Assessee, therefore, just on the basis of a piece of information received form Investigation Wing, the reopening of the case u/s 147 of the act may not be considered a valid reason for reopening. Thus, the entire assessment proceedings in this case are vitiated because of it. Accordingly, we are not inclined to accept the findings of both the Assessing Officer and the Ld. CIT(A) passed on mere suspicion. Accordingly, the assessment order passed by the Assessing Officer is quashed

14. Reliance is being placed on judgements on the issue that reopening based on vague reason to believe is not admissible for reopening of the case of the any assessee as per following case laws of different High Court and Hon'ble Tribunals as under:-

- ***J.K. Bullions (P.) Ltd. vs. Deputy Commissioner of Income-tax [2024] 169 taxmann.com 590 (Gujarat)[29-10-2024]***

*Section 69A, read with section 148, of the Income-tax Act, 1961 - Unexplained moneys (Reopening of assessment) - Assessment years 2014-15 to 2016-17 - Assessee was engaged in business of trading in gold and silver bullion - Assessing Officer issued reopening notice on ground that assessee had made cash deposits and made cash sales without keeping proper documentary evidence and identity of customers - Assessee filed objections contending that same represented cash sales which were deposited in bank account and duly recorded in books of account - Assessing Officer disposed of objections in total disregard to explanation given by assessee - **It was noted that Assessing Officer had failed to show even prima facie reason to believe as to how information received from Investigation Wing would amount to escapement of income as there was total lack of formation of reason to believe on part of Assessing Officer to prima facie arriving at a finding that it was a fit case to reopen assessment for escaping income - Whether since reasons recorded were cryptic, vague having no nexus and no application of mind, Assessing Officer could not assume jurisdiction to reopen assessment - Held, yes**- Whether, therefore, impugned notices for all three assessment years were to be quashed and set aside - Held, yes [Paras 9 and 10] [In favour of assessee]*

*15. It is submitted that, in the case of the assessee unsigned Excel sheet was recovered from premises of M/s. Futuristic Metal Trading Pvt. Ltd which is third party information and not valid and our reliance is being placed on judgment of Ahmedabad – Trib in the case of **DCIT vs. Mahalaxmilnfracontract Ltd reported in [2025] 173 taxmann.com 399 [12-03-2025**] wherein it is held as under:*

INCOME TAX : Where Assessing Officer made addition under section 69C on ground that assessee had paid interest in cash to a third-party, since said addition was made solely on basis of unsigned Excel sheets recovered from premises of third party, without any further corroborative evidence, same was to be deleted.

16. *Reliance is being placed on other judgments on the issue of third part information of jurisdictional bench ITAT Chandigarh in the case of* ***SH. SubhashChander Gupta vs. ITO reported in 124 ITR Trib 247(CHD) placed at pages 62 to 80 of PB****, and Judgment of* ***DEPUTY COMMISSIONER OF INCOME TAX vs. AMARJIT SINGH* in ITA No. 774/Chd/2023 as per pages 81 to 93 of judgement set wherein it is held as under.***

Search and seizure—Assessment under s. 153A—Applicability of s. 153A vis-avis s. 153C—Search and seizure operation was carried out in the premises of the assessee and simultaneous search was conducted on the premises of one KR where a document "BTD 2011" was found and seized—According to the AO, this document exhibits an outstanding loan taken from one HJ—AO was of the view that assessee must have advanced this loan to KR—Therefore, on the basis of this document, the AO confronted the assessee to explain the source of such loans—AO of KR has not recorded any satisfaction that the document 'BTD-2011' pertains to the assessee—At the most, information contained in this document partially pertains to the assessee—In both the courses, the AO has to first record his satisfaction that income pertaining to the assessee has escaped assessment and therefore, he is transmitting these seized materials to the AO of the assessee—AO cannot take into consideration the material collected at the premises of third person without following the mandatory procedure contemplated in s. 153C—Hence, the impugned addition is not sustainable on this ground.

17. ***Similar reliance is being placed on judgment in the case of ITO vs. Ashwani Kumar Jain as reported in [2025] 123 ITR_Trib (SN) 4 (CHD-Trib.) at pages 210 to 211 of JS on the issue of third party evidence.***

18. No independent evidence brought on record by the AO that proves that the excel sheets belongs to assessee as per judgement of ***DCIT vs. Abhipush Properties (P.) Ltd. [2025] 180 taxmann.com 799*** *(Ahmedabad - Trib.)[25-11-2025] wherein it is held as under:*

INCOME TAX : Where Assessing Officer made additions under section 69C and 69B in reassessment proceedings treating difference between registered value and ***figures in an unsigned third-party Excel sheet as alleged on-money paid by assessee to purchase plot of land and construction of villa, but no independent evidence was brought on record to show that said Excel sheet belonged to assessee*** *or that any amount of on-money was ever paid by assessee to developer, impugned reassessment order passed on basis of said unsigned Excel sheet was to be quashed.,*

Form the above, it is very much evident that, the reason in the case of the assessee, are fully vague as no information have been supplied to the assessee that forms valid reasons for reopening, therefore the judgements above may please be considered and the assessment may please be quashed

19. Further, it is submitted that, ***no opportunity of cross examination*** *has been afforded to the assessee by the Ld. AO during the course of reassessment proceedings, which was specifically requested by the assessee vide reply dated 11.09.2023 placed at pages 81 to 84 of the PB and relevant page is 83. Moreover, the assessee has requested the same before Ld. CIT(A) vide ground no 7 of the Written submission filed by the assessee which is placed at pages 175-192 of the PB. Reliance in this regard is being placed upon the same judgement supra in the case of M/s. Malbros International Pvt. Ltd in ITA No. 992 & 993/CHD/2024 vide order dated 25.06.2025, wherein this fact has been accepted by the Hon'ble court that the opportunity to cross-examination is right of assessee as per para:*
12.4 According to this judgement, if the deponent was noput to cross-examination, then statement of such a witnesscannot be used against the

interest of any other person. Inthe present case, this statement was recorded from the backof the assessee and the assesseewas not given an opportunity to cross-examine the deponent. Therefore, the statement is to be excluded from the evidence used against the assessee. If the statement is excluded, then nothing remains with the AO for making the addition."

20. Further following are the other binding judgments wherein it has been held that the statements taken at the back of the assessee cannot be used for making additions unless a chance to cross examine has been given to the Assessee.

a) [2024] 162 taxmann.com 5 (SC) Principal Commissioner of Income-tax v. Kishore Kumar Mohapatra,*
"INCOME TAX : SLP dismissed against order of High Court that where Assessing Officer denied exemption claimed by assessee under section 10(38) on long-term capital gain on sale of shares on basis of statement of entry operators recorded on various dates in some other proceedings not connected with assessee and no opportunity to cross-examine so-called entry providers was given to assessee thereby violating principles of natural justice, Tribunal was justified in deleting addition made by Assessing Officer"
b) [2023] 157 taxmann.com 193 (SC) SUPREME COURT OF INDIA Principal commissioner of Income-tax v. HadotiPunjVikas Ltd
INCOME TAX : SLP dismissed against impugned High Court's order that where AO made addition under section 68 solely on basis of information received from Investigation Wing that lenders from whom assessee-company acquired loans were indulged in bogus accommodation entries, since assessee was not granted an opportunity to cross-examine persons whose statements were recorded during investigation, impugned addition made on basis of such investigation which was not privy to assessee were to be deleted
c) [2015] 281 CTR 0241 (SC) Andaman Timber Industries Vs. Commissioner of Central Excise.

*d) [2024] 161 taxmann.com 586 (Punjab & Haryana) Principal Commissioner of Income-tax (Central) v. DSG Papers (P.) Ltd.**
INCOME TAX : Where pursuant to a search conducted at business premises of assessee, department made additions on account of suppressed turnover through under-invoicing based on third-party statements, since said statements were recorded at back of assessee and without giving proper opportunity for cross-examination, Tribunal rightly deleted said addition
From perusal of above referred case laws, it is submitted that, wherein the opportunity of cross examination has not been provided to assessee then the assessment framed will be considered as invalid assessment, thereby violating the principal of natural justice, therefore, needs to be quashed.

Merits of the case
21. It is submitted that, in the case of the assessee the Ld. AO has not provided any copy of Excel sheet recovered during the survey u/s 133A at M/s. Futuristic Metal Trading Pvt Ltd and the said copy was sought by the assessee vide its reply 11.09.2023 as per copy placed at 83 to 83 of the PB, relevant page 83, in the said reply to the questionnaire, it has been stated by the assessee that, the material recovered by department in the shape of 'Excel sheet' cannot be considered as tangible material without confronting the same to assessee, and no such other Prima facie evidence have been provided by the Ld. AO that makes the Excel sheet as incrementing evidences. Thus, the same excel sheet recovered cannot be considered as basis for reopening.

22. Further, it is submitted that while relying on the data obtained from the desktop, the same is to be analyzed as per provisions of Section 65B of the Indian

Evidence Act, 1872. In this regardsyour goodself attention is invited towards the in the case of ***M/s. Vetrivel Minerals vs. ACIT, Madurai [2021] 129 taxmann.com 126*** *(Madras) wherein it is held as under:*

INCOME TAX: Where assessment orders passed in case of assessee under section 153A were passed in gross violation of principles of natural justice as copies of all materials seized which were used for framing assessment had not been supplied to assessee,no opportunity for cross-examination had been provided and even section 65B of Evidence Act had not been complied with before admitting electronic evidence, matter was to remanded back to Assessing Officer for adjudication afresh

23. ***The Indian Evidence Act, 1872 is a condition precedent to the admissibility of evidence by way of electronic record as*** *S. 65B (4)* ***of The Indian Evidence Act, 1872 is a mandatory. In view of the same, the electronic record, being relied upon by the department, is not admissible as evidence as certificate u/s 65B (4) has not been produced.***

24. The informed passed on just taken as base by the assessee officer without making and further enquiry, which merely proves the non-application of mind of the AO and such non application of mind of the AO and relying upon the information of CRIU unit and the Ld. AO has not applied mind independently so as to reach to have reason to believe that any income has escaped the assessment and in absence of any such exercise to have the satisfaction to form the reason to believe by the respondent, it is apparent that the respondent has issued the impugned notice merely based on ***"borrowed satisfaction****" as against statutory requirement of "independent satisfaction" and therefore the impugned notice deserves to be set aside as such action is not tenable in the eye of judgements of different Tribunals in the followings cases:*

a. Judgment in the case of Evershine Recreation Pvt. Ltd. vs. DCIT as reported in 107 ITR TRIB. S.N. 65 as per copy of judgment placed ***at pages 24-31 of JS.***

b. Judgment in the case of Sh. Gopal Sharan vs. ITO in ITA No. 51/ASR/2012 vide order dated 05.09.2012 as per copy of judgment ***placed at pages 32-39 of JS.***

c. Judgment in the case of Sh. MohdYousufWani vs. ITO in ITA No. 372/ASR/2009 vide order dated 06.06.2011 as per copy of judgment ***placed at pages 40-51 of JS.***

d. Judgment in the case of Sh. Sanjeev Aggarwal vs. DCIT in ITA NO. 547/ASR/2011 vide order dated 01.11.2012 as per copy of judgment ***placed at pages 52-61 of JS****.*

Thus from the above facts it is prayed before your goodself that the reopening in the case of the assessee bad in law as no individual satisfaction of information received have been recorded by the AO and no evidence concrete evidence of relying on excel sheet found have been proved by the AO and there is no such statement of any person recorded and provided to assessee that forms valid reason for reopening of the case of assessee

25. It is submitted that the assessee during the course of assessment proceedings as well as before CIT(A) has filed the all such documentary evidences before the AO relating to the actual transaction made with the doubtful party namely ***M/s. Futuristic Metal Trading Pvt Ltd*** *which is duly recorded in the books of accounts of the assessee and the said details have been filed*

before the assesses officer that the assessee had made purchase of 'Silico Manganese' and 'Imported Scrap' from the said party and the said transaction have been not doubted by the assessee anywhere in the assessment order. The detail filed before the AO which is now forming part of paper book at pages are as under:

Documentary evidences in relation to prove the genuineness of transactions made with party namely M/s Futuristic Metal Trading Pvt. Ltd		
a.	*Copy of ledger account of the party in the books of the assessee relating to purchase of 'SilicoManganess'.*	***96***
d.	*Certified Sale agreement dated 06.11.2015 between assessee and M/s Futuristic Metal Trading Pvt. Ltd relating to purchase of material.*	***97-100***
e.	*Sample Invoices issued by party against purchase of 'SilicoManganess' alongwith VAT Certificate.*	***101-102***
f.	*Copy of complete stock register of 'Ferro SilicoMagneses' for year ending 31.03.2016.*	***103-111***
g.	*Copy of ledger account of the party in the books of the assessee relating to purchase of 'Imported scrap'.*	***112***
h.	*Documentary evidence prove that the sale of scrap made by the party to assessee were all 'import purchase'.*	***113-117***
i.	*Sample invoice issued by party to assessee relating to purchase of 'Heavy Metal Scrap'.*	***118-119***
j.	*Complete stock register of 'M.s Scrap' maintained by assessee for year ending 31.03.2016.*	***120-152***

26. Further, it is submitted that the VAT department has already conducted an VAT assessment for the year under consideration and the copy of said order is placed in the ***Paper Book at pages 173 to 174 and our reliance is being placed on judgement of ITO vs. M/s Saboo Tor Private Limited in ITA No. 786/CHANDI/2025***

4……The assessee's books are subjected to Tax Audit and the assessee has maintained quantitative details of its trading stock. The other documents as furnished by the assessee include ledger extract of IINFC Ltd., copies of invoices bearing complete details, bank statements evidencing receipt of sales proceeds through banking channels, copies of VAT returns, documents evidencing delivery of goods, relevant VAT assessment order, copies of C-Form as issued by assessee's customer etc. ***The assessee thus duly discharged its onus of proving the sales transactions as genuine transactions. No adverse inference could be drawn only because the confirmation from the customer was not furnished. As against this, Ld. AO merely relied upon information received from investigation wing and did not carry out any independent examination or verification of the transaction. No cash trail in support of accommodation entry has been established. The sales have been accepted and no defect has been pointed out in the books of accounts. Adding the sale transaction again as alleged accommodation entry would tantamount to double addition which is impermissible. Therefore, on the given facts, the adjudication of Ld. CIT(A) could not be faulted with. We order so.***

The purchase made by the assessee are fully vouched in the books of the assessee and the said purchase are high sea sales purchase made by the

assessee directly from the port and the assessee has filed all the documentary evidences that proves the genuineness of material sold to assessee by ***M/s Futuristic Metal Trading Pvt.****Ltd i.e. from import from other countries which is duly verified by customs checks and clearance. The Books of accounts of the assessee is verified by the VAT department and proper stock register maintained by the assessee.*

27. Further, it is submitted the sales and purchases made by the assessee are duly recorded in the item wise stock register maintained by the assessee details of which of have been filed before the Ld. AO and CIT(A). The assessee is maintaining quantitative tally/stock record which have been duly declared in the tax audit report at per point no 35(b) of the tax audit and reference is drawn towards page 15 of the PB, which have been filed during the course of reassessment proceedings and the same have been accepted by the Assessing Officer and, thus, no addition could be made on account of alleged bogus purchases, when no doubt has been raised in respect of sales made by the assessee and the quantative Tally.

*28. Further, it is submitted that assessee has filed quantitative stock tally in form stock inventory, having purchases, sales made by the assessee and no defect has been pointed out by the AO and since all the payments have been made through normal banking channel, then no case of bogus purchases can be made against the assesseeand reliance is being placed on judgment in the case of****Piyush Developers Pvt. Ltd V/s ACIT in ITA No.5599/DEL/2010, ITAT, Delhi Bench*** *(on the issue, if no defect have been pointed out, no addition is called for)*

"No defects have been found in the stock register nor any defects have been pointed out by the A.O. in the audited books of accounts maintained by the assessee. Despite search and seizure no adverse material was found to substantiate the disallowance made by the A.O. Coming to the identity of the parties we find that all the parties are registered with sales tax department and have charged VAT in each of the bills. All these parties have bank accounts and payments were made through account payee cheques. Evidence of material having been received by the assessee, has been filed."
PCIT VS Synbiotics Ltd. as reported in [2019] 106 taxmann.com 316 (Gujarat).

Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessment year 1993-94 - Assessee was engaged in business of manufacturing and marketing of various bulk drugs and pharmaceutical preparations - During year, assessee incurred expenditure for purchase of chemicals for production of products - A search was carried out at premises of one FHR in which it was found that FHR was running ten concerns which were mainly used for issuing bogus purchase bills and assessee had also purchased chemicals from one of its concerns - Assessing Officer made additions under section 69C to income of assessee on account of bogus purchases - ***Commissioner (Appeals) noted that during relevant assessment year assessee had yielded profit ratio at 107.95 per cent and it was impossible to generate anything from thin air, thus, assessee had produced goods by utilising such bulk drugs purchased by it*** *- In light of such finding of fact, he had restricted additions on account of bogus purchases to 25 per cent - Tribunal also upheld such finding of fact recorded by Commissioner (Appeals) - Whether since conclusion arrived at by Tribunal was based upon a finding of fact that there were corresponding sales in respect of alleged bogus purchases, impugned order passed by Tribunal could not be said to give rise to any substantial question of law, warranting interference - Held, yes [Paras 15, 17 and 19] [In favour of assessee]*

29. Further, it is submitted that, the assessee has provided all the documentary evidences relating to the actual transaction relating to purchases made by the assessee from doubtful party namely M/s Futuristic Metal Trading

Pvt. Ltd and all payments to the purchases have been made through banking channel and proper inventory of stock have been maintained by the assessee, wherein such purchases made from FMTPL have been duly entered out of which assessee has made further sales, which have been accepted by the VAT department and the same has not been doubted by the Ld. AO as well as CIT(A) during proceedings, which ultimate means that the trading results of the assessee stands accepted in every way.

30. Further, our reliance is being placed bench mark judgements of Hon'ble Apex Court and of jurisdictional High court of Punjab and Haryana on the issue of Bogus Purchases, wherein it is held the where assessee proves all documentary evidences relating the genuineness of the purchases and sales made by the assessee then in such circumstances no addition on account of 'Bogus sales/Purchases can be made as per following judgements as under:-

a) Judgment in the case of CIT vs. Odeon Builders (P.) Ltd as reported in [2019] 110 taxmann.com 64 (SC).

INCOME TAX: Where assessee had submitted purchase bills, transportation bills, confirmed copy of accounts and VAT Registration of sellers as also their Income-tax Return and payment was made through cheques, impugned purchases could not be disallowed.

b) Judgment in the case of PCIT vs. TejuaRohit Kumar Kapadia reported in [2018] 94 taxmann.com 325 (SC)

Where purchases made by assessee-trader were duly supported by bills and payments were made by account payee cheque, seller also confirmed transaction and there was no evidence to show that amount was recycled back to assessee, Assessing Officer was not justified in treating said purchases as bogus under section 69C: SLP dismissed.

c) Judgment in the case of the Apex court in the case of CIT Vs Century Plyboards (I) Ltd. [2019] 103 taxmann.com 179 (SC) held as follows

Where High Court upheld Tribunal's order that in view of copies of invoices and challans, proof of payments, bank statements, transportation payments, vouchers for movement of goods etc, it could be concluded that purchase transactions between assessee and 'D' were not bogus or fraudulent and, thus, addition could not be made under section 69C, SLP filed against decision of High Court was to be dismissed.

d) CIT Vs Leader Valves Ltd. as reported in [2007] 285 ITR 435 (P&H).

Section 145 of the Income-tax Act, 1961 – Method of accounting – Rejection of accounts – Assessment year 1986-87 – Commissioner (Appeals) deleted additions made by Assessing Officer on account of bogus purchases from seven parties as also addition in trading account besides allowing triple shift allowance on machinery etc. – Tribunal concurred with analysis and conclusions drawn by Commissioner (Appeals) on appreciation of material on record, after taking notice of fact that trading results of assessee had all along been accepted and purchases of scrap from seven parties could also be not termed as bogus for reason that in subsequent assessment year purchases from those very parties stood accepted by department to a very substantial extent – Tribunal also took notice of Revenue's contradictory stand in as much as firstly specific additions were made in assessment on account of alleged bogus purchases and then assessee's books were rejected on ground that those were not verifiable, but adjustment of bogus purchases was made while working out gross profits and

that too on basis of 'sales version' in those very books though with a slight modification – Whether brief capitulation of findings of fact returned by Tribunal led to an irresistible conclusion that these were pure findings of fact giving rise to no question of law – Held, yes.

Thus, the AO has not doubted the stock inventory of the assessee and accepted the trading results of the assessee and assessee has proved the genuineness of the purchases by way of various documentary evidences mentioned above and same cannot be disallowed and treated bogus merely on the basis of third party information, even when the sales made by the assessee have been not doubted by the AO and books of accounts not rejected.

No addition relating to sale purchase can be made without rejecting the Books of assessee

*31. With regards to the above title, It is also submitted that, no addition in the case of the assessee is liable to be made, since the AO has not rejected the books of accounts and it is a settled law that if the books have not been rejected, then no addition has been made on account of bogus purchases and other disallowances as made by the Assessing Officer. Reliance is being placed following judgments, wherein, it has been directed by the different courts and tribunals that '**No addition can be made against sales or purchases**, where books of the assessee are not doubted' and reliance is being placed on following case laws:*

- ***Judgement in the case of CIT v. Om Overseasas reported in[2008] 173 Taxman 185/ [2009] (High Court Punjab and Haryana).***

*"Section 145 of the Income-tax Act, 1961 - Method of accounting - Rejection of accounts Assessment year 2001-02 - For relevant assessment year, assessee-firm declared gross profit rate (GPR) of 25.38 per cent as against 29.5 per cent declared in immediate preceding year - Assessing Officer was not satisfied with assessee's explanation regarding decline in GPR and, therefore, he rejected its books of account and applied GPR at 27 per cent which resulted in certain addition - On appeal, Commissioner (Appeals) deleted addition holding that **Assessing Officer made addition without pointing out any specific defect in books of account - Tribunal upheld finding of Commissioner (Appeals)** - Whether there was any perversity in order of Tribunal – Held"*

- ***Judgement in the case of CIT v. Anil Kumar & Co as reported in[2016] 67 taxmann.com 278 (Karnataka).***

"IT: Where books of account of assessee had not been rejected and assessment having not been framed under section 144, entire addition made by Assessing Officer based on estimation of income was to be deleted"

- ***Judgement in the case of Smt. Tripta Rani vs. ACIT as reported in [2022] 142 taxmann.com 278 (Chandigarh – Trib)***

"INCOME TAX : Where cash deposits made in bank accounts of proprietorship concern during demonetization period were routed through regular books of account of assessee which were not rejected by AO and no incriminating material was found during search conducted at premises of sister concern of assessee to point out that assessee introduced her own unaccounted money in her proprietorship concern in garb of sale to its sister concern, additions made by AO in respect of such cash deposit were merely based on surmise and conjectures and, thus, same were to be deleted"

- *Judgement in the case of **PCIT vs. Forum Sales (P.) Ltd.** as reported in **[2024] 160 taxmann.com 93 (Delhi).***

- *Judgement in the case of **CIT vs. Shakti Industries** as reported in **[2013] 36 taxmann.com 16 (Gujarat)***

- *Judgement in the case of **Rahul Cold Storage vs. Income-tax Officer** as reported in **[2024] 168 taxmann.com 42 (Raipur - Trib.) [29-11-2022]***

- *Judgement in the case of **ITO vs. Swati Housing & Construction (P.) Ltd.** as reported in **[2019] 112 taxmann.com 371 (Delhi – Trib).***

Thus the books of accounts of the assessee is not doubted no addition can be made out of books of assessee, without finding any specific defect in the books.

Our Prayer before Hon'ble Bench

*The assessee is a long-established manufacturing company with **audited books, quantitative stock records, VAT compliance and accepted trading results**. Original assessment for AY 2016-17 was completed u/s 143(3).*

- *Reopening u/s 148 after four years is bad in law as:*

➢ *There is no allegation or finding of failure on the part of the assessee to disclose fully and truly all material facts, attracting the bar of the proviso to section 147.*
➢ *Reopening is based solely on borrowed satisfaction and third-party information (unsigned Excel sheet found during search/survey of a third party) without independent verification, corroboration, statement, cash trail, or compliance with section 65B of the Evidence Act.*
➢ *Mandatory objections filed by the assessee were not disposed of while passing order u/s 148A(d), violating principles of natural justice.*
➢ *Notice u/s **148 was issued by the Jurisdictional AO instead of NFAC**, contrary to the faceless assessment scheme notified u/s 151A, rendering the notice invalid.*
➢ *Notice u/s **143(2) is also invalid** for non-compliance with CBDT Instructions, as it failed to specify the nature of scrutiny (limited/complete/manual).*
➢ *No Opportunity of cross examination offered to the assessee during assessment proceedings and the same ground was taken before the CIT(A) as per Grounds NO 7.*
➢ *Reopening is further hit by **change of opinion**, as the issue was already examined during original scrutiny.*
➢ *Purchases from M/s Futuristic Metal Trading Pvt. Ltd. are fully supported by invoices, agreements, import/customs documents, VAT returns, bank payments and stock registers.*
➢ *Sales are accepted, books are not rejected u/s 145, and no defect in stock, yield or consumption is found.*
➢ *Judgments of Various Hon'ble Apex Court, High Courts and different Tribunals that bogus purchases cannot be added when sales, stock records and books are accepted.*

*Since addition of Rs. 55,02,640/- is not maintainable as provision of section 69A are not applicable and before the CIT(A) we had submitted statement of fact at page 2 & 3 of the order of CIT(A) and then detailed submission with regard to the reopening u/s 148A and on merits of the case the opportunity to cross examination was not allowed and cited various cases starting from page 3 to 22 of the order of CIT(A) and the CIT(A) has dismissed detailed submission without any application of mind.**Therefore**, the reassessment proceedings are **void ab initio** and liable to be quashed; alternatively, the impugned additions deserve **deletion in full**.*

8. Per contra, the Ld. DR strongly supported the orders of the lower authorities.

8.1 It was submitted that the excel sheet was found during the course of search proceedings and contained date-wise entries indicating cash transactions with the assessee. According to the Ld. DR, the Assessing Officer was justified in drawing adverse inference, as the assessee failed to furnish any satisfactory explanation.

8.2 The Ld. DR further submitted that the reopening was validly initiated on the basis of credible information flagged under the CBDT's Risk Management Strategy and that the Ld. CIT(A) had rightly confirmed the addition after due consideration.

9. We have heard the rival submissions, carefully perused the orders of the lower authorities, examined the material placed on record including the paper books filed by the assessee, and considered the judicial precedents relied upon by both sides. The issues raised before us relate to (i) validity of reopening under section 147/148 of the Act, (ii) jurisdiction under the Faceless Assessment Scheme, (iii) violation of principles of natural justice including non-disposal of objections and denial of cross-examination, (iv) validity of notice under section 143(2), and (v) sustainability of addition made under section 69A on merits. We proceed to adjudicate each issue separately.

Issue regarding Validity of Reopening beyond Four Years – Proviso to Section 147

9.1 Admittedly, in the present case, the original assessment for AY 2016-17 was completed under section 143(3) of the Act vide order dated 30.10.2018. The reassessment proceedings were initiated after the expiry of four years from the end of the relevant assessment year. Therefore, the proviso to section 147 squarely applies.

9.2 A bare perusal of the reasons recorded and the order passed under section 148A(d) reveals that there is no allegation whatsoever that income escaped assessment due to any failure on the part of the assessee to disclose

fully and truly all material facts necessary for assessment. This requirement is a jurisdictional condition and a sine qua non for reopening after four years.

9.3 The Assessing Officer has not even adverted to the fact that an earlier scrutiny assessment was completed, nor has he demonstrated as to which material fact was not disclosed by the assessee during the original proceedings. In absence of such mandatory satisfaction, the reassessment is clearly barred by the proviso to section 147.

9.4 This position is no longer res integra and is squarely covered by the decisions of the Hon'ble Supreme Court and High Court. Respectfully following the same, we hold that the reopening in the present case is invalid on this count alone. As the reopening was made contrary to law therefore the assessment proceeding which predicated on the basis of wrong reopening are liable to be quashed.

Issue regarding Borrowed Satisfaction and Lack of Independent Application of Mind

9.5 The entire basis of reopening rests on information received from the Investigation Wing relating to an excel sheet found during search/survey proceedings at the premises of a third party, namely M/s Futuristic Metal Trading Pvt. Ltd. There is nothing on record to show that the Assessing Officer conducted any independent inquiry or verification to establish a live nexus between such information and escapement of income in the hands of the assessee.

9.6 The reasons recorded merely reproduce the information received and mechanically conclude that income has escaped assessment. Such an approach clearly reflects borrowed satisfaction, which has repeatedly been disapproved by various Courts and Tribunals.

9.7 We find support from the coordinate bench decision in *Akbar Ali v. ACIT* and the judgment of the Hon'ble Gujarat High Court in *J.K. Bullions (P.) Ltd.*, wherein it has been held that mere information from the Investigation Wing, without independent application of mind, cannot constitute valid "reason to

believe". Furthermore, we are of the opinion that the underlying documents have not been provided to the assessee and the objection of the assessee challenging the reopening were also not disposed off by the lower authority. Accordingly, on this ground also, the reopening is vitiated.

Issue regarding Jurisdiction under Faceless Assessment Scheme

9.8 We further note that the notice under section 148 was issued by the Jurisdictional Assessing Officer and not by the National Faceless Assessment Centre through automated allocation, as mandated under section 151A read with the CBDT Notification dated 29.03.2022.

9.9 The reassessment proceedings have thus been initiated by an authority not vested with jurisdiction under the Faceless Assessment Scheme. This issue stands conclusively settled by the judgments of the Hon'ble Punjab & Haryana High Court in *Jatinder Singh Bhangu* and *Jasjit Singh* and the Hon'ble Bombay High Court in *Hexaware Technologies Ltd.*

9.10 The coordinate bench decisions in *Vikas Jain v. DCIT* and *Seth Industrial Corporation v. DCIT* also support the assessee. Respectfully following the same, we hold that the notice issued under section 148 is invalid, rendering the entire reassessment void ab initio.

Issue regarding Validity of Notice under Section 143(2)

9.11 The assessee has raised an additional ground challenging the validity of the notice issued under section 143(2) of the Act on the ground that the said notice does not specify the nature of scrutiny, allegedly in violation of CBDT Instruction dated 23.06.2017.

9.12 We have carefully considered the additional ground raised by the assessee and perused the CBDT Instruction dated 23.06.2017 relied upon. A plain reading of the said Instruction reveals that it has not been issued under section 119 of the Income-tax Act, 1961. In the absence of invocation of section 119, such instructions cannot be regarded as statutory directions binding upon the Income-tax Authorities. At best, the said Instruction can be treated as an internal administrative guideline or office instruction meant for

procedural guidance of the field authorities, which does not have the force of law.

9.13 It is well settled that only those circulars or instructions which are issued in exercise of powers conferred under section 119 of the Act are binding on the tax authorities. This legal position stands fortified by the judgment of the Hon'ble Supreme Court in UCO Bank v. CIT (1999) 237 ITR 889 (SC), wherein the Hon'ble Court, in paragraph 6 of the judgment, has held as under:

"The Board, thus, has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 which are binding on the authorities in the administration of the Act. Such circulars, however, are not meant for contradicting or nullifying any provision of the statute."

Further, the Hon'ble Supreme Court clarified the scope and limitation of such circulars in paragraph 7, observing that:

"Such circulars are binding under section 119 so long as they are issued for proper administration of the Act and for mitigating the rigour of the law in favour of the assessee. However, they cannot override the provisions of the statute nor can they impose obligations or confer rights dehors the Act."

9.14 Though certain Coordinate Benches of the Tribunal have taken a view favourable to the assessee on similar facts, we find that the said decisions proceed primarily on equitable considerations rather than on the statutory mandate of section 119. From a conjoint reading of section 119 of the Act and the CBDT Instruction dated 23.06.2017, it is evident that the said Instruction does not derive its authority from the statute and, therefore, cannot be held to be binding in nature so as to invalidate a notice otherwise issued in accordance with section 143(2) of the Act.

9.15 In view of the above discussion and respectfully following the ratio laid down by the Hon'ble Supreme Court in UCO Bank v. CIT (supra), we hold that the additional ground raised by the assessee is devoid of merit.

Issue regarding Addition under Section 69A – Third Party Excel Sheet

9.16 Coming to the merits, the addition of Rs. 55,02,640/- has been made solely on the basis of an unsigned excel sheet allegedly found from the premises of a third party. The said excel sheet neither belongs to the assessee nor has its authorship been established.

9.17 No statement of any person maintaining or owning the excel sheet has been recorded linking the assessee with the alleged cash transactions. No cash trail, corroborative evidence, or independent material has been brought on record.

9.18 Further, the assessee was not supplied with the complete excel sheet nor was any opportunity of cross-examination granted, despite specific requests. This is in clear violation of principles of natural justice as laid down by the Hon'ble Supreme Court in *Andaman Timber Industries* and reiterated in *Kishore Kumar Mohapatra* and *HadotiPunj Vikas Ltd.*

9.19 We also note that the electronic evidence relied upon has not been supported by a certificate under section 65B of the Indian Evidence Act, rendering it inadmissible. The decision of the Hon'ble Madras High Court in *Vetrivel Minerals* squarely applies.

Issue regarding Acceptance of Books, Stock Records and VAT Assessment

9.20 The assessee has maintained audited books of account, quantitative stock records, and has furnished complete documentary evidence including invoices, agreements, bank payments, VAT returns, and customs/import documents. The books of account have not been rejected under section 145.

9.21 Sales corresponding to the alleged purchases have been accepted, and no defect has been pointed out in stock consumption or trading results. VAT assessment has also been completed accepting the transactions.

9.22 It is well settled that when books are not rejected and sales are accepted, no addition on account of alleged bogus purchases or unexplained expenditure can be made. This view is supported by the

judgments of the Hon'ble Supreme Court in *Odeon Builders (P.) Ltd.*, *Tejua Rohit Kumar Kapadia*, and *Century Plyboards (I) Ltd.*

10. In view of the foregoing discussion, we hold that:

- The reassessment proceedings are invalid being barred by the proviso to section 147;
- The notice under section 148 is void ab initio for want of jurisdiction under the Faceless Assessment Scheme;
- The notice under section 143(2) is valid;
- The addition made under section 69A is unsustainable both in law and on facts.

10.1 Accordingly, the reassessment proceedings are quashed. Since the assessment itself is annulled, the addition made on merits does not survive.

11. In the result, the appeal of the Assessee is allowed.

Order pronounced in the open Court on 21/01/2026

Sd/-	**Sd/-**
कृणवन्त सहाय	**ललित कुमार**
(KRINWANT SAHAY)	**(LALIET KUMAR)**
लेखा सदस्य/ ACCOUNTANT MEMBER	**न्यायिक सदस्य /JUDICIAL MEMBER**

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar