

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI**

**SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3763/MUM/2024
(Assessment Year: 2021-2022)
&
ITA No. 3760/MUM/2024
(Assessment Year: 2022-2023)**

Income Tax Officer -13(1)(1), Mumbai

Room No. 225, Aayakar Bhavan, MK Road,
Churchgate, Mumbai – 400020, Maharashtra. **Appellant**

Vs

Jaideep Metallics And Alloys Pvt Ltd.

108, 1st Floor, Neha Industrial Estate,
Behind CCI Ltd., Off Dattapada Road,
Borivali(E), Mumbai – 400066, Maharashtra.
[PAN:AADCJ9275A]

..... **Respondent**

Appearance

For the Appellant/Department : Shri Solgy Jose T. Kottaram

For the Respondent/Assessee : Shri Madhur Agarwal
Shri Jay Bhansali

Date

Conclusion of hearing : 17.10.2024

Pronouncement of order : 31.12.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are two appeals preferred by the Revenue pertaining to Assessment Years 2021-2022 and 2022-2023. Since identical issues were raised in the appeals, the same were heard together and are, therefore, being disposed by way of a common order.

ITA No. 3763/MUM/2024

2. We would first take appeal for Assessment Year 2021-2022 preferred by the Revenue against the order, dated 10/06/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi,

[hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had allowed the appeal against the Assessment Order, dated 29/12/2022, passed under Section 143(3) read with Section 144B of the Act for the Assessment Year 2021-2022.

3. The Revenue has raised following grounds of appeal :

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs.94,30,14,937/-made on account of bogus purchase without considering the fact that the assessee has made purchase transaction with the parties who are either non filer(s) or have reflected lower income/turnover in ITR despite making substantial sales?.*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs.94,30,14,937/- made on account of bogus purchase without considering the fact that most of the parties have not filed their reply or could not trace out in response to notice issued u/s 133(6) of the IT Act, 1961?.*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 94,30,14,937/- made on account of bogus purchase and ignoring the facts that the assessee has not proved the genuineness of the transaction, and credit-worthiness of the parties in respect of purchase transactions, to the satisfaction of the AO, so as to discharge the primary onus?.*
4. *The appellant prays that the order of the CIT(A) on the grounds be set aside and confirm the order of the AO."*

4. The relevant facts in brief are that the Assessee is a resident private limited company engaged in the business of manufacturing various steel products including products such as TMT bars and MS Billets. For the Assessment Year 2021-2022, the Assessee filed return of income on 15/12/2021 declaring total income of INR 27,82,06,970. Subsequently, the case of the Assessee was selected for regular scrutiny.

4.1. During the assessment proceedings Notice, dated 18/10/2022, was issued under Section 142(1) of the Act requiring the Assessee to

produce details of vendors from whom purchases were made by the Assessee. In response, vide response Letter dated 12/11/2022, the Assessee furnished party-wise break-up of purchases giving name of party, address, GST number, PAN, quantity and amount. Further the Assessee also furnished sample copies of invoices, raw material receipt, E-way bill, transportation bills, vehicle RC status, CC TV footage of vehicle as well as HDFC Bank Account Statement for the relevant previous year. Further, the Assessee also furnished purchases register for the Assessment Year 2021-2022 and a reconciliation of sales as per GST-1 with the sales recorded in the books of account.

- 4.2. Thereafter, vide notice dated 15/12/2022, the Assessee was asked to show cause why purchases made from the following non-filers of return of income aggregating to INR.96,46,56,734/- should not be disallowed and added to the income of the Assessee:

S.No.	Name of party	Amount (INR).
1	Sandeep Garg & Sons HUF (Hanuman Enterprises)	57,93,23,193/-
2	Mohd Salim Khan (Star Scrap Steel)	23,78,06,621/-
3	Mashhor Alam Sabir Khan (S K Scrap Trading)	6,50,33,414/-
4	Shafik Ahmed Mumtaz Khan (SK Steel Traders)	1,57,09,904/-
5	Shamsad Abdul Khan (Lateef Traders)	3,21,08,426/-
6	Seosis Mines Private Limited	52,95,509/-
7	Mohamad Umar Choudhary (MU Scrap Traders)	1,66,464/-
8	Naushad Ahamadabdul Latif Khan	26,596/-
9	Nazeem Raza Khan (Sun Enterprises)	1,28,66,916/-
10	Santosh Kisan Thorat	1,99,512
	<i>Total</i>	96,46,56,734/-

In response, the Assessee filed letters, dated 17/12/2022, and 18/12/2022, providing information/details along with supporting documents.

- 4.3. The Assessing Officer also issued notice under Section 133(6) of the

Act to the above said vendors. However, response was received only from three parties. Seosis Mines Private Limited and Santosh Kisan Thorat denied any transactions with the Assessee during the relevant previous year. Sandeep Garg & Sons HUF (Hanuman Enterprises) confirmed the transactions with the Assessee, however, the Assessing Officer noted that Sandeep Garg & Sons, HUF had not filed return of income. The Assessing Officer also noted that Shamshad Abdul Khan (Lateef Traders) had earned miniscule profits while no response was received from the other parties/vendors. After taking into consideration the information and details gathered, the Assessing Officer completed the assessment vide Assessment Order, dated 29/12/2022, passed under Section 143(3) read with Section 144B of the Act at assessed income of INR.122,12,38,554/- after making, inter alia, an addition of INR.94,30,14,937/- holding the following purchases transactions as bogus:

SNo	Name of Party	Amount (INR)
1	Sandeep Garg & Sons HUF (Hanuman Enterprises)	57,93,23,193/-
2	Shamsad Abdul Khan (Lateef Traders)	3,21,08,426/-
3	Mohamad Umar Choudhary (MU Scrap Traders)	1,66,464/-
4	Nazeem Raza Khan (Sun Enterprises)	1,28,66,916/-
5	Mohd Salim Khan (Star Scrap Steel)	23,78,06,621/-
6	Mashhor Alam Sabir Khan (S K Scrap Trading)	6,50,33,414/-
7	Shafik Ahmed Mumtaz Khan (SK Steel Traders)	1,57,09,904/-
	<i>Total</i>	94,30,14,937/-

5. Being aggrieved the Assessee challenged the above addition of INR.94,30,14,937/- before the CIT(A).
- 5.1. Before CIT(A), it was contended on behalf of the Assessee that the Assessing Officer had proceeded to issue notices under Section 133(6) of the Act and had relied upon the information/material so gathered to drawn adverse inference against the Assessee without

confronting the Assessee with such information/material. It was submitted that the Assessee had provided all the necessary documents and discharged the onus cast upon the Assessee in terms of Section 68 of the Act. The Assessee had made detailed submissions (vide letter dated 18/12/2022) which was supported by documents/evidence to establish the genuineness of the purchases from the parties concerned. However, the same were brushed aside by the Assessing Officer who proceeded to make addition of INR.94,30,14,937/- under Section 37(1) of the Act on the basis of conjecture and surmise. It was submitted that merely because the some of the parties/vendors did not file return of income or did not earn good profits would not be sufficient reason to treat the purchases as bogus. There was no reason to doubt the purchases made by the Assessee when the counterparty/vendor had confirmed the same and the Assessee had provided sufficient evidence to discharge the burden by producing the purchase related documents including invoice, e-way bill, raw material receipt, lorry receipt, weight slip, photograph of truck and truck driver, driving license, RC status, screen shot from GST website and bank statement before the Assessing Officer. It was also submitted that the Gross Profit Margin of 10% and the Net Profit Margin of 7.23% was declared by the Assessee for the Assessment Year 2021-2022 and that the same was extremely high and one of the finest in the steel industry. There were no instances of cash purchases and all payments to the vendors were made by way of account payee cheques. The vendors had paid GST and the proof of payment of GST was furnished by the Assessee. All these purchases were recorded into the books of accounts and the same was evidenced from the various ledger extracts furnished by the Assessee. The Assessing Officer had not doubted the accounts maintained by the Assessee and therefore, the same were not rejected. In support of the aforesaid submissions the Assessee furnished the following party-wise details/documents which

were also filed before the Assessing Officer [which have also been placed before the Tribunal as part of the paper-book filed by the Assessee]:

SNo	Particulars	Paper-Book Page No
1.	<p>Purchase from Sandeep Garg and Sons HUF (Proprietor of Human Enterprises)</p> <ul style="list-style-type: none"> – Notice u/s 133(6) issued to Sandeep Garg and Sons HUF (Proprietor of Human Enterprises) dated 13.12.2022 – Reply filed by Sandeep Garg and Sons HUF (Proprietor of Human Enterprises) dated 16.12.2022 along with bank statement for the period 01.04.2020 to 31.03.2021 highlighting the payments received from the assessee, ledger account of the assessee in the books of Human Enterprises for the period 01.04.2020 to 31.03.2021 and signed Confirmation of Accounts of the assessee for the period 01.04.2020 to 31.03.2021 – GST registration certificate of Human Enterprises – Extract of GST website – PAN card copy of Sandeep Garg and Sons HUF – PAN card copy of Sandeep Garg and Sons HUF – PAN card copy of Sandeep Kumar Das – Ledger account of Sandeep Garg and Sons HUF (Proprietor of Human Enterprises) in the books of the assessee for the period 01.04.2020 to 31.03.2021 – Signed Confirmation of Accounts of Sandeep Garg and Sons HUF (Proprietor of Human Enterprises) for the period 01.04.2020 to 31.03.2021 – Sample copy of purchase related documents such as invoice, e-way bill, raw material receipt, lorry receipt/ delivery receipt, weight slip, photograph of the truck and truck driver, driving license, RC status, screen shot from GST website, extract of MS Scrap (Register) and bank statement showing payment made 	1 to 335
2.	<p>Purchase from from Shafik Ahmed Mumtaz Khan (Proprietor of SK Steel Traders)</p> <ul style="list-style-type: none"> – Extract of GST website – Ledger account of SK Steel Traders in the books of the assessee for the period 01.04.2020 to 31.03.2021 – Sample copy of purchase related documents such as invoice, e-way bill, raw material receipt, lorry receipt/ delivery receipt, 	336 to 441

	weight slip, photograph of the truck and truck driver, driving license, RC status, screen shot from GST website, extract from MS Scrap Register and bank statement showing payment made	
3.	<p>Purchase from Mohamad Umar (Proprietor of MU Scrap Traders)</p> <ul style="list-style-type: none"> – Ledger account of M U Scrap Traders in the books of the assessee for the period 01.04.2020 to 31.03.2021 – Bank statement showing payment to MU Scrap Traders – Sample copy of purchase related documents such as invoice, e-way bill, raw material receipt, lorry receipt/ delivery receipt, weight slip, photograph of the truck and truck driver, RC status, screen shot from GST website and extract from MS Scrap Register 	442 to 453
4.	<p>Purchase from Naseem Khan (Proprietor of Sun Enterprises)</p> <ul style="list-style-type: none"> – GST Registration certificate – PAN card of Mr. Naseem Khan – Aadhar card of Mr. Naseem Khan – Extract of GST website – Confirmation of Accounts of Sun Enterprises for the period 01.04.2020 to 31.03.2021 – Ledger account of Sun Enterprises in the books of the assessee for the period 01.04.2020 to 31.03.2021 – Sample copy of purchase related documents such as invoice, e-way bill, raw material receipt, lorry receipt/ delivery receipt, weight slip, photograph of the truck and truck driver, RC status, screen shot from GST website, extract from MS Scrap Register and bank statement showing payment made 	454 to 569
5.	<p>Purchase from Shamshad Khan (Proprietor of Lateef Traders)</p> <ul style="list-style-type: none"> – GST Registration certificate – Acknowledgment copy of Return of Income for Assessment Year 2021-22 – Extract of GST website – Ledger account of Lateef Traders in the books of the assessee for the period 01.04.2020 to 31.03.2021 – Sample copy of purchase related documents such as invoice, e-way bill, raw material receipt, lorry receipt/ delivery receipt, weight slip, photograph of the truck and truck driver, RC 	570 to 714

	<p>status, screen shot from GST website, extract from MS Scrap Register and bank statement showing payment made</p> <ul style="list-style-type: none"> - Signed confirmation of Lateef Traders for the period 01.04.2020 to 31.03.2021 	
6.	<p>Purchases from Mashoor Khan (Proprietor of SK Scrap Trading)</p> <ul style="list-style-type: none"> - GST Registration certificate - PAN card of Mr. Mashoor Khan - Aadhar card of Mr. Mashoor Khan - Extract of GST website - Ledger account of S K Scrap Trading in the books of the assessee for the period 01.04.2020 to 31.03.2021 - Sample copy of purchase related documents such as invoice, e-way bill, raw material receipt, lorry receipt/ delivery receipt, weight slip, photograph of the truck and truck driver, RC status, screen shot from GST website, extract from MS Scrap Register and bank statement showing payment made - Confirmation of S K Scrap Trading for the period 01.04.2020 to 31.03.2021 	715 to 841
7.	<p>Purchases from Mohd Khan (Proprietor of Star Scrap Steel)</p> <ul style="list-style-type: none"> - GST Registration certificate - PAN card of Mr. Mashoor Khan - Aadhar card of Mr. Mashoor Khan - Extract of GST website - Ledger account of Star Scrap Steel in the books of the assessee for the period 01.04.2020 to 31.03.2021 - Sample copy of purchase related documents such as invoice, e-way bill, raw material receipt, lorry receipt/ delivery receipt, weight slip, photograph of the truck and truck driver, RC status, screen shot from GST website, extract from MS Scrap Register and bank statement showing payment made - Signed confirmation of Star Scrap Steel for the period 01.04.2020 to 31.03.2021 	842 to 1115

5.2. The above submissions of the Assessee found favour with the CIT(A). After appreciating the documents/evidence furnished by the Assessee, the CIT(A) deleted the addition of INR.94,30,14,937/-

made by the Assessing Officer on account of bogus purchases, vide order dated 10/06/2024, concluding as under:

"Decision

The grounds number 1, 3 and 4 of Grounds of appeal are interlinked and effectively challenges the disallowance of purchases of Rs. 94,30,14,937/- made from the specified seven parties treating the same as bogus. Since the issued involved is one and the same, these grounds of appeals are decided together. The purchases of Rs. 94,30,14,937/- made from the following seven parties held as bogus:

SNo	Name of Party	Amount (INR)
1	Sandeep Garg & Sons HUF (Hanuman Enterprises)	57,93,23,193/-
2	Shamsad Abdul Khan (Lateef Traders)	3,21,08,426/-
3	Mohamad Umar Choudhary (MU Scrap Traders)	1,66,464/-
4	Nazeem Raza Khan (Sun Enterprises)	1,28,66,916/-
5	Mohd Salim Khan (Star Scrap Steel)	23,78,06,621/-
6	Mashhor Alam Sabir Khan (S K Scrap Trading)	6,50,33,414/-
7	Shafik Ahmed Mumtaz Khan (SK Steel Traders)	1,57,09,904/-
	Total	94,30,14,937/-

Since the issue involves purchases from the above seven parties, I do hereby give my decision in respect of each party as under:

7. Sandeep Garg & Sons HUF (proprietor M/s Hanuman Enterprises):

The appellant company has made total purchases of Rs. 57,93,23,193/- from this party. The appellant submitted the following documentary evidences to substantiate its purchases from this party

Name of party	Documents submitted	Page No of compilation
Sandeep Garg and Sons HUF (Proprietor of Hanuman Enterprises)	xx	346 – 480

7.1 It is observed that the AO has issued notice under section 133(6) to this party and pursuant to such notice, the party has confirmed the transaction with appellant. The party has also submitted confirmation of account, ledger and bank statement wherein payment made by the appellant are duly reflected.

7.2 However in his assessment order AO has asserted that as the party has not filed its income tax return even though it has affected sale of Rs. 57.93 crores to the assessee itself. Thus, the creditworthiness of this party and genuineness of the transaction is not proved.

- 7.3 *On the other side appellant has submitted ledger account and confirmation wherein the purchases of Rs. 57,93,23,193/- and payments thereof is duly reflected and confirmed. It has submitted bank statement wherein payment to this party is duly reflected and matched with the ledger. It has submitted PAN and GST registration certificate of the party. The current status of GST was also submitted. The appellant also submitted sample transaction documents which includes tax invoice, e-way bill, raw material receipt, lorry receipt, weigh slip, photograph of the truck and truck driver, driving license, RC status, screen shot from GST etc. The Appellant also submitted the MS Scrap register wherein each and every purchase of MS Scrap is entered. The AO could not find out a single infirmity in these documents and has neither questioned the genuinity of these documents rather than surprisingly no attempt has been made to cross verify or conduct any enquiry related to any of these documents .The Ld.AO has not drawn any adverse inference against these Documents in his assessment order.*
- 7.4 *The Ld. AO in his assessment order has only reiterated the fact that since the to the appellant has not filed the return of income the party is bogus and hence transaction cannot be treated as genuine. However without challenging the genuineness of the purchase and proving documents submitted in relation to it are not genuine and the appellant cannot be penalized. If the has not filed the return, the Income Tax Department is free to take all possible action against him. Non filing of return by the cannot be a basis of addition in the hands of the appellant as buyer.*
- 7.5 *To conclude, as against the evidence of purchases given by the appellant, the contention of the AO is found to be without any basis and merely based on surmises and conjunctures. Thus, the disallowance of purchase from this party cannot be sustained and is here by deleted. Thus, disallowance of purchase of this party of Rs. 57,93,23,193/- is hereby deleted.*

8. Mohd Salim Khan (Star Scrap Steel):

The appellant company has made total purchases of Rs. 23,78,06,621/- from this party. The appellant submitted the following documentary evidences to substantiate its purchases from this party:

Name of party	Documents submitted	Page No of Compilation
<i>Mohd Khan (Proprietor of Star Scrap Steel)</i>	<i>xx</i>	<i>1187-1461</i>

- 8.1 *It is noted that no specific finding and reasoning whatsoever is given by the AO for disallowance of purchases made from the above party except that the party has not filed its tax return. Rather than it is surprising that AO in his assessment order has not even mentioned that why and on what basis he is treating purchases made from this party as bogus.*
- 8.2 *on the other hand the appellant has submitted ledger account and confirmation wherein the purchases of Rs. 23,78,06,621/- and payments thereof is duly reflected and confirmed. It has submitted bank statement wherein payment to this party is duly reflected and matched with the ledger. It has submitted PAN and GST registration certificate of the party. It has also submitted Aadhar of the proprietor. The current status of GST was also submitted. The appellant also submitted transaction documents which includes tax invoice, e-way bill, raw material receipt, lorry receipt, weigh slip, photograph of the truck and truck driver, driving license, RC status, screen shot from GST etc. The Appellant also submitted the MS Scrap register wherein each and every purchase of MS Scrap is entered. The AO could not find out a single infirmity in these documents and has not made any attempt to make any cross verification or enquiry related to the transaction.*
- 8.3 *To conclude, as against the evidence of purchases given by the appellant, the AO has not adduced single evidence which could suggest otherwise. Thus, the addition of purchase from this party cannot be sustained and deleted. Thus, disallowance of purchase made from this party of Rs. 23,78,06,621/- is hereby deleted.*

9. **Mashoor Alam Sabir Khan (S. K. Scrap Trading):**

The appellant company has made total purchases of Rs. 6,50,33,414/- from this party. The appellant submitted the following documentary evidences to substantiate its purchases from this party:

Name of party	Documents submitted	Page No of compilation
<i>Mashoor Khan (Proprietor of S K Scrap Trading)</i>	<i>xx</i>	<i>1187-1461</i>

- 9.1 *It is noted that no specific finding and reasoning whatsoever is given by the AO for disallowance of purchases made from the above party except that the party has not filed its tax return. Rather than it is surprising that AO in his assessment order has not even mentioned that why and on what basis he is treating purchases made from this party as bogus.*

- 9.2 on the other hand the appellant has submitted ledger account and confirmation wherein the purchases of Rs. 6,50,33,414/- and payments thereof is duly reflected and confirmed. It has submitted bank statement wherein payment to this party is duly reflected and matched with the ledger. It has submitted PAN and GST registration certificate of the party. It has also submitted Aadhar of the proprietor. The current status of GST was also submitted. The appellant also submitted transaction documents which includes tax invoice, e-way bill, raw material receipt, lorry receipt, weigh slip, photograph of the truck and truck driver, driving license, RC status, screen shot from GST etc. The Appellant also submitted the MS Scrap register wherein each and every purchase of MS Scrap is entered. The AO could not find out a single infirmity in these documents and has not made any attempt to make any cross verification or enquiry related to the transaction.
- 9.3 To conclude, as against the evidence of purchases given by the appellant, the AO has not adduced single evidence which could suggest otherwise. Thus, the addition of purchase from this party cannot be sustained and deleted. Thus, disallowance of purchase of this party of Rs. 6,50,33,414/- is hereby deleted.

10. **Shafik Ahmed Mumtaz Khan (S. K. Steel Traders):**

The appellant company has made total purchases of Rs. 1,57,09,904/- from this party. The appellant submitted the following documentary evidences to substantiate its purchases from this party:

Name of party	Documents submitted	Page No of compilation
Shafik Ahmed Mumtaz Khan (S. K. Steel Traders)	xx	679-786

- 10.1 It is noted that no specific finding and reasoning whatsoever is given by the AO for disallowance of purchases made from the above party except that the party has not filed its tax return. Rather than it is surprising that AO in his assessment order has not even mentioned that why and on what basis he is treating purchases made from this party as bogus.
- 10.2 on the other hand the appellant has submitted ledger account and confirmation wherein the purchases of Rs. 1,57,09,904/- and payments thereof is duly reflected and confirmed. It has submitted bank statement wherein payment to this party is duly reflected and matched with the ledger. It has submitted PAN and GST registration certificate of the party. It has also submitted Aadhar of the proprietor. The current status of GST was also submitted. The appellant also submitted transaction documents

which includes tax invoice, e-way bill, raw material receipt, lorry receipt, weigh slip, photograph of the truck and truck driver, driving license, RC status, screen shot from GST etc. The Appellant also submitted the MS Scrap register wherein each and every purchase of MS Scrap is entered. The AO could not find out a single infirmity in these documents and has not made any attempt to make any cross verification or enquiry related to the transaction.

10.3 To conclude, as against the evidence of purchases given by the appellant, the department has not adduced single evidence which could suggest otherwise. Thus, the addition of purchase from this party cannot be sustained and deleted. Thus, disallowance of purchase of this party of Rs. 1,57,09,904/- is hereby deleted.

11. **Shamsad Abdul Latif Khan (proprietor M/s Lateef Traders):**

The appellant company has made total purchases of Rs. 3,21,08,426/- from this party. The appellant submitted the following documentary evidences to substantiate its purchases from this party:

Name of party	Documents submitted	Page No of compilation
Shamsad Abdul Latif Khan (proprietor M/s Lateef Traders)	xx	915-1059

11.1 In the case of this party the AO has issued notice under section 133(6) to this party and the verification unit has duly served upon the notice to the party. The Party has confirmed the transaction and has promised to provide the information within 2-3 days. However, the party has not submitted any response, which shows that the entity is not genuine and has nothing to say in this matter. The appellant though submitted I. T. Return acknowledgement of the party, however, it is noted that total Income of the Party is just 9,10,700/-. The AO further noted that such a meagre income on sale of Rs. 3.21 crores itself to the assessee is not justifiable. 11.2 Again it is noted that AO without making any observation about genuineness of the purchases and documents submitted by the appellant or making any cross verification or enquiry related it, is only focussing on the financial position of the parties from whom purchases are made or the fact that they have not filed the return of income . on the other hand the appellant has submitted ledger account and confirmation wherein the purchases of Rs. 3,21,08,426/- and payments thereof is duly reflected and confirmed. It has submitted bank statement wherein payment to this party is duly reflected and matched with the ledger. It has submitted PAN and

GST registration certificate of the party. The current status of GST was also submitted. The appellant also submitted sample transaction documents which includes tax invoice, e-way bill, raw material receipt, lorry receipt, weigh slip, photograph of the truck and truck driver, driving license, RC status, screen shot from GST etc. The Appellant also submitted the MS Scrap register wherein each and every purchase of MS Scrap is entered. The AO could not find out a single infirmity in these documents.

11.3 To conclude, as against the evidence of purchases given by the appellant, the contention of the AO is found to be without any basis and merely based on surmises and conjunctures. Thus, the addition of purchase from this party cannot be sustained and deleted. Thus, disallowance of purchase of this party of Rs. 3,21,08,426/- is hereby deleted.

12. Mohd. Umar Sohbat Ali Choudhary (Prop. MU Scrap Traders):

The appellant company has made total purchases of Rs. 1,66,464/- from this party. The appellant submitted the following documentary evidences to substantiate its purchases from this party:

Name of party	Documents submitted	Page No of compilation
Mohd. Umar Sohbat Ali Choudhary (Prop. MU Scrap Traders)	xx	787-796

12.1 AO specified that there are some report of Verification unit as reproduced below, however, no such report could be found. The AO also mentioned at one place that the party is a non-filer. It is noted that no specific finding and reasoning whatsoever is given by the AO for disallowance of purchases made from the above party except that the party has not filed its tax return. Rather than it is surprising that AO in his assessment order has not even mentioned that why and on what basis he is treating purchases made from this party as bogus.

12.2 on the other hand the appellant has submitted ledger account and confirmation wherein the purchases of Rs. 1,66,464/- and payments thereof is duly reflected and confirmed. It has submitted bank statement wherein payment to this party is duly reflected and matched with the ledger. It has submitted PAN and GST registration certificate of the party. It has also submitted Aadhar of the proprietor. The current status of GST was also submitted. The appellant also submitted transaction documents which includes tax invoice, e-way bill, raw material receipt, lorry receipt, weigh slip, photograph of the truck and truck driver, driving license, RC status, screen shot from GST etc. The

Appellant also submitted the MS Scrap register wherein each and every purchase of MS Scrap is entered. The AO could not find out a single infirmity in these documents and has not made any attempt to make any cross verification or enquiry related to the transaction.

12.3 To conclude, as against the evidence of purchases given by the appellant, the AO has not adduced single evidence which could suggest otherwise. Thus, the addition of purchase from this party cannot be sustained and deleted. Thus, disallowance of purchase of this party of Rs. 1,66,464/- is hereby deleted.

13. Naseem raza Khan (Sun Enterprises):

The appellant company has made total purchases of Rs. 1,28,66,916/- from this party. The appellant submitted the following documentary evidences to substantiate its purchases from this party:

Name of party	Documents submitted	Page No of compilation
Naseem raza Khan (Sun Enterprises)	xx	799-914

13.1 In his assessment order the AO has asserted that he has deputed verification unit to serve the notice under section 133(6) to this party. However, the inspector of Verification found the addressed premises to be locked and on being inquired, no one having known to Naseem Raza Khan. The AO held that since the entity could not be traced, it is bogus.

13.2 on the other hand the appellant has submitted ledger account wherein the purchases of Rs. 1,28,66,916/- and payments thereof is duly reflected and confirmed. It has submitted bank statement wherein payment to this party is duly reflected and matched with the ledger. It has submitted GST registration certificate of the party. The appellant also submitted sample transaction documents which includes tax invoice, e-way bill, raw material receipt, lorry receipt, weigh slip, photograph of the truck and truck driver, driving license, RC status, screen shot from GST etc. The Appellant also submitted the MS Scrap register wherein each and every purchase of MS Scrap is entered. The AO could not find out a single infirmity in these documents. Again it is mentioned that AO has not made any efforts whatsoever to verify the genuiness of the transaction or documents submitted to prove it .He has only relied upon third parties without making his own verification and enquiries and has also failed to cross examined the appellant in cases where third party was not available.

13.3 To conclude, as against the evidence of purchases given by the

appellant, the AO has not adduced single evidence which could suggest otherwise. Thus, the addition of purchase from this party cannot be sustained and deleted. Thus, disallowance of purchase of this party of Rs. 1,28,66,916/- is hereby deleted.

14. *It is further observed that the AO has not made any challenge to the sales made and neither rejected appellant books of accounts. Without rejecting the books of accounts or adding the purchases of the assessee as his income is also not justified. Thus, to conclude, I find that in this case, the addition made by the AO is purely on the basis of guess work, surmises and conjectures. The AO could not adduce single evidence to prove that the purchases from the above parties and not genuine and not bonafide except a general remark that tax return not filed/ filed with lesser income. On the other hand, the appellant established beyond doubt that the purchases made is genuine and supported by overwhelming documents which remained uncontroverted. Further books of the accounts of the appellant were not rejected. The corresponding sale against the above purchases were offered to tax. The ledger accounts of purchase parties do not indicate its bogus nature. Thus, the disallowance of purchase of Rs. 94,30,14,937/- has no leg to stand, therefore, entire purchase disallowance of Rs. 94,30,14,937/- is hereby deleted.*

The appellant gets a relief of Rs. 94,30,14,937/-"

6. Being aggrieved by the above relief granted by the CIT(A), the Revenue has preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 2 above.
- 6.1. The Learned Departmental Representative relied upon the Assessment Order and submitted that the findings returned by the Assessing Officer were not appreciated by the CIT(A). It was submitted that Sandeep Garg & Sons HUF (Hanuman Enterprises) had confirmed the transaction in response to notice issued under Section 133(6) of the Act. However, the said party had not filed its return of income. Shamsad Abdul Khan (Lateef Traders) had not responded to the notice issued under Section 133(6) of the Act and had declared meager income for the relevant assessment year. As regards, the balance five vendors are concerned, the aforesaid vendors had not responded to the notice issued under Section 133(6) of the Act. Thus, on the basis of the aforesaid, it was

submitted by the Learned Departmental Representative that the purchases aggregating to INR.94,30,14,937/- made by the Assessee were in the nature of bogus purchases.

- 6.2. Per contra the Learned Authorised Representative reiterated the stand taken before the CIT(A) and relied upon the favorable findings returned by the CIT(A). It was submitted that the Assessee was not confronted with the information gathered by the Assessing Officer under Section 133(6) of the Act and therefore, no adverse inference can be drawn against the Assessee. Further, no notices under Section 133(6) of the Act were sent to Mohd Salim Khan (Star Scrap Steel), Mashhor Alam Sabir Khan (S K Scrap Trading), and Shafik Ahmed Mumtaz Khan (SK Steel Traders) and that the Assessing Officer had proceeded to disallow purchases from the aforesaid vendors without having any basis. Without prejudice to aforesaid, it was submitted that, in any case, the CIT(A) had granted relief to the Assessee after appreciating the various documents/evidence furnished by the Assessee in relation to purchases made from each of the seven parties/vendors. In this regard, the Learned Authorised Representative for the Assessee referred to paragraph 3.12 to 3.19 of the order passed by CIT(A) and submitted that all purchases made by the Assessee were genuine and that the same were supported by the proper documents/evidence.
7. We have given thoughtful consideration to the rival submission and have perused the material on record including the orders passed by the authorities below and the documents placed before us as part of the paper book.
- 7.1. We find that the addition/disallowance made by the Assessing Officer on account of bogus purchases have been deleted by the CIT(A) by placing reliance upon the documents/evidence furnished by the Assessee. The Assessee has furnished documents/details supporting

both purchase as well as movement of goods. The CIT(A) has observed that the Revenue has failed to point out any discrepancy in the same. Even during the appellate proceedings before us, the Revenue has failed to bring out any defect in the documents/evidence furnished by the Assessee. Though the documents/evidence taken into consideration by the CIT(A) were also placed before the Assessing Officer during the course of assessment proceedings, the same was merely brushed aside by the Assessing Officer without carrying out any further inquiry/investigation. The sample documents furnished by the Assessee, which are representative of the purchase transactions undertaken by the Assessee, include e-way bill, lorry receipt, weight slip, photograph of truck, and registration certificate of the vehicle. The aforesaid documents/evidence shows the purchase as well as the movement of goods purchased. The findings returned by the CIT(A) in the order impugned are based upon the documents/evidence furnished by the Assessee and that the same have gone uncontroverted during the appellate proceedings before the Tribunal. The Revenue has failed to bring on record any material to doubt the veracity of the documents/evidence filed by the Assessee.

- 7.2. Further, we note that out of total purchases of INR.250,37,84,333/- made by the Assessee during the relevant previous year, the purchases of INR.94,30,14,937/- were held to be bogus by the Assessing Officer. In order to support the contention that aforesaid purchases were genuine in nature, it was submitted on behalf of the Assessee that the Assessee had declared gross profit margin of 10% for the relevant assessment year as per the tax audit report in Form 3CD. It is not the case of the Revenue that the purchases were not entered in the books of accounts or that the payment for the purchases under consideration was made in cash. We note that the Assessing Officer has not rejected the books of accounts of the

Assessee. The quantitative details of raw material and products manufactured/sold by the Assessee as well as the figures of sales and opening/closing stock contained in the audited financial statements and tax audit report have also not been doubted by the Assessing Officer.

- 7.3. We also find merit in the contention advanced on behalf of the Assessee that the information/details gathered by the Assessing Officer in exercise of powers conferred under Section 133(6) of the Act cannot be relied upon to draw adverse inference against the Assessee without confronting the Assessee with the same and more so, where the Assessee has placed on record documents/evidence supporting the stand taken by the Assessee.
8. In view of the paragraph 7 to 7.3 above, we hold that there is nothing on record to persuade us to take a different view of the matter from the one taken by the CIT(A) while deleting the addition/disallowance made by the Assessing Officer in respect of purchases of INR.94,30,14,937/- made by the Assessee during the previous year relevant to the Assessment Year 2021-2022. Concurring with the CIT(A), we hold that the details, documents and evidence furnished by the Assessee outweigh the factors pointed out by the Assessing Officer, shifting the preponderance of probability in favour of the stand taken by the Assessee and against the Revenue. Accordingly, we decline to interfere with the order passed by the CIT(A) on this issue. Ground 1 to 4 raised by the Revenue are dismissed.

ITA No. 3760/MUM/2024 (Assessment Year 2022-2023)

9. Now we will take up the appeal for Assessment Year 2022-2023 preferred by the Revenue against the order, dated 10/06/2024, passed by the CIT(A) under Section 250 of the Act whereby the Ld. CIT(A) had allowed the appeal against the Assessment Order, dated 27/03/2024, passed under Section 143(3) read with Section 144B of

the Act for the Assessment Year 2022-2023.

10. The Revenue has raised following grounds of appeal :

- "1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs.76,56,99,535/-made on account of bogus purchase without considering the fact that the assessee has made purchase transaction with the parties who are either non filer(s) or have reflected lower income/turnover in ITR despite making substantial sales?.
2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs.76,56,99,535/- made on account of bogus purchase without considering the fact that most of the parties have not filed their reply or could not trace out in response to notice issued u/s 133(6) of the IT Act, 1961?.
3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 76,56,99,535/- made on account of bogus purchase and ignoring the facts that the assessee has not proved the genuineness of the transaction, and credit-worthiness of the parties in respect of purchase transactions, to the satisfaction of the AO, so as to discharge the primary onus?.."

11. For the Assessment Year 2022-2023, in the facts and circumstances identical to the Assessment Year 2021-2022, the Assessing Officer made addition of INR.76,56,99,535/- in respect of the purchases made from the following:

S.No.	Name of party	Amount (INR).
1	Farooq Rahim Khan	6,72,89,484/-
2	Mohd Salim Khan (Star Scrap Steel)	69,84,10,051/-
	Total	76,56,99,535/-

12. The above addition of INR.76,56,99,535/- was which was deleted by the CIT(A) vide order, dated 10/06/2024, in appeal preferred by the CIT(A) concluding as under:

"Decision

The grounds number 1 to 5 of Grounds of appeal are interlinked and effectively challenges the disallowance of purchases of Rs. 76,56,99,535/ made from the specified two parties treating the same

as bogus. Since the issue involved is one and the same, these grounds of appeals are decided together. The purchases of Rs. 76,56,99,535/- made from the following two parties held as bogus:

S. No	Name of Party	Amount(Rs).
1	FAROOQ RAHIM KHAN	6,72,89,484/-
2	MOHD SALIM KHAN	69,84,10,051/-
	TOTAL	76,56,99,535/-

Since the issue involves purchases from the above two parties, I do hereby give my decision in respect of each party as under:

6.1 Farooq Rahim Khan (Prop. United Steel Traders):

The appellant company has made total purchases of Rs. 6,72,89,484/- from this party. The appellant submitted the following documentary evidences to substantiate its purchases from this party:

Name of party	Documents submitted	Page No of compilation
Farooq Rahim Khan (Proprietor of United Steel Traders)	• GST Registration Certificate	265-267
	• PAN Card of Farooq Rahim Khan	268
	• Aadhar Card of Farooq Rahim Khan	269-270
	• Extract from GST website showing the current status	271-276
	• Photograph of Godown of United Steel Traders	277
	• Ledger copy for the year 01.04.2021 to 31.03.2022.	278-306
	• 12 sample purchase related document i.e. invoice, e-way bill, raw material receipt, lorry receipt, weight slip. photograph of truck and truck driver, driving license, RC status, bank statement of assessee, extract from MS Scrap (Raw Material) Inward Register maintained at Factory etc.	307-431

6.2 In his assessment order the AO has asserted that he has sent the notice under section 133(6) to this party for which assessee has not replied further the assessee is a non-filer, hence the party and transactions made by the appellant with it are bogus

6.3 On the other hand the appellant has submitted ledger account wherein the purchases of Rs. 6,72,89,484/- and payments

thereof is duly reflected and confirmed. It has submitted bank statement wherein payment to this party is duly reflected and matched with the ledger. It has submitted GST registration certificate of the party. The appellant also submitted sample transaction documents which includes tax invoice, e-way bill, raw material receipt, lorry receipt, weigh slip, photograph of the truck and truck driver, driving license, RC status, screen shot from GST etc. The Appellant also submitted the MS Scrap register wherein each and every purchase of MS Scrap is entered. The AO could not find out a single infirmity in these documents.

Again it is mentioned that AO has not made any efforts whatsoever to verify the genuineness of the transaction or documents submitted to prove it. He has only relied upon third parties without making his own verification and enquiries and has also failed to cross examined the appellant in cases where third party was not available.

It is further noted that no specific finding and reasoning whatsoever is given by the AO for disallowance of purchases made from the above party except that the party has not filed its tax return and has been non-responsive to notice u/s 133(6) of the Act. The AO has assumed that the non-filing of the Return of Income is a clear indication that this entity is showing entries in its books that are not backed by actual sales and purchases.

- 6.4 The only ground of the Ld. AO that Income Tax return is not filed by the seller party and it is non-responsive to notice u/s 133(6) of the Act. There is no indication in assessment order that the notice u/s 133(6) of the Act has not been served upon the party, hence the existence of party is not disputed. I note that at least for these reasons the appellant cannot be penalized. If the seller has not filed the return and not responded to notice u/s 133(6) of the Act, the Income Tax Department is free to take all possible action against him. Non filing of return by the seller and/ or non-response to notice u/s 133(6) cannot be a basis of addition in the hands of the appellant as buyer.
- 6.5 To conclude, as against the evidence of purchases given by the appellant, the contention of the AO is found to be without any basis and merely based on surmises and conjunctures. Thus, the disallowance of purchase from this party cannot be sustained and deleted. Thus, disallowance of purchase of this party of Rs. 6,72,89,484/- is hereby deleted.

7. Mohd Salim Khan (Star Scrap Steel):

The appellant company has made total purchases of Rs. 69,84,10,051/- from this party. The appellant submitted the following documentary evidences to substantiate its purchases from this party:

Name of party	Documents submitted	Page No of Compilation
Mohd Salim Khan (Proprietor of Star Steel)	• GST registration Certificate of Mohd. Salim Khan	432-434
	• PAN card of Mohd Salim Khan	435
	• Aadhar card of Mohd Salim Khan	436
	• Extract from GST website showing the current status	437-438
	• Ledger account for the year 01.04.2021 to 31.03.2022.	439-760
	• 26 sample purchases related documents i.e. invoice, e-way bill, raw material receipt, lorry receipt, weight slip, photograph of truck and truck driver, driving license, RC status, bank statement of assessee, extract from MS Scrap (Raw Material) Inward Register maintained at Factory etc.	761-1020
	• Screen shot of reply filed by Mohd Salim Khan (Proprietor of Star Scrap Steel) to the notice issued u/s 133(6).	1027
• Copy of return of income filed for A.Y.2022- 23 by Mohd Salim Khan (Proprietor of Star Scrap Steel).	1028	

7.1 In the case of this party the AO has issued notice under section 133(6) to this party The party though submitted I. T. Return acknowledgement of the party, however, it is noted by the AO that total Income of the Party is just 9,10,700/-. The AO further noted that such a meager income on sale of Rs. 69,84,10,051/- itself to the assessee is not justifiable.

7.2 Again it is noted that AO without making any observation about genuineness of the purchases and documents submitted by the appellant or making any cross verification or enquiry related it, is only focusing on the financial position of the parties from whom purchases are made or the fact that they have not filed the return of income. On the other hand the appellant has submitted ledger account and confirmation wherein the purchases of Rs. 69,84,10,051 /- and payments thereof is duly reflected and confirmed. It has submitted bank statement wherein payment to this party is duly reflected and matched with the ledger. It has submitted PAN and GST registration certificate of the party. The current status of GST was also submitted. The appellant also submitted sample transaction documents which includes tax invoice, e-way bill, raw material receipt, lorry receipt, weigh slip,

photograph of the truck and truck driver, driving license, RC status, screen shot from GST etc. The Appellant also submitted the MS Scrap register wherein each and every purchase of MS Scrap is entered. The AO could not find out a single infirmity in these documents.

- 7.3 I further note that no specific finding and reasoning whatsoever is given by the AO for disallowance of purchases made from the above party except that after making sales of such substantial amount to the assessee, the party has filed ITR amounting to only a meager amount of Rs. 25,83,320/-.
- 7.4 The only ground of revenue is that the party has declared lower income in Income Tax return. I note that at least for this reason the appellant cannot be penalized. If the seller has declared lower income in the return, the Income Tax Department is free to take all possible action against him. Declaration of lower income in return by the seller cannot be a basis of addition in the hands of the appellant as buyer.
- 7.5 To conclude, as against the evidence of purchases given by the appellant, the department has not adduced single evidence which could suggest otherwise. Thus, the addition of purchase from this party cannot be sustained and deleted. Thus, disallowance of purchase made from this party of Rs. 69,84,10,051/- is hereby deleted.
8. It is further observed that the AO has not made any challenge to the sales made and neither rejected appellant books of accounts. Without rejecting the books of accounts or adding the purchases of the assessee as his income is also not justified.

(9) 1.The appellant has further submitted that the Gross Profit Ratio and Net Profit ratio of the appellant company for the current year as well as for earlier years are as under:

Particulars	Assessment Years		
	2022-23	2021-22	2020-21
Turnover	6,43,22,07,459	3,62,98,27,724	2,73,88,76,101
Gross Profit	76,43,33,356	37,50,41,475	7,41,40,784
Gross Profit Ratio	11.88%	10.33%	2.85%
Net Profit	58,30,20,895	26,33,31,446	1,44,07,497
Net Profit Ratio	9.06%	7.25%	.53%

As it can be seen that the gross profit ratio is 11.88%. The net profit is Rs 58,30,20,895/-. The net profit (before tax) ratio is 9.06%. Such ratios are extremely high and are one of the finest in the steel industry. Which shows that both the Gross Profit ratio and net profit ratio has increased during the year Further, the gross profit ratio for the current year stands at 11.88% which is very much higher on any given parameter which further

substantiates and strengthen the claim and genuineness of the transactions.

(10)1. Thus, to conclude, I find that in this case, the addition made by the AO is purely on the basis of guess work, surmises and conjectures. The AO could not adduce single evidence to prove that the purchases from the above parties are not genuine and not bonafide except a general remark that tax return not filed/ filed with lesser income. On the other hand, the appellant established beyond doubt that the purchases made is genuine and supported by overwhelming documents which remained uncontroverted. Further books of the accounts of the appellant were not rejected. Quantitative details and stock records are maintained. The GP and NP ratio declared are quite on the higher side. The corresponding sale against the above purchases were offered to tax. The ledger accounts of purchase parties do not indicate its bogus nature. Thus, the disallowance of purchase of Rs. 76,56,99,535/- has no leg to stand, therefore, entire purchase disallowance of Rs. 76,56,99,535/- is hereby deleted.

(11) 1. xx

(12) 1. xx

Since penalty under section 270A and 271AAD(1)(i) are not yet levied; these grounds are premature and hence, dismissed.

(13) 1. Ground No. 8 of grounds of appeal is general in nature, hence, requires no separate adjudication.

14. Conclusion: In the result, the appeal of the appellant is hereby allowed.” (Emphasis Supplied)

13. Now Revenue is in appeal before us challenging the above relief granted by the CIT(A).

14. During the course of hearing both the sides adopted the arguments made in relation to identical issues raised in appeal for the Assessment Year 2021-2022. Taking note of parity of facts and adopting the reasoning given while adjudicating grounds raised by the Revenue in appeal for the Assessment Year 2021-2022, we decline to interfere with the order passed by the CIT(A). The findings returned by the CIT(A), which are based upon the documents furnished by the Assessee supporting purchase as well as movement of goods, have gone uncontroverted during the appellate

proceedings before the Tribunal. In our view, the onus was on the Assessing Officer to bring on record material challenging the veracity of the documentary evidence furnished by the Assessee. There is nothing on record to persuade us to take a different view of the matter from the one taken by the CIT(A) while deleting the addition/disallowance made by the Assessing Officer in respect of purchases of INR.76,56,99,535/- made by the Assessee during the previous year relevant to the Assessment Year 2022-2023. Thus, concurring with the CIT(A), we hold that the details, documents and evidence furnished by the Assessee outweigh the factors pointed out by the Assessing Officer. Accordingly, we decline to interfere with the order passed by the CIT(A) on this issue. Ground No. 1 to 3 raised by the Revenue are dismissed.

15. In result, the present appeal preferred by the Revenue for the Assessment Year 2021-2022 (ITA No.3763/Mum/2024) and Assessment Year 2022-2023 (ITA No.3760/Mum/2024) are dismissed.

Order pronounced on 31.12.2024.

Sd/-
(Girish Agrawal)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 31.12.2024
Milan, LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai