

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA Nos. 3912 & 3941/MUM/2023
Assessment Years: 2009-10 & 2010-11**

Rajnish Bharti HUF,
4/281, Opp. Britannia Biscuit
Company, Reay Road, Darukhana,
Mumbai-10.

**PAN NO. AAEHR 6595 K
Appellant**

Vs.

ITO, Circle 20(3)(1),
Piramal Chambers Lalbaug,
Mumbai.

Respondent

**ITA Nos. 4378 & 4377/MUM/2023
Assessment Years: 2009-10 & 2010-11**

ITO-41(3)(3), BKC
436, 4th floor, Kautaliya Bhavan,
Mumbai-400051.

Appellant

Vs.

Rajnish Bharti HUF,
4/281, Opp. Britannia Biscuit
Company, Reay Road, Darukhana,
Mumbai-10.

**PAN NO. AAEHR 6595 K
Respondent**

Assessee by : Mr. C.V. Jain
Revenue by : Mrs. Sanyogita Nagpal, CIT-DR

Date of Hearing : 26/11/2024
Date of pronouncement : 30/01/2025



ORDER

PER OM PRAKASH KANT, AM

The captioned appeals by the assessee and cross appeals by the Revenue are directed against two separate orders, both dated 03.10.2023, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2009-10 & 2010-11 respectively. As identical issues-in-dispute are involved in both these appeals, therefore, same were heard together and disposed off by way of this consolidated order for the sake of convenience.

2. Firstly, we take up the appeal of the assessee and Revenue for assessment year 2009-10. The relevant grounds raised are reproduced as under:

Assessee’s Ground

1. *The Learned Commissioner of Income Tax Appeal (Ld. CITA) has erred in upholding the impugned assessment order passed by the Learned Assessing Officer (Ld. A.O.) u/s 143(3) r.w.s. 147 without issuing/ serving any notice u/s 148. The Ld. CITA has further erred in not considering the fact that the Ld. A.O. had **failed to provide any proof of issue/ service of notice u/s 148**, despite specific request being made from the appellant.*
2. *Without prejudice to the issue of notice u/s 148, the Ld. CITA has further failed to appreciate that the reassessment proceedings were null and void as the Ld. A.O. had invoked the provisions of sec 147 **without there being any reason to believe** that the income had escaped assessment.*



3. Without prejudice, the Ld. CITA has failed to appreciate that the reassessment proceedings were bad in law as the Ld. A.O. had failed to follow the procedure laid down by the Supreme Court of India in case of GKN Drive Shaft as he had **not dealt with the objections raised by the appellant** against re-opening proceedings because no inspection of documents and/or examination/ cross examination of suspicious parties was provided.
4. The impugned assessment order is barred by the Law of limitation as **notice in this case was never served u/s 148** and accordingly notice issued u/s 142(1) was time barred. Also the impugned assessment order has been passed without jurisdiction in law.
5. On the facts, in the circumstances of the case and in law, Ld. CITA has erred in upholding the disallowance of Rs.2,15,36,916/- made by the Ld. AO.by disallowing 12.50% of the alleged bogus purchases worth Rs. 17,22,95,332/-, merely on the basis of doubt, surmises and conjectures without considering the relevant facts on record and without bringing on record any adverse evidence.
6. On the facts, in the circumstances of the case and in law, Ld. CITA has erred in sustaining the addition of 2% of bank deposits amounting to Rs. 10,55,84,256/-without considering the fact that total bank deposits were duly explained and full reconciliation of bank deposits with sales and other business transactions was made available to the CITA. The Ld. CITA has further erred to appreciate that the Ld. A.O. had grossly erred in making an addition of bank deposits under the pretext of unexplained credits in bank accounts without considering the fact that the deposits and credits in the said bank accounts had appeared due to a transfer from another bank account of the appellant, so they were not independent credits and accordingly there was no income due to these credits.
7. The appellant therefore prays your honour to be kind enough to-

1. Admit the appeal and grant stay against the demand.
2. Quash the order of the Ld AO passed u/s 143(3) r.w.s 147 of IT Act, 1961,
3. Delete the disallowance/addition of Rs2,15,36,916/- and Rs.21,11,685/-sustained by the Ld. CITA.
4. Grant any other relief deemed fit by your honours.



Revenue's Ground:

1. "Whether on the facts and circumstances of the case and in law the Ld CIT(A) has erred in restricting the addition made of Rs.10,55,84,256/-to 2% of the unexplained credits in the bank account?"

2. "Whether on the facts and circumstances of the case and in law the Ld CIT(A) has erred in not considering the fact that the assessee failed to furnish any explanation, on the credits in the bank account held by assessee in HDFC and DCB banks, during the assessment proceedings?"

3. Briefly stated, facts of the case are that the assessee was engaged in trading of goods including steel products through his proprietary concern namely M/s Bharti Tradelink. For the year under consideration, the assessee filed return of income on 27.07.2009 declaring total income at Rs.2,50,580/-. The return of income filed by the assessee was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, the Assessing Officer received information from the two sources. **Firstly**, information from the Director General of Income-tax (Investigation), Mumbai was received vide their letter dated 26.12.2012 to the effect that assessee had obtained bogus bills to reduce and suppress profit. The information contained evidences gathered by the sales tax authorities of Maharashtra during inquiry proceedings against 'hawala' dealers, who had issued bogus bills to beneficiaries for suppressing or reducing their profit. The information provided by the Investigation Wing contained name of the parties who issued bogus bills to assessee and amount of bogus



bills obtained, aggregating to Rs.17,22,95,332/-. **Secondly**, information was received from the Asst. Director of Income-tax Investigation, Unit Mumbai wherein it was mentioned that credits/deposits of Rs.2,30,04,247/- in various bank accounts of the assessee were appearing and source of deposits those could not be explained by the assessee. In view of the information received, the Assessing Officer recorded reasons to believe in terms of section 147 of the Act that income escaped assessment and accordingly, he issued notice u/s 148 of the Act on 22.03.2016. The said notice returned back by the postal authorities with the remark 'left'. The said notice was thereafter served on the assessee by way of affixture by the Inspector of the Office of the Assessing Officer. Details of subsequent notices issued by the AO as mentioned in assessment order are reproduced as under:

(i) Notices u/s 142(1) of the Act were issued on 17.06.2016 and 30.06.2016 by the Assessing Officer, which were sent by postal authorities but were returned back with the remark of the postal authorities that party 'left/not known'.

(ii) Thereafter, again one more notice was issued on 26.07.2016 at another address namely Flat No. 506/B Oversine Nagar, Rajendra Vihar, Malad West, Mumbai-400064 fixing the hearing on 05.08.2016. The said notice was also sent on e-mail IDs of assessee which were gathered by the



Assessing Officer from record. But, no compliance was made on the scheduled date of the hearing.

(iii) Thereafter, on 10.08.2016 representative of assessee from Chartered Accountant firm namely M/s Jain Ambavat & Associates, sought for adjournment and on their request matter was adjourned to 16.08.2016. But none attended on the said date.

(iv) Thereafter, on 17.08.2016 M/s Jain Associates filed a letter stating that assessee had not received any notice u/s 148 of the Act. The Ld. Authorized Representative also provided address of the assessee at Flat No. 506/B Evershine Nagar Malad West, Mumbai.

(v) Accordingly, the Assessing Officer issued a fresh notice u/s 142(1) of the Act on 18/08/2016 clarifying with regard to service of the notice u/s 148 of the Act and matter was fixed for hearing on 30.08.2016. But no compliance was made on the part of the assessee.

(vi) **The Assessing Officer again issued notice on 08.09.2016 along with a fresh copy of the notice u/s 148 of the Act and the matter was fixed for hearing on 19.09.2016** but same was also not complied by the assessee.

(vii) Thereafter, the Assessing Officer further provided a final



opportunity on 26.10.2016 at the Mumbai address which was provided by the authorized representative of the assessee and also on the last address given in the return of income. The Assessing Officer also provided reasons of reopening but said notice also returned back by the postal authorities with the remark 'un-claimed'.

(viii) The Assessing Officer again on 8/11/2016 issued a show cause notice at both the addresses of assessee and one copy was e-mailed to the assessee and authorized representative of the assessee and the assessee was requested to appear for hearing on 16.11.2016, but again no compliance was made on the part of the assessee except a letter seeking proof of issue and service of the notice u/s 148 of the Act and stated that the notice u/s 148 of the Act was not served on the assessee and matter was time barred.

3.1 In background of the above facts, the Assessing Officer further issued a final show cause notice on 16.11.2016 fixing the matter for hearing on 21.11.2016. In the said notice, the Assessing Officer proposed additions in respect of deposits in bank as well as bogus purchases. As matter was approaching toward limitation for passing the assessment order, on 22.11.2016 the assessee filed a letter objecting to the reopening of the assessment. The Assessing Officer disposed off the said objections vide letter dated 22.11.2016.



On 28.11.2016, the assessee filed balance sheet, profit and loss account and detail of the income along with tax audit report. The assessee stated that books of the assessee had been seized by the sales tax authorities. On verification of the impounding order issued by Sales Tax Authorities, the Assessing Officer found that only purchase and sales register had been impounded by the concerned authority. Still, the assessee did not file the other books of accounts including other documents. The Assessing Officer in the assessment order has discussed the objections raised by the assessee regarding service of the notices u/s 148 of the Act as well as reopening of the assessment. The Assessing Officer rejected the contentions/objections of the assessee and thereafter decided the issue on merit. Regarding the undisclosed bank accounts, after verification with the balance sheet of the assessee, the Assessing Officer found that bank accounts maintained with the 'DCB Bank' and the 'HDFC Bank' were not appearing in the balance sheet. The assessee was asked to explain the source of the deposits in those bank statements. However, the assessee did not file any reply in respect of source or credit appearing in those bank statements and therefore, the Assessing Officer held the total deposit of Rs.10,55,84,256/- appearing in those bank accounts of the assessee as unexplained cash credits. Regarding the bogus purchases, also the Assessing Officer asked the assessee to support the claim of the purchases but the assessee did not file either



purchase bills, detail of the payments, transportation detail, stock register etc. on the plea that books of the assessee were impounded by the Sales Tax Department. The Assessing Officer issued notice u/s 133(6) of the Act to the parties however same were return unserved and therefore, the Assessing Officer asked the assessee to produce those parties for verification. Thereafter, the assessee filed ledger account in respect of those parties and claimed that payment were made by the account payee cheque but the Assessing Officer rejected the contention of the assessee that account payee cheque was not conclusive evidence to prove genuineness of the transaction. The Assessing Officer asked the assessee to produce those parties or the brokers or third party evidences to support the purchases, transport receipt or lorry receipts or octroi receipts particularly in view of the fact that those seller parties had already admitted before the Sales Tax Authorities the fact of issuing only accommodation bills. The Ld. Assessing Officer recorded that the assessee failed to discharge its burden of the proof and accordingly, he relying on the decision of the Ahmadabad Bench of Tribunal in the case of **Vijay Proteins Ltd. (1990) 15 ITD 428**, held 12.5% of such purchases as unexplained in terms of section 69C of the Act, which was worked out to Rs.2,15,36,960/-. In this manner in the assessment order passed, the Assessing Officer made two additions, **firstly**, addition of Rs.10,55,84,257/- for unexplained



credit/deposit in Banks and **secondly**, addition of Rs.2,15,36,916/- for bogus purchases u/s 69C of the Act.

4. On further appeal, the assessee challenged the validity of the reassessment as well as addition on the merit. The assessee could not succeed on the legal ground challenging validity of the reassessment however on the ground of unexplained deposits in the bank account, the Ld. CIT(A) assumed the deposits as part of the accommodation entry as held in the case of Shri Rajnish Bharti (Individual) by the Ld. First Appellate Authority and estimated commission @ 2% and thus restricted the addition in respect of unexplained deposit in the bank to 2% of total addition of Rs.10,55,84,256/-. The addition of Rs.2,15,36,916/- in respect of the bogus purchases was however sustained. Aggrieved with the legal ground challenging validity and additions sustained in respect of bogus purchases as well as unexplained deposits, the assessee is in appeal whereas in respect of relief granted on unexplained deposit in the bank, the Revenue is in appeal.

4.1 We have heard rival submissions and material placed on record including Paper Book containing pages 1 to 127 filed by the assessee and copy of various decisions filed by both the parties. The Departmental Representative also produced assessment folder and filed copies of various notices/documents from the assessment folder, which were taken on record. We have taken note of all the



decisions cited by the parties but have referred the decisions which are relevant to the facts of the case and necessary for disposal of the issue-in-dispute before us.

5. In the grounds, the assessee has challenged the validity of the reassessment by way of various propositions. In ground No. 1, the assessee has challenged validity of 'issue of notice' as well as 'service of notice' u/s 148 of the Act. In ground No. 2, the assessee has challenged reassessment proceedings on the ground that there are no reasons to believe. In ground No. 3, the assessee has challenged reassessment for not disposing the objection of the assessee. In ground No. 4 also reassessment has been challenged on the ground of the non-service of the notice u/s 148 of the Act as well as due to lack to approval by the higher authorities. The issues involved in the grounds are dealt as under:

5.1 First issue raised by the assessee is of non-issue of the notice u/s 148 of the Act. However a copy of the said notice was produced and filed by the Ld. DR before us. From the said document, it is clear that notice has been printed/computer generated and which is issued on 22.03.2016. The notice is also duly signed by the Assessing Officer. A copy of said notice was also provided to the ld Counsel for the assessee. Therefore, the contention of the Ld. counsel for the assessee that no notice u/s 148 of the Act was issued by the Assessing Officer is totally unfounded. From the



assessment order, we note that copy of said notice was also provided to the assessee on many occasions during assessment proceedings. Despite knowing this fact very well that the notice was duly issued, the assessee raised this frivolous ground just to waste time of the authorities. We condemn such practice on the part of the assessee. The ground No. 1 of the appeal to the extent is according dismissed.

6. The assessee has raised next issue of service of notice through ground No. 1 and ground No. 4 of the appeal. The section 149 of the Act requires that notice u/s 148 should be issued within the limitations provided. The relevant provision during the period is reproduced as under:

“S. 149. Time limit for notice. [1] No notice under section 148 shall be issued for the relevant assessment year,—

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) [or clause (c)];

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;]”

6.1 It is evident that the provisions of the Act do not specify limitation for service of the notice but the limitation has been provided of the issue of notice u/s 148 of the Act. The limitation for service of notice has been provided in section 148 of the Act, where it is mentioned that *before making assessment, reassessment or re-*



*computation under section 147 of the Act, the Assessing officer shall serve notice on the assessee. This issue came up before the **Hon'ble Supreme Court in the case of R.K. Upadhyaya v. Shanabhai P. Patel reported in 166 ITR 163 (SC)**. The Hon'ble Supreme Court held that *service of the notices is not a condition precedent to confirmation of jurisdiction of the ITO but the condition precedent for making of the order of the assessment and thus if notice u/s 148 is served before completion of the assessment , it is a valid service of the notice.* In the instant case, the Assessing Officer has issued notice u/s 148 of the Act on 22.03.2016 and same was sent by the registered post at the address of the assessee available in the PAN data base i.e. M/s Bharati Enterprises 4/281 Opposite Britania Company, Reay Road, Mumbai Maharashtra. The said notice was returned un-served with the remark 'left' and thereafter, the Assessing Officer invoked 'substituted service' of the notice by affixing notice on said premises through Ward Inspector. A copy of notice u/s 148 dated 22/03/2016 was also served on the assessee on 8/09/2016 by post, which was not returned back. The Ld. CIT(A) has considered objections of the assessee on the issue of validity of service of notice u/s 148 of the Act through postal authorities. The relevant finding of the Ld. CIT(A) is reproduced as under:*

"6.2.3 The ITO 20(3)(1) Mumbai sent the notice through speed post. The Speed post bar code no. read as EMS 962227432IN, the letter was returned by the postal authority with marking of



"LEFT" dated 4.04.2016 and received in the office of the ITO on 05.04.2016. The ITO Ward 20(3)(1) Mumbai deputed ITI to serve the notice and the ITI submitted the report to the ITO of serving the notice through affixture on 12.04.2016. The AO issued various notices which are mentioned in detail in the assessment order and are also part of the appeal record. Therefore, the contention of the appellant that the AO had not followed the due procedure and that the notice was not properly served does not appear to be having a credible force. The Hon'ble **High Court of Punjab & Haryana in 151 taxmann.com 120 in case of Anita Gupta vs. ITO dated 14th March 2023**, held that where assessee had been served notice under section 148A(b) at address given on PAN database which was correct address and had been given seven days to respond, proceedings initiated for reassessment could not be quashed. The relevant part of the order is reproduced below:

7. On this very issue, Hon'ble the Supreme Court in a case of **Pr. CIT v. I-ven Interactive Ltd. [2019] 110 taxmann.com 332/267 Taxman 471/418 ITR 662**, held that issuance of notice at the address listed in the PAN database is sufficient compliance of issue of notice, and that in the absence of any specific intimation to the Assessing Officer, the Assessing Officer would be justified in sending notice at the available address mentioned in the PAN Database.

8. Reference has further been made to judgment of Hon'ble the Supreme Court of India in a case of **C.C. Alavi Haji v. Palapetty Muhammed [2007] 77 SCL 117/6 SCC 555**, wherein it has been held as under:-

"Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice."

9. Reference has been made to judgment of this Court in a case of **CIT v. Naveen Verma [2013] 33 taxmann.com 527/[2012] 346 ITR 100 (Punj. & Har.)**, wherein it was held as under:



"The above provisions are statutory recognition of the principles of natural justice which are applicable to assessment proceedings under the Act. The affected party is entitled to the fair opportunity and fair procedure. Since the period of 15 days has been specified statutorily, it may not be fair to expect filing of return in shorter period. At the same time, the effect of violation of the principles of natural justice is not to always nullify the exercise of jurisdiction unless prejudice is caused. Where period specified in the notice is less than the statutory period, no prejudice is caused if return filed is taken into account. The notice specifying lesser period can be read as specifying the statutory period. The principle is duly recognised under section 292B of the Act.

In State Bank of Patiala v. S.K. Sharma: [1996] 3 SCC 364. after considering the case law on the point. The Division Bench answered the questions in favour of the Revenue. It was held as under:

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under- 'no notice', 'no opportunity' and 'no hearing categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., Whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after



the evidence of the employer/Government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle."

10. *Hon'ble the Supreme Court in the case titled as Banarsi Debi v. ITO [1964] 53 ITR 100 has held that wider meaning of the word "issued" must be accepted. The Hon'ble Allahabad High Court in the case titled as Sri Niwas v. ITO, [1956] 30. ITR 381, has also interpreted the word "issued" to mean "served".*

11. *The procedure to be followed upon receipt of the Notice came to be considered by the Hon'ble Supreme Court in the case titled as GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963/[2003] 259 ITR 19, wherein it has been held as under:-*

"However, we clarify that when a notice under section 148 of the Income-tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years"

12. *Heard learned counsel for the parties at length.*

13. *Reference at the very outset can be made to section 148 A (b) of Act 1961, which reads as under:-*

"148A. The Assessing Officer shall, before issuing any notice under section 148,-



(b) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);"

14. *In the present case, the petitioner was having the knowledge of notice on 26-3-2022 and she has not given any reply to the said show cause notice. Thus, the impugned order came to be passed on the 7th day i.e on 7-4-2022. The notice has been sent at the address given on the PAN Database. The Assessing Officer initiated the proceedings in accordance with section 148A read with section 149/151. The approval of specified authority as per section 151 of Act, 1961 was obtained at every stage. The petitioner chose not to file reply to the notice and hence the notice issued on 20-3-2022 through speed post at the address given on the PAN Database was sufficient to return a finding that the respondents had served the notice at the correct address. Moreover, petitioner herself has admitted that the notice was received on 26-3-2022.*

15. *The next question for consideration is that whether the petitioner having been served the notice at the correct address, the proceedings initiated for reassessment can be quashed. The answer is 'No'.*

16. *Further the case i.e. Jindal Forgings case (supra), cited by learned counsel for the petitioner will not be applicable to the facts of the present case, as in that case only three days time was given to the petitioner to file reply. In the present case, the show cause notice was issued to the petitioner on 26-3-2022 (Annexure P-2) and on the 7th day itself, the impugned notice dated 01-4-2022 (P-3) was passed. The petitioner instead of filing reply chose to approach this Court.*

17. *Finding no merit, the writ petition is dismissed.*

6.2.4 *The fact of the case and the grounds of appeal relating to the non-serving of the notice u/s 148 of the Act is seen in light of the above decision of the Hon'ble High Court and therefore does not stand on a legally valid ground. Further reliance is*



also placed on the decision of the Hon'ble Supreme Court in case of PCIT vs. M/s I- Ven Interactive Ltd. Mumbai, in Civil Appeal No. 8132 of 2019 of SLP (C) No. 3530/2019. The AO had followed the due procedure established by law in serving the notice. And as discussed above, the notice was validly and legally served on the appellant. The ground relating to the service of notice is accordingly dismissed.”

6.2 We note that Hon'ble **Gujarat High Court in the case of Atulbhai Hiralal Shah v. C.P. Meena, Deputy Commissioner of Income-tax (2016) 73 taxmann.com 320 (Guj.)** held that since the assessee had not joined the Postal Department why remark 'left' was made and Assessing Officer was entitled to proceed on the basis of remark of postal department and thus only on the ground of non-service of the notice, the reassessment could not be terminated. The SLP filed against the same by the assessee has been dismissed by the Hon'ble Supreme Court as reported in (2016) 73 taxmann.com 325 (SC). We further note that **Hon'ble Supreme Court in the case of Jagdish Singh Vs. Natthu Singh (1992) 1 SCC 647** held that when a notice is sent by registered post and is returned with the postal endorsement that 'refused' or 'not available' or 'house locked' or 'shop closed' or 'addressee not in station', then due service has to be presumed. In the instant case also, notice was sent at the address provided by the assessee to income tax department and the postal department endorsed that party 'left' the place, therefore, the notice issued is deemed to be served on the assessee



6.3 Further, we note that the Assessing Officer has also sent copy of the notice u/s 148 of the Act at another Mumbai address which was provided by the authorized representative of the assessee. Same was returned by the postal authorities with the remark 'unclaimed'. The Assessing Officer also had provided copy of such notices on the e-mail ID of the authorized representative of the assessee. Thereafter, the notice u/s 148 of the Act was sent at the new address provided by the Authorised representative, which was duly served before completion of the assessment, which is also undisputedly a valid service of the notice u/s 148 of the Act. The Ld. counsel for the assessee raised doubt on the substituted service of the notice through affixture and submitted that no independent witness was present while affixing the notice and another inspector of the Income-tax Department had signed as witness which is not valid in law. In our opinion, in view of deemed service of the notice issued for the first time by the Assessing Officer and also subsequent copy of the notice u/s 148 of the Act sent at the new address provided by the assessee and on the e-mail of the authorized representative which have been served before completion of the assessment, amounts to valid service and therefore, we do not feel it appropriate to comment on the doubts raised on the substituted service of the notice. Accordingly, the grounds challenging validity of the service of the notice are rejected.



6.4 The next issue challenging validity of reassessment on the ground of objections raised not properly dealt by the Assessing Officer, has been raised in ground No. 3. In this regard, the Ld. CIT(A) in para 6.2.5 to 6.2.6 of impugned order has reproduced the order of the AO disposing the objections. The relevant para is reproduced as under:

“6.2.5 The AO also disposed the objections raised by the appellant against the issuance of notice u/s 148 of the Act vide his letter dated 22.11.2016. The AO had disposed the objection u/s 148 of the Act vide dated 22.11.2016 satisfying the condition as provided by the Hon'ble Supreme Court in the case of GKN Driveshaft. The order disposing the objection is reproduced below:

"PAN: AAEHR6595K

M/S. RAJNISH BHARTI HUF

Flat No. 506-B, Evershine Nagar,

Rajendra Vihar, Malad West, Mumbai 400 064

Sir,

Sub: Removal of objection against reopening proceedings-initiated notice u/s 148 dtd.22.03.2016 for Asst. Year 2009-10-reg. vide

Kindly refer to the above noted subject and objection filed by M/s Jain Ambavat& Associates, CAs dtd. 22.11.2016.

2 Vide the above referred letter did. 22.11.2016, it has been contended that the provision of section 148 have no application on the following grounds:

3. The parawise comments are as under:

3.1 Para No. 1 to 4 of the letter dtd 22.11.2016, the assessee contended that the notice issued u/s 148 dtd. 22.03.2016 which was posted on 02.04.2016 accordingly the same was time barred. Further, the notice was never served on the



assessee hence, the notice is fructuous. The assessee also contended that since the notice server, Shri Krishna Vasant Karale, who served the notice by pasting on the premises mentioned in the notice and also the notice server made another Inspector the evidence of serving and has not made the neighbors evidences the notice is not valid and void abinito

3.2 The said objection is not valid. It needs to be stated that that the notice u/s 148 was issued on the address as evident with the Department which was provided by the assessee himself in the return of income for Asst. Year 2009-10. It is not the case that addresses are different. Assessee if changes the address is required to accordingly intimate the Department about the change in address which has not been done in this case till the issue of notice u/s 148. Further, the notice has been issued on 22.03.2016 and the same has been posted on 23.03.2016 under EMS No. EM962227432IN and Sr. No.1244 dd 23.03.2016 of Postal Book. The same has been returned back on 05.04.2016 by the postal authorities with a remarks 'LEFT. Since the notice u/s 148 was returned back by the postal authorities, the same was served by affixture by the Ward Inspector, Shri Krishna Karale in the Presence of another Inspector which is as per procedure of service of notice. The copy of the said Ward Inspectors report has also been provided to assessee. Therefore, objection in this regard, is hereby unsustainable and rejected.

3.3 Para No. 5 to 22: In Para-No.5 to 22 the assessee has contended that reopening has been done without any reasons to believe that income had escaped assessment. The assessee has stated that the list of suspicious dealers appearing on Sales Tax Department is only a caution to other dealers while dealing with them. The assessee relied upon the judgment of M/s. ChandulalNarandas Vs State of Maharashtra VAT Appeal No 884 of 2015 with VAT Appeal No.882 of 882 of 2015). Assessee stated that in view of this judgment Information on sales tax department is not very reliable unless thoroughly verified. The assessee thereafter verbatim the reproduced the reasons for reopening and stated that notice u/s 148 has been issued as the behest of DGIT Mumbai without any tangible material available before you to form an independent opinion. The assessee thereafter relied upon the Mumbai ITAT judgment of Rajiv G Kalathil Vs CIT dtd 20.08.2014. Thereafter assessee contended that the jurisdiction is having a reason to suspect but there is no reasons to believe and relied upon the Supreme Court's judgment ITO Vs LakhnaniMewaldas 103 ITR 437, Kelvinator



of India Ltd 320 /TR 561 (Supreme Court), CIT Vs Lucas TVS Ltd 249 ITR 306. The assessee thereafter relied on the judgment of Prashant S. Joshi Vs. ITO 324 ITR 154 to contend that the AO was not having tangible material before him for reopening. Assessee also stated that the information of Sales Tax Department is also irrelevant as Sales Tax Department is more concern with set of taken by dealers under MVAT Act and since the vendor dealer does not paid tax the set off is disallowed and accordingly the dealer is identified as hawala operator Hence, disallowance of set off is not relevant for income tax purpose.

3.4 The contention of the assessee in the said para-No.5 to 22 is also not sustainable and acceptable.

In this regard it needs to be stated that reopening has been done after concrete information received not only from DGIT, Mumbai but also from Sales Tax Department of Maharashtra. Sales Tax Department is completely different investigative authority wherein they have found out that assessee is involved in the circle of obtaining accommodation bills from hawala operators. It is not the case that the investigative finding of Sales Tax Department is wrong. It is also not the case that assessee has filed any petition against the Sales Tax Department. As far as the contention of disallowance of set of is concerned the same is legal under MVAT Act. It is hereby clarified that the AO has sufficient material on record and on the basis of the said material and information, proceedings u/s 147 has been initiated and notice u/s 148 has been issued on 22.03.2016. The information and material on record is nothing but the concrete evidences on record, on the basis of which the AO has specifically noted that he has "reason to believe that income chargeable to tax has escaped assessment for the Asst. year 2009-10 and therefore, proceedings u/s 147 has been initiated and notice u/s 148 has been issued as per Income Tax Act, 1961. It is not only the AO has applied his mind before recording the reasons for reopening but also has come to the satisfaction that the income chargeable to tax has escaped assessment in your case. Therefore, notice issued u/s 148 is not illegal and bad in law. Therefore, it is very clear that the notice issued u/s 148 is issued as per Income Tax Act, 1961 and the same is within the jurisdiction, the objection raised by you in this regard is not correct and hereby rejected. The decision relied upon by you has also been perused, however, it is noticed that the facts of the case are different than your case.



4. Reopening of assessment in the above case is perfectly justified in view of following decisions:

i) Hon'ble Supreme Court in the case of Sri Krishna Pvt. Ltd (87 Taxman 315) has held that even in respect of an issue accepted u/s 143(3), proceedings U/s 147 can be initiated. The enquiry at the stage of examining the validity of a reassessment notice is only to see whether there are reasonable grounds for the Assessing Officer and not whether the omission/ failure and the escapement of income is established. It is necessary to keep this distinction in mind.

ii) Hon'ble Bombay High Court in the case of Yuvraj Vs. Union of India & Anr. (2009) 315 ITR 84 has held that reassessment to be valid in this case. While passing the assessment order the Asstt. CIT merely noted that the assessee has sold her right to purchase an open plot and computed the total income as per the chart mentioned in the order. There was no application of mind on the part of the Asstt. CIT to the facts of the case and the issue involved. The issue relating to assess ability of capital gain or casual income was not addressed. Thus, AO was justified in issuing the impugned notice under s. 148. He had applied his mind for issuing the notice. It was not a case of mere change of opinion.

iii) Hon'ble Bombay High Court in the case of Multi screen Media (P) Ltd. Vs. Union of India & Anr. (2010) 324 /TR 54 has held that when the Court is concerned with a challenge to a notice under s. 148, the issue is not as to whether it can be conclusively demonstrated that the income had escaped assessment, but whether as a matter of fact, there was a reason to believe to justify recourse to exercise of power under s. 147. In the instant case, the AO has concrete material on record to reasons to believe that the income has escaped assessment to that extent. Recourse to the provisions of s. 147 was taken on the ground that Investigation Wing has conducted search operation and during the said operation material gathered has been admitted on oath by the party and the same has been established. The, AO did have tangible material to reopen the assessment under 5 147. Where though assessment has been made, income chargeable to tax is under-assessed, the law deems that income chargeable to tax has escaped assessment. Therefore, recourse to the provisions of s. 147 was valid.

4.2 Further, the quality of the reason recorded is not to be questioned or analyzed by the assessee in the guise of such



an objection. The very jurisdiction under sec 147 of the Act is open for challenge by the assessee in the regular appellate channels. Therefore, the assessee's present objection seeking a judicial review of the issue which is yet to hatch through the re-assessment proceedings, cannot be accepted. I may refer to the following decisions of the Hon. Supreme Court in regard to the point at issue as under:

a. In Chhugmal Raj Pal v. SP Chaliha &Ors (1971) 79 ITR 603 (SC), which was decided against the Revenue, the Apex Court has held that "AO must give reasons for issuing a notice under section 148. In other words, AO must have some prima facie grounds before him for taking recourse action under section 148."

b. In ITO v. Selected Daluv Band Coal Co. (P) Ltd. (1996) 217 ITR 597 (SC), the Apex Court observed that at the stage of issuance of notice under section 148, the only question is whether there was relevant material, on which a reasonable person could have formed the requisite belief.

c. Again, in Raymond Woolen Mills Ltd. v. ITO &Ors (1999) 236 ITR 34 (SC), the Apex Court while refusing to interfere with the reassessment proceedings, observed "we have only to see whether there was prima facie some material on the basis of which the department could reopen the case."

It is evident that income of the assessee has escaped assessment and the A. O. was perfectly justified in reopening the assessment.

5. In the light of discussion in foregoing paragraphs, your objection in respect of the proceedings-initiated u/s 148 is hereby rejected and there is no question of dropping proceedings-initiated u/s 148. Therefore, the application filed by M/s Jain Ambavat& Associates, CA stands disposed off

6 In view of the discussion above, you are hereby requested to comply with the proceedings-initiated u/s 147. Your case fixed for hearing on 28.11.2016 at 10.30 A.M. before the undersigned and produce the details called for. Please produce the details called for as per Annexure to this notice."

6.2.5 Taking into account the fact that the objections raised u/s 148 of the Act were disposed. The AO had followed the due procedure as set out in the order of GKN Driveshaft. The order disposing objections u/s 148 of the Act was also sent to



the appellant by the AO at the last known postal address of the appellant. Therefore, the subsequent assessment u/s 143(3) r.w.s 147 of the Act is a valid assessment in pursuance of a valid notice u/s 148 of the Act, after disposing the objections raised by the appellant. Therefore, the ground relating to the legal validity of the impugned assessment order is accordingly dismissed.”

6.3 Further, the Ld. CIT(A) upheld that the Assessing Officer has followed due procedure as set out in the case of G.K. Drivesaft (supra), and served said order at the last known address of the assessee. Before us the ld Counsel stated that a separate order was not issued for disposing objections and objections were casually removed. The ld counsel relied on decision of Hon'ble Bombay High Court in the case of Asian Paints ltd vs DCIT reported in 296 ITR 90 (Bom) but facts of said case are different. In that case the assessee raised objections well in time but the AO disposed the objections just before completion of assessment. But in instant case, the assessee raised objections at the fag end of expiry of limitation for completing assessment but the AO disposed the objections on same date. The AO has disposed objections by way of detailed order, a copy of which has been reproduced by us in preceding paras, hence the contention of ld counsel that no separate order was passed by the AO, are baseless and devoid of merit.

6.4 Further, the ld counsel argued that tangible material on the basis of which reasons were recorded was not provided. Firstly, before us the ld counsel has not referred to any document



evidencing that any such request was made by the assessee. Secondly, when no return of income was filed by the assessee, then it is the assessee who has not followed the procedure provided in GKN Drishaft (supra). In such circumstances, the AO was not obliged to provide material relied for reopening the assessment. Before us, the Ld. counsel for the assessee further repeated the arguments that objections were not disposed off properly. In our opinion, the requirement of the law is of the disposal of the objection and whether it is it is proper or not proper is very subjective issue. The Ld. counsel has not been able to substantiate as how the order for disposal was not proper. Thus, accordingly, we reject the contention of the Ld. counsel of the assessee. The ground No. 3 of the appeal of the assessee is accordingly dismissed.

7. In ground No. 2, the assessee has challenged validity of the reassessment as there was no reason to believe that income had escaped assessment. The Ld. counsel for the assessee assailed the reassessment proceedings, **firstly**, on the ground that reopening was made for making fishing or a roving inquiry. The Ld. counsel has referred to the sentence in the reasons recorded '*that the source of the credit/deposit at Rs.2,30,04,247/- remains unexplained and thus requires verification.*' In support thereof, the Ld. counsel for the assessee relied on the decision of the Hon'ble Supreme Court in the case of PCIT v. Manzil Dinesh Kumar Shah, Special Leave Petition (Civil) Diary No. 45862/2018. However, we find that this claim of



the assessee of carrying out roving/fishing inquiry by the AO has been rejected by the Ld. CIT(A) observing as under:

“6.2.7 The submission of the appellant is perused. The above order of the Hon'ble ITAT in I.T.A. No. 5826/Mum/2016 is in relation to the assessee Rajnish Chimanlal Bharti-PAN-AABPB6150F-A.Y. 2009-10, while the present appeal is in case of Rajnish Bharti-HUF-AAEHR6595K-A.Y.-2009-10. The above fact is only brought in to just differentiate that they are two different assesseees. However, it is necessary to examine the reasons recorded for the A.Y. 2009-10 in ITA No. 5826/Mum/2016 which has been the subject matter of adjudication before the Hon'ble ITAT with the reason recorded for the impugned A.Y. in the case of assessee. The Hon'ble ITAT in the above order noted that reason to believe are to read as they are recorded by the AO, no substitution or alteration is permissible [Hindustan Lever Ltd. 268 ITR 332]. The reasons for the recorded by the AO are a part of Para 5 of the Hon'ble ITAT in Para 6.2.6 above. However, for brevity the same is reproduced below:

"An information received from the office of the DGIT(INV) regarding bogus claim of expenses of Rs. 6, 16,79, 235/- by the assessee from various parties. I have therefore, reason to believe that income chargeable to tax of Rs.6, 16,79, 235/- for the A. Y.2009-10 has escaped assessment in this assessee's case within the meaning of the provisions of section 147 of the Act dated on 27.11.2011. Notice u/s 148 issued"

6.2.8 It is in the light of the above the reasons recorded by the AO in the impugned A.Y. Now this reason is compared with the reasons recorded by the AO in the impugned A.Y. for initiating proceeding u/s 147 of the Act. The reasons recorded by the AO is reproduced above in Para 6.2.2. The reasons recorded by the AO is detailed one. In Para 1 of the reasons the AO mentions the source and basis of information i.e., Sales Tax Department through DGIT (Inv) about the bogus hawala purchases by the assessee. Further, in Para 3 of the reasons the AO mentions the credits/ deposits into various bank accounts and summons were issued u/s 131 of the Act for making an enquiry about the source and genuineness of the deposits. The AO categorically mentions that the enquiry was indicative and not exhaustive which require examination and verification, and that the assessee has not fully and truly disclosed all the material facts a deeper examination is



necessary and only after that the AO came to a primary conclusion that income of Rs. 195299579/- has escaped assessment which requires issuance of notice u/s 148 of the Act. A comparative analysis of the reasons recorded by the AO in the impugned A.Y. under litigation and the reason recorded by the AO adjudicated by the Hon'ble ITAT in I.T.A. No. 5826/Mum/2016, there is discernible difference and effort made by the AO i.e., to move beyond the information provided by the DGIT (Inv), to arrive at some sort of primary conclusion that there is an escapement of income.

6.2.9 The above discussion is further analyzed in the light of some of the judicial rulings mentioned below:

1. In the case of Eureka Stock and Share Broking Services Ltd. Vs CIT, [2017] 82 taxmann.com 10 (SC)/[2017] 248 Taxman 81 (SC), the Hon'ble Supreme Court has upheld the order of the Hon'ble High Court. The relevant portion is reproduced below:

"16. The last judgment, in the case of Kelvinator of India Ltd. (supra), the question for consideration was whether the concept of change of opinion stood obliterated with effect from April 1, 1989 after substitution of section 147 of the Income Tax Act, 1961 by the Direct Tax Laws (Amendment) Act, 1987. That question was answered in the negative by the Apex Court. Far from helping the assessee, the judgment, in our view, militates against him. Their Lordships held, "Hence, April, 1989, the Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief."

17. There is in fact tangible material to come to the conclusion that income escaped assessment which we have already discussed. There is thus no question of any change of opinion."

2. Avirat Star Homes Venture (P.) Ltd. Vs ITO, [2019] 102 taxmann.com 60 (Bombay)/[2019] 261 Taxman 184 (Bombay)/[2019] 411 ITR 321;

3. PCIT Vs Paramount Communication (P.) Ltd. Delhi High Court taxmann.com 409 held that Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings;



4. *Vasudev Fatandas Vaswani Vs ITO Gujarat High Court* 2018-TIOL-2305-HC-AHM-IT held that when issuing notice for re-opening assessment, the AO is only required to show reasonable belief that income escaped assessment & is not required to establish the same beyond reasonable doubt;

5. *Gujarat Ambuja Exports Ltd. Vs DCIT Gujarat High Court* 86 taxmann.com 69 held that where purchases made by assessee from a proprietary concern were bogus and entries were in nature of accommodation entries, merely because assessee had disclosed such entries in return filed and also showed such purchases in books of accounts would hardly be sufficient to advance arguments of full and true disclosure by assessee.

6.2.10 After careful consideration of the facts and laws as discussed above it is apparent the facts of the case are distinguishable from the facts of the case adjudicated by the Hon'ble ITAT in I.T.A. No. 5826/Mum/2016. Therefore, the appellant fails to get its cover. Hence, the grounds of appeal of the appellant with regard to validity of notice issued u/s 148 of the Act, the service of the notice, the validity of the reasons recorded and the subsequent reassessment u/s 143(3) r.w.s 147 of the Act are dismissed in light of the discussion in foregoing paras.”

7.1 In view of the above observation of the Ld. CIT(A), it is evident that for verification of the credit/deposits into various bank accounts summons u/s 131 of the Act were not issued to the assessee but same were not complied and the Assessing Officer has mentioned that the inquiry was not vindictive and not exhaustive and therefore, credits remain unexplained till verification. In our opinion, reopening has not been carried out for fishing inquiry but it was based on information gathered by the Investigation Wing. **Secondly**, the Ld. counsel assailed the reassessment proceedings on the ground that reopening was on the ‘borrowed satisfaction’ as the Ld. AO has only relied on the information provided by the DGIT-



Investigation, who in turn received the information from the Sales Tax Department, without independently verifying the same. With reference to the above arguments of the Ld. counsel for the assessee, we are of the view that while recording reasons to believe, the Assessing Officer has to keep in mind that the material or information in his possession, is relevant to the case in hand and material should be such that a reasonable person can make requisite believe that income escaped. Thus requirement of the law is that the Assessing Officer has to form a requisite belief on the basis of information that income escaped assessment and during relevant period there was no requirement for independent verification by the AO from the assessee as under the law during relevant time the Assessing Officer was not authorized to make inquiry from the assessee unless, assessment proceedings is pending. Thus, contentions of the assessee are accordingly rejected.

7.2 **Thirdly**, the Ld. counsel for the assessee assailed the validity of reassessment proceedings on the ground that no tangible material was provided to the assessee on the basis of which reasons was recorded. In the background of the facts mentioned above, we find that the assessee has neither complied with the notice u/s 148 of the Act nor the notice u/s 142(1) of the Act and no such evidence has been placed before us of making such request for providing material on the basis of which reasons were recorded. Thus, the contentions of the assessee are accordingly rejected.



7.3 Further, the Ld. counsel for the assessee submitted that the information provided by the Sales Tax Department was not reliable in view of the judgments of the Hon'ble Bombay High Court and there was no live link information given by the Sales Tax Department. In our opinion, these observations or arguments of the Ld. counsel for the assessee are liable to be rejected in view of the decision of Hon'ble Supreme Court in the case of **Raymond Woolen Mills (1999) 236 ITR 34** wherein it is held that 'sufficiency' or 'correctness' of the material for reopening need not be seen at the stage of recording reasons to believe. The information was in respect of parties from whom the assessee has shown purchases and therefore, the information of the material was relevant to the assessee and therefore, in view of the decision of the Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Broker Pvt. Ltd. 291 ITR 500 reopening on the basis of relevant material is valid reopening. The relevant part of the decision is reproduced as under:

16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word reason in the phrase reason to believe would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the



*fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Delhi High Court in [Central Provinces Manganese Ore Co. Ltd. v. ITO](#) [1991 (191) ITR 662], for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is reason to believe, but not the established fact of escapement of income. **At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief.** Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction. (emphasis supplied externally)*

8. In ground No. 4, the Ld. counsel for the assessee submitted that notice u/s 148 of the Act had been issued without any mention of the approval of the notice. However during the course of the hearing before us, the Ld. DR filed a copy of the approval communicated vide letter dated 17/03/2016 of the ITO(headquarter) of the office of the approving authority. According to the documents filed before us, the Assessing Officer applied for approval on 14.03.2016 which has been granted on 17th March, 2016. Therefore, the argument of the Ld. counsel for the assessee that no sanction was obtained is also without any basis. Further, he alleged that reasons recorded are dated 22.03.2016, whereas



sanctioned was obtained on 17.03.2016. However on verification assessment record which was produced by the Id DR before the bench and the Id AR was also allowed for inspection, we find that reasons were recorded prior to 14.03.2016 and approval was sought by the appropriate authority which was granted on 17.03.2016 and thereafter notice has been issued on 22.03.2016. The Assessing Officer has only added the fact of issue of notice u/s 148 of the Act in the reasons recorded on 22.03.2016. Therefore, the contention of the Ld. counsel that reasons were recorded after approval is without any basis and without proper appreciation of the facts. Accordingly, the contention challenging approval granted u/s 151 of the Act are accordingly rejected.

9. Now, we come to the ground No. 5 of the appeal of the assessee challenging upholding of 12.5% of the bogus purchases which is worked out to Rs.2,15,36,916/-. The brief facts qua the issue in dispute are that the information received from Sales Tax Department through Investigation Wing, the assessee has shown to be received bogus bills from following parties:

Name of the Party		Amount of transaction (Rs.)
M/s. Appex Steel	2008-09	21166608/-
M/s. Tara Enterprises	2008-09	15988608/-
M/s. Shyam Corporarion	2008-09	17555248/-
M/s. Universal Enterprises	2008-09	14144479/-
M/s. G.S. Trading Co.	2008-09	9572004/-
M/s. Shakti Enterprises	2008-09	11319670/-
M/s. Anikesh Trading P. Ltd.	2008-09	9889921/-
M/s. S. B. Metel Corporation.	2008-09	649032/-



M/s. Sangura Trading P. Ltd.	2008-09	25451306/-
M/s. Sairam Trading Corporation	2008-09	9020206/-
M/s. Mahavir Enterprises		37538548/-
Total		172295332/-

9.1 The assessee failed to file copy of the bills, transportation details, and stock register etc, therefore, the Assessing Officer issued notice u/s 133(6) of the Act to the parties. However, the notices issued remained un-complied and therefore, the Assessing Officer asked the assessee to produce all those parties for verification. But the assessee failed in producing so. The assessee has also failed in substantiating transport with the help of transport receipt, lorry receipt, octroi receipt. In view of the non-production of the party particularly keeping in view their statement before Sales Tax Authorities of denying sales to the assessee, the assessee failed to discharge his burden of substantiating the purchases. Accordingly, the assessee applying ratio in the case of **M/s Vijay Proteins (supra)** sustained 12.5% purchases of Rs.17,22,95,382/- which was worked out to Rs.2,13,66,916/- as undisclosed income u/s 69 of the Act. The Ld. CIT(A) also upheld the disallowance observing as under :

6.3.2 The appellant assailed the AO and filed detailed reply placing reliance on a number of case laws. The submission of the appellant is examined. Regarding the taxability of such transactions, the reliance is placed on the decisions of jurisdictional Mumbai High Court/ITAT in the following cases on the issue of estimation of profits where bogus accommodation entries of purchases had been taken:



i) In a recent judgement, the Mumbai High Court in the case of PCIT. Mumbai vs Vishwashakti Construction ITXA. 1016 & 1026 of 2018 dated 04.05.2023 had held as

"5. An appeal was preferred before the CIT(A) by the assessee, who concurred with the A.O. that purchases from the ten parties in question were bogus but held that the entire amount of such purchases could not be added to the total income and that only the profit element embedded and suppressed in the disputed purchases be assessed to income, which he estimated at 12.5% The CIT(A) accordingly retained the addition to the extent of 12.5% while deleting the rest.

6. An appeal was preferred before the ITAT both by the assessee as also the revenue, which was finally decided by virtue of the order impugned dated 20th January, 2017, which is impugned in the present appeal. The Tribunal upheld the view of the CIT(A) to treat the purchases from ten parties as bogus and also upheld the view expressed by the CIT(A) to sustain the addition to the extent of 12.5% of the amount of the disputed purchases relying upon the decision of Gujarat High Court in the case of CIT VS. Bholanath Poly Fab Pvt. Ltd.

In a case involving a similar issue, even this Court in Income Tax Appeal No. 398 of 2018 decided on 18th July, 2022, had dismissed the appeal filed by the revenue on the ground that the entire amount of purchases was to be held as non-genuine purchases,

then it would not be possible to justify as to how the

works allotted to the assessee for execution by the semi-Government Agencies, could be completed

7. Even in the present case the Appellant is a contractor, who had been allotted a subcontract for carrying out civil works of road and buildings repairs for which various types of building materials are stated to have been purchased from several suppliers including the ten suppliers, who are alleged to have been providing accommodation entries. It is not denied that the works allotted had been completed for the concerned agency, which would have been otherwise impossible, if the entire purchases made by the Appellant were to be held as non-genuine.



In our opinion the order passed by the Tribunal warrants no interference. No substantial questions of law arise in the present appeal."

ii) The Mumbai High Court in the case of PCIT vs Batliboi Environmental Engineering Ltd./2022] 141 taxmann.com 245 (Bombay)dated 10.06.2022 had held as under:

"I Section 69C of the Income-tax Act, 1961- Unexplained expenditure (Bogus purchases) - Assessment year 2011-12 Assessing Officer treated purchases made by assessee as bogus purchases and disallowed in totality Commissioner (Appeals) directed Assessing Officer to disallow 12.5 per cent of bogus purchases and to add 12.5 per cent of amount of purchases to income of assessee - Tribunal upheld view of Commissioner (Appeals) - Revenue contended before High Court that bogus purchases ought to have been disallowed in totality- It was noted that if factum of sales had been accepted by department then even if it was established that there were bogus purchases, it was not necessary that entire amount of purchases should be added to income of assessee as there could not be a sale without purchase -In instant case sales effected by assessee had been accepted by department- Whether Tribunal was right in upholding view of Commissioner (Appeals) - Held, yes [Para 41"

(iii) The Mumbai High Court in the case of PCIT vs Ram Builders [2023] 146 taxmann.com 447 (Bombay)dated 18.07.2022 had held as under

"Section 68 of the Income-tax Act, 1961-Cash credit (non-genuine purchases) - Assessment year 2010-11-Assessee was involved in execution of civil works- It had shown purchases of construction material from twelve parties-Assessing Officer asked assessee to produce twelve parties - As assessee failed to produce twelve parties for verification. Assessing Officer treated purchase bills as bogus and held entire purchases as non-genuine purchases and added amount to income of assessee-Commissioner (Appeals) held that purchases per se were not in dispute but parties from whom purchases were shown to have been made were disputed only profit element on such purchases to be considered for addition He, thus, restricted addition by estimating profit of 12.5 per cent on total purchases- Tribunal upheld order of Commissioner (Appeals) - It was noted that if entire purchases were to be held as non-genuine purchases then it would not be possible to justify as to how works allotted to assessee for execution by semi



Government Agencies could be completed-Whether order passed by Tribunal was legally valid warranting no interference - Held, yes [Paras 12 and 13]"

(iv) The ITAT, Mumbai in the case DCIT vs DBM Geotechnics and Construction (P.) Ltd. [2022] 136 taxmann.com 345 (Mumbai - Trib.) dated 25.03.2022 had held as under:

"Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessment year 2012-13 - Whether where assessee's sales figures were not doubted, 100 per cent disallowance for bogus purchases was not justified by drawing adverse inference on his inability to produce suppliers-Held, yes-Purchases were made by assessee from grey market -Making purchases through grey market gave assessee savings on account of non-payment of tax at expenses of exchequer Whether in said circumstances, Commissioner (Appeals) was justified in deleting 100 per cent disallowance of purchases by Assessing Officer and limiting disallowance to 12.5 per cent out of bogus purchases - Held, yes (Para 4J"s

6.3.3 The submission of the appellant is examined in the light of the above cited judicial decisions. The AO action of disallowing 12.5% of the purchases being bogus in view of the non-compliance and no-genuinity and the report of the Sales Tax Department and the Investigation Wing report is judicious and as per law accordingly the addition of Rs. 21536916/- is upheld. The Ground of Appeal is dismissed."

9.2 We have heard rival submissions of the parties and perused the relevant materials on record. Before us, also no evidence in support of purchases including transportation of the goods was filed. As the assessee has shown purchases in its books of accounts, the onus is on the assessee to substantiate that purchases are genuine. In view of failure on the part of the assessee in discharging its onus, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute. Accordingly, we



uphold the same. The ground No. 5 of the appeal of the assessee is accordingly dismissed.

10. The ground No. 6 of the appeal of the assessee relate to credit/deposits of Rs.10,55,84,256/- which were held by the Assessing Officer as unexplained. However, the Ld. CIT(A) has restricted addition of 2% of the such deposits following the finding in the case of Shri Rajnish Bharati (Individual). The relevant finding of the Ld. CIT(A) is reproduced as under:

“6.4 The appellant in its ground of appeal no. 6 assailed the AO in making addition of Rs. 105584256/-. The AO in Para 5 of the assessment order noted that assessee is having several bank accounts. The AO issued notices to the assessee, however in the face of non-compliance the AO added the total balance of Rs. 105584256/- u/s 69A of the Act. The appellant filed the copy of the bank statement and in its submission submitted that credits found in the various bank accounts of the appellant are transfer from one bank to other and addition on this account is arbitrary and perverse, as the credits in one bank account were out of the withdrawals from another bank account and these transactions did not constitute any business transactions on which any income could have been earned. The appellant in its submission for A.Y. 2010-11 has relied on the judgment of Hon'ble Bombay High Court in case of PCIT-14 vs Alag Securities Pvt Ltd. (ITA 1512 of 2017), Where the Hon'ble High Court has held (attached as Annexure-7) as under:

“20. We are in agreement with the view taken by the Tribunal. In a case of this nature Section 68 of the Act would not be attracted. Section 68 would come in to play when any sum is found credited in the books of the assessee and the assessee offers no explanation about the nature and source thereof or the explanation offered by the assessee is not in the opinion of the Assessing Officer satisfactory. In such a situation the sum so credited may be charged to income tax as the income of the assessee of the relevant previous year. But that is not the



position here. It has been the consistent stand of the assessee which has been accepted by the First Appellate Authority and affirmed by the Tribunal that the business of the assessee centered around customers / beneficiaries making deposits in cash amounts and in lieu thereof taking cheques from the assessee for amounts slightly lesser than the quantum of deposits, the difference representing the commission realized by the assessee. The cash amounts deposited by the customers i.e., the beneficiaries had been accounted for in the assessment orders of these

21. Coming to the percentage of commission, Tribunal had already held 0.1% commission in similar type of transactions to be as on able percentage of commission. Therefore, Tribunal accepted the percentage of commission at 0.15% disclosed by the assessee it self. This finding is plausible one and it cannot be said that the rate of commission was arrived at in an arbitrary manner. The same does not suffer from any error or infirmity to warrant interference, that too, under Section 260-A of the Act."

The appellant further in its submission for the A.Y. 2010-11 submitted that in the present case, the facts are identical, where the deposits of funds have been withdrawn and paid to the customers, whose cheques are discounted. Therefore, any addition in excess of 0.05% of the turnover is unjustified. Further, in case of individual assessment of the Karta, Mr. Rajnish Bharti of the appellant HUF in AY 2008-09, the addition has been made by considering 2% commission on accommodation entries provided by the Karta of the appellant. After considering the factual matrix of the case, the addition u/s 69A of the Act is restricted to 2% of the total addition of Rs. 105584256/- following the addition made in the A.Y. 2008-09 in case of the Karta of the Rainish Bharti-HUF. The Ground of Appeal is partly allowed."

10.1 The ground No. 1 of the appeal of the Revenue is also connected to the above ground of the assessee. We have considered the rival submissions of both parties and examined the relevant materials on record. The brief facts of the dispute are that the Assessing Officer (AO) observed substantial transactions in bank accounts maintained with HDFC Bank, DSB Bank, and the State



Bank of India. Upon verifying the assessee's balance sheet, the AO noted that the balances of HDFC Bank and DSB Bank were not reflected. Consequently, the AO asked the assessee to explain the source of the deposits/credit entries in these bank accounts. However, the assessee failed to provide a satisfactory explanation. The Learned Commissioner of Income Tax (Appeals) [CIT(A)] relied on the findings of the First Appellate Authority in the case of Rajnish Bharati (Individual), where it was established that the assessee was engaged in accommodation entries. In that case, it was observed that the assessee was involved in cheque discounting, where funds were withdrawn in cash and paid to customers who provided cheques for discounting. Accordingly, an addition of 2% commission was sustained. However, in the present case, the assessee has not provided any evidence to substantiate engagement in the business of accommodation entries or cheque discounting. Furthermore, the assessee's arguments are contradictory—while claiming to have conducted actual business concerning purchases, the assessee simultaneously asserts that the deposits in the bank accounts were related to accommodation entries. To support such a claim, the assessee was required to submit affidavits from each party to whom accommodation entries were allegedly provided. Since the assessee failed to discharge the burden of proof as required under the provisions of the Act, the deposits in the bank accounts are liable to be assessed as undisclosed income under the



Act. In view of the above facts and circumstances, we set aside the findings of the Learned CIT(A) on the disputed issue and uphold the entire disallowance of ₹10,55,84,256/-. The ground No. 6 of the appeal of assessee is accordingly dismissed whereas the ground 1 of appeal of the Revenue is allowed.

11. In ground No. 7, the assessee has prayed for admitting the appeal and granting stay against the recovery of demand. For seeking stay on the demand, the assessee has to file a proper stay application before the ITAT in terms of section 254(2) of the Act. . We don't know whether any such application has been filed by the assessee, but it is clear that no stay petition of assessee was listed before us and therefore, this ground of appeal is dismissed as infructuous. The ground No. 7 (ii) and 7(iii) stands already covered while disposing the grounds challenging validity of reassessment as well as ground on merit. The ground No. 8 is general in nature therefore, same is dismissed as infructuous.

12. The ground raised in assessment year 2010-11 by the assessee and the Revenue are reproduced as under:

Assessee's Ground

1. The Learned Commissioner of Income Tax Appeal (Ld. CITA) has erred in upholding the impugned assessment order passed by the Learned Assessing Officer (Ld. A.O.) u/s 143(3) r.w.s. 147 without issuing/ serving any notice u/s 148. The Ld. CITA has further erred in not considering the fact that the Ld. A.O. had failed to provide any proof of issue/ service of



notice u/s 148, despite specific request being made from the appellant.

2. Without prejudice to the issue of notice u/s 148, the Ld. CITA has further failed to appreciate that the reassessment proceedings were null and void as the Ld. A.O. had invoked the provisions of sec 147 without there being any reason to believe that the income had escaped assessment.

3. Without prejudice, the Ld. CITA has failed to appreciate that the reassessment proceedings were bad in law as the Ld. A.O. had failed to follow the procedure laid down by the Supreme Court of India in case of GKN Drive Shaft as he had not dealt with the objections raised by the appellant against re-opening proceedings because no inspection of documents and/ or examination/ cross examination of suspicious parties was provided

4. The impugned assessment order is barred by the Law of limitation as notice in this case was never served u/s 148 and accordingly notice issued u/s 142(1) was time barred. Also the impugned assessment order has been passed without jurisdiction in law.

5. On the facts, in the circumstances of the case and in law, Ld. CITA has erred in upholding the disallowance of addition of bank deposits under the pretext of unexplained credits in bank accounts without considering the fact that the deposits and credits in the said bank accounts had appeared due to a transfer from another bank account of the appellant, so they were not independent credits and accordingly there was no income due to these credits.

5. The appellant therefore prays your honour to be kind enough to: i. Admit the appeal and grant stay against the recovery of demand, ii. Set aside the order of A.O., iii. Delete all illegal additions and disallowances made by A.O., iv. Grant justice

Revenue's Ground

1. " Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in restricting the addition made u/s. 69C of Rs. 1,32,93,190/- from 100% to 12.5% of the bogus purchases, even after considering the said purchases to be bogus."



2. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in not considering the fact that the addition was made on the basis of information received from DGIT(Investigation), Mumbai and Sales Tax Authorities."*

3. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in not considering the decision of Hon'ble Supreme Court in the case of M/s. N.K. Proteins Ltd. in SLP CC Nos. 769 of 2017: 2017-TIOL-23-SC-IT dated 16.01.2017."*

4. *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in restricting the addition made of Rs. 14,41,26,765/-to 2% of the unexplained credits in the bank account."*

5. *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in not considering the fact that the assessee failed to furnish any explanation on the credits in the bank account of HDFC and DCB banks during the assessment proceedings.?"*

13. The ground challenging the validity of the reassessment by the assessee from ground No. 1 to 4 of the appeal are identical to the ground raised in the assessment year 2009-10. As the facts and circumstances in the year under consideration are identical to the facts and circumstances in assessment year 2009-10 and therefore, following our finding in assessment year 2009-10, the grounds No. 1 to 4 of the appeal of the assessee are decided mutatis mutandis.

14. As far as ground No. 5 of the appeal of assessee and ground Nos. 1 to 3 of the appeal of the Revenue are concerned, there is slight changes in facts as compared to assessment year 2009-10. In the year under consideration, the Assessing Officer has made entire disallowance of the bogus purchases amounting to



Rs.1,32,93,190/- . The relevant finding of the Assessing Officer is reproduced as under:

4. **BOGUS PURCHASES:**

The data provided by the Sales Tax Department contains the details of transactions of each beneficiary with bogus biller, their TIN and PAN details and the PAN details of the beneficiaries. From the data, it was found that assessee during F.Y. 2009-10 has acquired bogus purchase bills amounting to Rs. 1,32,93, 190/- from above below mentioned parties. During the course of assessment proceedings, the assessee's representative was repeatedly asked to explain the said entries of purchases as evident from information received from Sales Tax Department.

Sr.No.	Hawala Party Name	F.Y.	Amount (Rs.)
1.	M/s Sangura Trading Pvt Ltd	2009-10	28,14,269
2.	Yashudhasan Enterprises	2009-10	72,89,289
3.	Shyam Corporation	2009-10	31,89,632
			1,32,93,190

4.2 Till date the assessee could not furnish any bills vouchers, details of payments, transportation details, stock register, etc. in support of his claim. The AR of the assessee only stated that the books has been impounded by the Sales Tax Department and no bills are available with the assessee. However on going through the Audit Report the auditor has specifically mentioned that all the books of account are maintained on the computer system and the same are Sales Register, Purchaser Register, Ledger, Cash Book, Journal Register, Bank Book. It is pertinent to mention here that as per the impounding order of the Sales Tax Department, the Sales Tax Department has impounded only Sales Invoice File and Purchase Invoice File. Since the books of accounts were maintained on the computer system, the assessee was supposed to be produced the same for verification, which has not been done purposely. The assessee only stated that the assessee is not having any transactions with M/s Yashudhasan Enterprises. In this regard, the assessee was asked to produce copies of VAT returns filed by them. However, the assessee could not produce the copy of VAT return. Therefore, a letter was issued to Sales Tax Department copy of Annexure J1 & J2 was obtained. The same was also provided to the assessee wherein the Name of M/s.



Yashudhasan Enterprises was duly reflected. The assessee taken the plea that the transactions Rs. 72,89,289/- pertains to M/s Universal Enterprises and not M/s. Yashudhasan Enterprises. However, no documentary evidences have been produced by the assessee in support of their contention. Therefore, the plea taken by the assessee cannot be considered as the Annexure J1 also establishes the fact that the assessee has made transactions with M/s Yashudhasan Enterprises. Even if it is considered that the said purchases pertains to M/s Universal Enterprises, in that case also, the assessee is unable to produce any evidences in support of their claim.

4.3. It needs to be stated that assessee obtained entries from Hawala Operators to the tune of Rs. 1,32,93,190/-. It is well accepted facts that purchases are shown in the books of accounts in order to support the sales, so as to explain that sales are also from genuine source

4.4. Further, notices u/s 133(6) were issued to parties which were declared as hawala traders/bogus parties. All the notices served have remained to be complied till date. Accordingly, vide order sheet noting dated 06.12.2017, 14322017 and order sheet notings dtd. 14.12.2017 assessee was asked to produce the parties for verification from whom the purchases were made. In response, assessee showed his inability to produce the alleged parties. The above said submission of the assessee clearly shows that the assessee is unable to produce the parties for verification. The assessee has merely stated that it is not possible to produce these parties for verification. It is a fact that notices issued to the above said parties has been returned back by the postal authorities in cases and in other cases there is no compliance from their end. In short all the notices issued u/s 133(6) are remained unattended and assessee has failed to produce single party for verification. Further, the Ward Inspector was also deputed to make inquiries in these cases, the Ward Inspector reported that no such parties are available on the given addresses. Ward Inspectors report is on record.

4.5 The explanation of the assessee has been considered and the same is found to be untenable. On perusal of the explanation of the assessee, it is noticed that the assessee could furnish only ledger account. The assessee has failed to establish one to one co relation with regard to purchase and payments made to them. Assessee tried to state that the material is received and sold by it, the same was without any



supporting evidences. Even the banks statements were provided to the assessee still he was unable to correlate the purchases and payments made to them. The assessee also submitted that for the Sales Tax purpose all the persons who has defaulted in payment of VAT were treated as defaulters and were included in the list of entry providers.

4.6 The purchase made by the assessee cannot be treated as genuine in view of the fact that the concerned parties have confessed before the Sales Tax Authorities that they are in the business of issuing bills without actually selling any material. The ledger account is only a self made evidence. The details of payment made by account payee cheque is also not an conclusive evidence to prove the genuineness of transaction. The Sales Tax Department has displayed all the data in respect of these parties on their website.

4.7 It may be noted here that the assessee has not furnished any third party evidence to prove the genuineness of the purchases. The assessee was specifically asked to produce the seller and prove the genuineness of the transaction again and again. The assessee also failed to establish that how the seller acquired the material which was supplied to it. The same detail was also called for u/s 133(6) but the same remained non-complied and the letters came back unserved

4.8 The assessee has failed to prove the genuineness of the aforesaid purchases, has failed to produce the suppliers, failed to produce the brokers/third party evidence in spite of repeated opportunities granted. No transport receipts or lorry receipts or octroi receipts, delivery challans, in and out register have been submitted. Further these hawala parties have also admitted before the Sales Tax authorities that they have issued only accommodation bills. At this stage, the assessee is unable to produce the suppliers to refute their admission made before sales tax authorities

4.9 The onus lies on the assessee to establish any claim for deduction for expenditure which is claimed as deduction in computing its taxable income. Reliance is placed on judgment of Hon'ble Gujarat High Court reported in CIT vs. Chandra Vilas Hotel (1987) 164 ITR 102 (Guj), CIT vs. Navasari Cotton & Silk Mills Ltd. (1982) 135 ITR 546 (Guj) and Karjan Co-operative Cotton Sales Ginning & Pressing Society vs. CIT (1993) 109 ITR 17 (Guj).



4.10 Therefore the onus in the present case squarely lies on the assessee to prove the genuineness of purchases, said to have been made from the above mentioned parties, who have denied any sales to the assessee before Sales Tax Authorities. The assessee did not make any efforts to contact these parties and produce them during the course of assessment proceedings. He just tried to shift the burden on the Revenue. Such submissions have been made in complete disregard of the fact that the burden clearly lies on the assessee to prove the genuineness of the transaction. It was incumbent on the assessee to prove that the suppliers were genuine and they really supplied such material to the assessee and the assessee really made payments by cheques to these very parties and none else. Such a burden has to be discharged by the assessee with very strong and clinching evidence in view of a blatant denial by the parties. No serious efforts were made by the assessee to discharge such burden of proving the genuineness of the transactions with the party.

4.11 In view of the above, it can be said that the transactions in respect of Tate material shown as purchases by the assessee from the above mentioned parties circumstances and human probability for arriving at conclusion as held in CIT V/s Durga Prasad 82 ITR 540 (SC) and Sumati Dayal V/s CIT 214 ITR 801 (SC).

(vii) The purchases from hawala operator falls within the ambit of the term "colourable devices" and the Supreme Court observed in the case of MC Dowell and Company Ltd V/s CTO 154 ITR 148 that "Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honorable to avoid the payment of tax by resorting to dubious methods. It is obligation of every citizen to pay the taxes honestly without resorting to subterfuges."

(viii) Since the information available on Maharashtra Sales Tax Department's website leads to doubt regarding to genuineness of the purchases, it is incumbent on the assessee to produce this party alongwith their necessary documents to establish the genuineness of the transaction as this party were not found at the given address. It is really surprising that none of this party were found on the given addresses nor were they produced by the assessee before the undersigned to get the claim of the purchases verified



(ix) There is a specific finding of Maharashtra Sales Tax Department that this party had issued false bills without delivery of goods and the onus is on the assessee to prove conclusively that he had made the purchases from this very party.

(x) No stock register has been maintained by the assessee, also the assessee could not produce any details in respect of transportation of the said goods. Despite the specific query the assessee was not able to produce delivery challan, transport details, any payment made to Octori, In and out register, the inability of the assessee to produce this details leads to the facts that the material was never purchased from the alleged party. At the same time the fact that the assessee has shown the sales of said goods leads to the conclusion that assessee had purchased goods from the grey market with funds, sources of which is not explained. The whole transaction is ploy by the assessee brings his unaccounted money in the books in the form of accommodation of entry from the said alleged bogus party.

(xi) In view of the above discussion of the facts of the case, it is clear that the assessee has taken accommodation entry of purchases from the said party only to reduce its profit. This purchases were shown only on paper and no material was received in respect of this purchases which could have been included in the closing stock of the assessee from this party. As the assessee has been able to correlate the purchases of materials with the sales, it is assumed that the assessee has purchased this goods from some other party by way of cash and has introduced this in the regular stock of the assessee by obtaining bills/accommodation bills from the said party.

(xii) Any person indulging in the practice of purchasing the goods from the grey market and obtaining bogus bills of some other party would do so far getting some benefit.

4.13 In view of the above facts and circumstances, it is hereby held that the assessee has failed to prove the genuineness of purchases from the said party and purchases from the alleged party are bogus and non-genuine. Delhi High Court in the case of CIT V/s La Medica 117 Taxman 628 (2001) has held that once it is accepted that the supplies were not made by the bogus party to whom payments were alleged to have been made, the question whether the purchases were made from some other source ought not to have weighed with the Tribunal



as a factor of the assessee. The court thus confirmed the addition made by the AO.

Further, the Gujarat High Court in the case of Simit P. Sheth, 356 ITR 451 dealing with the matter of bogus purchase has held that :

".....The estimation of rate of profit return must necessarily vary with the nature of business and no uniform yardstick can be adopted."

4.14. In nutshell, the assessee has failed to establish the genuineness of transactions. But the fact which can not be disputed that the assessee has a Shown the corresponding sales. This facts leads to the conclusion that the assessee had purchased the said goods from the grey market and the source of the funds used for purchase from grey market has not been explained. As discussed the whole transaction is nothing but a accommodation entry obtained by the assessee and cannot be allowed as genuine expenditure in the form of purchase. Section u/s 69C of the Income Tax Act, 1961 is very specific in this regard, the same is reproduced as under :

"69C: Where in any financial year as assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income f the assessee for such financial year."

Further, Hon'ble Supreme Court vide order dated 16.01.2017 in the case

of M/s. N.K Proteins Ltd. In SLP © CC Nos. 769 of 2017: 2017-TIOL-23-SC-IT has clearly held as below;

"Once a finding of fact has been given that entire purchases shown on the basis of fictitious invoices and debited in the P & L A/c are established as bogus, restricting the addition to a certain percentage goes against the principles of sections 68 and 69C of the I.T. Act. "

In view of the above discussion, I am satisfied that the transaction made by the assessee with the abovesaid alleged party are covered by section 69C and the entire amount of Rs. 1,32,93,190/- corresponding to the amount of purchases



claimed to have made by the assessee from the non existent / bogus purchase entry provider party needs to disallowed as unexplained expenditure.

5. Notwithstanding the above conclusion that the source of the purchases from the grey market are not explained and the amount is disallowable u/s 69C, it is also a fact that in the absence of any proof of payment by way of account payee crossed cheques for the grey market purchases, the assessee had made payments in cash only. This cash payments clearly attracts the provision of Section 40A(3) of the income tax Act and are disallowable as such.

5.1. Accordingly, the purchases from the said party of Rs. 1,32,93,190/- is hereby 2o isallowed u/s 69C of the Income Tax Act, 1961 and added to the total income of the assessee. The undersigned is satisfied that the assessee has filed inaccurate particulars of income, therefore penalty proceedings u/s 271(1)(c) are initiated separately.

14.1 The Ld. CIT(A) however following his finding in assessment year 2009-10 restricted the disallowance to the extent of 12.5% of the bogus purchases. The relevant finding of the Ld. CIT(A) is reproduced as under:

“6.3.3 The submission of the appellant is examined in the light of the above cited judicial decisions. The AO action of disallowing total purchase of Rs. 13293190/- is not proper and the disallowance is restricted to 12.5% of the total purchases, which had been done by the AO in immediately preceding A.Y. Accordingly, the addition on account of the bogus purchases is restricted to 12.5% of Rs. 13293190/-. The AO is directed to work out the disallowance @12.5%. The Ground of Appeal is partly allowed.”

15. We have heard rival submissions of the parties and perused the relevant materials on record. The extent of disallowance for bogus purchases—whether a complete (100%) disallowance or a partial disallowance—depends on the specific facts of each case. In



cases involving trading activities, if an assessee successfully demonstrates that the goods corresponding to bogus purchase bills are linked to recorded sales in the books of account, and these sales are genuine (e.g., goods exported or supplied to the government), it is presumed that the sales are verified. In such instances, it is generally accepted that the assessee must have procured the goods from the grey market in cash at a discounted price before exporting or supplying them. The Hon'ble Courts and Tribunals have recognized that in such cases, the taxpayer benefits from discounts, VAT, or GST savings when purchasing from the grey market. Consequently, instead of disallowing the entire amount of bogus purchases, the Courts and Tribunals have estimated and sustained a certain percentage of the purchase value as the benefit derived by the assessee, which is then added back to the income. The relevant finding of Hon'ble High Court of Bombay in the case of **Mohammad Haji Ada & Co. in ITA No. 1004 of 2016** observed as under:

“8 In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the



sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

" So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66 %. Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

15.1 In the assessee's case for Assessment Year 2009-10, a percentage-based disallowance of bogus purchases has been upheld accordingly. However, the second category of cases involves taxpayers who fail to establish a clear link between the purchase quantities mentioned in bogus bills and corresponding sales based on day-to-day inventory records. In such cases, it cannot be presumed that the assessee procured goods from the grey market. Instead, it is reasonable to conclude that the bogus purchases were merely recorded in the books to artificially reduce business profits, without any actual procurement or corresponding sales. Under



such circumstances, the entire amount of bogus purchases is liable to be disallowed.

15.2 For the current assessment year, the assessee falls into this second category. The assessee has failed to substantiate the linkage between the goods reported in bogus purchases and actual sales using day-to-day inventory records or a stock register. The Assessing Officer (AO) has specifically noted that no stock register was produced by the assessee, further supporting the conclusion that the entire amount of bogus purchases should be disallowed. In view of the above facts and circumstances, the finding of the Ld. CIT(A) is set aside and order of the Assessing Officer is sustained. The ground Nos. 1 to 3 of the appeal of the Revenue is accordingly allowed.

16. The ground No. 5 of the appeal of the assessee and ground No. 4 and 5 of the appeal of the Revenue relates to addition of unexplained deposits/credits in the bank account amounting to Rs.14,41,26,765/-. The Ld. CIT(A) has reduced this addition to the 2% of such credit/deposits. Aggrieved, both the assessee and the Revenue are in appeal before the Tribunal. Since above grounds are identical to the ground in relation to the deposits/credit in bank account adjudicated in assessment year 2009-10 and therefore, following our finding in assessment year 2009-10. These grounds are also decided mutatis mutandis.



17. In the result, both the appeals of the assessee are dismissed whereas appeals of the Revenue are allowed.

Order pronounced in the open Court on 30/01/2025.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 30/01/2025
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai