

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

**BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA NO. 383/MUM/2025 : A.Y. : 2018-19

Dy. Commissioner of Income Tax-
42(1)(1), Mumbai. (Appellant) Vs. Bharat Ratilal Shah
205, Nandkuvar Apartment,
Factor Lane, Borivali (W),
Mumbai 400 092.
PAN : AAKPS3234J (Respondent)

**CO NO. 45/MUM/2025 : A.Y. : 2018-19
(in ITA NO. 383/MUM/2025)**

Bharat Ratilal Shah Vs. Dy. Commissioner of Income Tax-
205, Nandkuvar Apartment, 42(1)(1), Mumbai. (Respondent)
Factor Lane, Borivali (W),
Mumbai 400 092.
PAN : AAKPS3234J (Cross Objector)

**Assessee by : Shri Gaurav Bansal
Revenue by : Shri Alok Kumar**

**Date of Hearing : 10/03/2025
Date of Pronouncement : 10/03/2025**

ORDER

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :

By this appeal, the Revenue is challenging the order dated 29.11.2024 passed by the NFAC, Delhi ('CIT(A)' for short) thereby deleting the addition made by the Assessing Officer vide order dated 18.04.2021 on account of bogus purchases and unexplained

expenditure. The respondent-assessee has filed Cross Objection claiming that the appeal is not maintainable. The appeal relates to assessment year 2018-19.

2. The appellant is an individual, engaged in the business of trading in industrial chemicals. The appellant has its main office in Mumbai and branch office at Ahmedabad. The appellant filed its Return of Income (RoI) for the year under consideration on 22.10.2018 declaring a total income of Rs.72,65,930/-, which was duly processed by the CPC, Bangalore. The case was selected for scrutiny on the issue of bogus purchases and unsecured loans. The Assessing Officer completed the assessment under Section 143(3) r.w.s. 144B of the Act on 18.04.2021 and assessed the income at Rs.153,78,33,679/- making an addition of Rs.75,11,83,810/-. The addition/disallowance was made on the following counts :-

- "a. Disallowance of Rs.88,59,529/- being amount of inter branch purchase as bogus purchase in total income.*
- b. Disallowance of Rs.69,37,96,740/- being amount of purchase from the parties treated as bogus purchase in total income.*
- c. Disallowance of Rs.63,47,15,632/- being amount of purchase from the parties treated as bogus purchase in total income.*
- d. Addition of Rs.19,31,95,848/- being unexplained expenditure u/s 69C of the Income Tax Act, 1961 in total income."*

3. Feeling aggrieved, the respondent-assessee filed an appeal before the learned CIT(A) and produced certain documents to support inter-branch purchases made. The respondent claimed that there is a general practice in the market to transfer goods from one branch to other branch and pointed out that as per the reply dated 08.03.2021, the purchases were shown from main office to the branch office and vice versa. It was contended that there was separate VAT/GST number for the main office and the branch office. It was contended that out of the total branch transfer, amount of Rs.64,69,115/-

was related to pre-GST period, i.e. from 01.04.2017 to 30.06.2017 and the balance Rs.23,90,334/- pertained to GST period.

4. The learned CIT(A) vide order dated 17.10.2022 called for a Remand Report from the Assessing Officer for verification of the documents and acceptability of the claim as made. The Assessing Officer sent the Remand Report on 08.01.2024 stating that on due verification of the documents submitted, the claim of the assessee was acceptable. In that view of the matter, the learned CIT(A) has allowed the appeal filed by the assessee.

5. It is now contended on behalf of the Revenue that the learned CIT(A) was in error in accepting the Remand Report and deleting the addition without appreciating that the Assessing Officer had not carried out proper verification/investigation in the matter.

6. We have heard parties. Perused record.

7. It is submitted by the learned DR that although in the Remand Report, the Assessing Officer had accepted the claim of the assessee, the learned CIT(A) was not justified in placing implicit reliance on the Remand Report. An attempt is made to point out that the Assessing Officer while submitting the Remand Report had not carried out proper verification and thus the learned CIT(A) was in error in accepting the Remand Report and deleting the additions made.

8. The learned AR for the respondent-assessee has submitted that the appeal is not maintainable, once the Assessing Officer in the Remand Report had accepted the claim of the assessee upon due verification of the documents produced. Reliance in this regard is placed on the following decisions :-

i) Jivatlal Purtapshi vs CIT, 65 ITR 261 (Bom.)

- ii) ITO(IT)-2(1)(1) vs Ajay Ramchandra Chande, ITA No. 583/Mum/2020, order dated 20.02.2023
- iii) ITO-32(2)(1) vs M/s. Liberal Realtors LLP, ITA Nos. 450 & 449/Mum/2021, order dated 17.01.2022
- iv) PCIT-1, Kolkata vs Ambition Agencies (P.) Ltd. [2022] 134 taxmann.com 5 (Calcutta)
- v) Smt. B. Jayalakshmi vs ACIT, Salary Circle-II, Chennai, 407 ITR 212 (Madras)
- vi) DCIT vs J.A. Infracon (P.) Ltd. [2025] 171 taxmann.com 228 (Ahmedabad-Trib.)
- vii) DCIT vs Pawan Kumar Kansal, ITA No. 1454/Del/2012 dated 29.10.2014
- viii) ACIT vs R.P.G. Credit & Capital Ltd., ITA Nos. 4688 to 4690/Del/2012 dated 07.08.2015

9. We have considered the submissions made. A bare perusal of the impugned order shows that the learned CIT(A) has accepted the Remand Report and has deleted the disallowances made on account of bogus purchases; both inter-branch and other parties, and unexplained expenditure added under Section 69C of the Act. Once the Assessing Officer has accepted the claim of the assessee after due verification of the documents produced, it is difficult to see as to how the Revenue can challenge the same on the spacious ground that the learned CIT(A) was in error in accepting and placing reliance on the Remand Report.

10. The issue is no longer *res integra*. In *Jivatlal Purtapshi (supra)* before the Bombay High Court, the ITO had made addition to the returned income of the assessee as part of branch profits arising from its branch. While the appeal against the addition was pending, the ITO considered and agreed to delete the said addition. On the basis of the said concession, the AAC (the appellate authority) deleted the addition, which was challenged before the Tribunal. The High Court, *inter alia*, held that in the circumstances the Department could not be treated as being aggrieved by that part of the order which was based on concession.

11. A co-ordinate bench of this Tribunal at Mumbai in the case of *Ajay Ramchandra Chande (supra)* placing reliance on the decision in the case of *Jivatlal Purtapshi (supra)* and certain other decisions including that of the Madras High Court in *Smt. B. Jayalakshmi (supra)* has held that once the Assessing Officer in the Remand Report had accepted the claim of the assessee and the learned CIT(A) placing reliance on the Remand Report has deleted the addition, no appeal could have been filed by the Department in respect of the said issue. It is not necessary to multiply authorities on the point. We have carefully gone through the Remand Report as well as the impugned order passed by the learned CIT(A). The learned CIT(A) has considered the grounds in para 6.1 to 6.4 of his order and has rightly allowed the grounds deleting the disallowance/additions made placing reliance on the Remand Report. Thus, the appeal is without any merit.

12. Insofar as the Cross Objection is concerned, we may state that the Cross Objection is not expected to be filed only to support the order or to contend that the appeal is not maintainable. Such a plea about non-maintainability can be a part of the submissions/arguments opposing the appeal. Filing of the Cross Objection presupposes that the respondent/cross objector is aggrieved by a part of the order passed by the CIT(A), which is subject matter of challenge in the appeal, which is not the case in this appeal. In this case, there was no occasion for the respondent-assessee to file a Cross Objection. We state this only to put the record straight.

13. In the result, the appeal is dismissed. The Cross Objection is disposed of as infructuous.

Order pronounced in the open court on 10/03/2025.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Mumbai; Dated : 10/03/2025

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Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The PCIT/CIT concerned
4. DR, ITAT, Mumbai
5. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai