

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.6546/M/2024
Assessment Year: 2009-10
&
ITA No.6549/M/2024
Assessment Year: 2010-11
&
ITA No.6779/M/2024
Assessment Year: 2010-11**

Income Tax Officer, Room No. 503, 5 th Floor, Piramal Chamber, Lalbaug Mumbai 400012.	Vs.	Khimchand Okchand Bhansali, 601/602 Siddesh Jyoti, Balaram Street, Mumabi-400004 PAN: AFZPB7737B
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dhaval Shah & Ms. Tisha Bagh
Revenue by : Shri Srinivas P., Ld. Sr. D.R.

Date of Hearing : 03 .04 .2025
Date of Pronouncement : 03 .04 .2025

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

These appeals have been preferred by the Revenue Department against the orders dated 16.10.2024, 14.10.2024, 24.10.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Ys. 2009-10, 2010-11, 2011-12.

2. These 03 appeals are based on the identical facts, except variation in amounts, hence for the sake of the brevity, the same were heard together and are being disposed of, by this composite order and by taking into consideration facts and issue involved in **ITA No.6546/M/2024** (AY: 2009-10) as a lead case.

3. The Assessee has claimed that it deals in ferrous and non-ferrous metals and during the year under consideration, made the purchases of Rs. **1,12,13,732/-** through banking channels and respective purchase invoices and has established the purchases made, by filing relevant purchase invoices, copy of bank statements evidencing payment made through proper banking channels, highlighting the relevant entries, chart showing the details of the purchases made from the parties and quantitative tally in respect of purchases made from the parties and the corresponding sales. The assessee further claimed before the assessing officer that there is one to one co-relationship between purchasers, sales are fully vouched, purchases from the said parties can be corroborated, as the Assessee has made the payments through account paying cheques only. The Assessee at last claimed that without purchases, no sale can be made.

4. Though the Assessing Officer considered the aforesaid claim of the Assessee, however rejected the same, mainly on the reasons that Sales Tax Department, has given information with regard to the bogus accommodation entries on account of bogus purchases/bills. Further, the assessee has failed to produce the delivery challans, transport and octroi receipts etc. . The Assessing Officer also observed that mere filing of evidence qua purchases and making of payment through account cheque, cannot be conclusive in a case, where genuineness of the transaction, is in

doubt. The Assessing Officer thus on the aforesaid reasons, ultimately estimated the profit element at the rate of **12.5%** of the total purchase of Rs. 1,12,13,732/- and consequently made the addition of Rs. **14,01,716/-**.

5. The Assessee being aggrieved, challenged the reopening of the proceedings u/s 147 of the Act, as well as the addition on merits by filing 1st appeal before the Ld. Commissioner. The Ld. Commissioner though affirmed the reopening proceedings u/s 147 of the Act, but restricted the addition from **12.5%** to **4%** of the bogus purchases by taking into consideration the judgment passed by the Hon'ble Tribunal in the case of Kamlesh Bhansali in ITA No. 1591/M/2020. In effect, the Ld. Commissioner deleted the addition of Rs. 9,41,167/-.

6. The revenue department being aggrieved is in appeal before this court and at outset has placed reliance on the judgment passed by the Hon'ble Jurisdictional High Court in the case of **Principal Commissioner Of Income Tax-5 Vs. Kanak Impex (India) Ltd.** in ITA No. 791/2021 decided on 03.03.2025, wherein the Hon'ble High Court restored the addition made by the assessing officer @**100%** of the bogus purchases, which was restricted to **12.5%** by the Ld. Commissioner, and subsequently got affirmed by the Hon'ble Tribunal, restricting the disallowance qua profit margin, on unproven purchases.

7. Ld. Counsel Mr. Dhaval Shah, on the contrary has demonstrated that this case is factually dissimilar to the case dealt with the Hon'ble High Court, as the Hon'ble High Court considered the case, wherein the assessing officer has made the addition

@100%, but in the instant case, the Assessing Officer himself has estimated the profit @12.5%.

8. This Court observe that the Hon'ble High Court, while deciding the issue, has also taken into consideration the relevant fact specific to the effects that the Assessee in that case failed to prove the purchases including source of expenditure, by not offering any explanation in the course of reassessment proceedings and therefore in the absence of any explanation qua source of expenditure, the AO had applied the provisions of section 69(c) of the Act and therefore, the Hon'ble High Court justified the action of the AO, in making the addition @100%. Whereas in the instant case, admittedly the Assessee has proved that the transactions have been carried out through banking channels and the assessing officer has not also not doubted the same and accepted specifically in the assessment order itself vide para 7(xii) for making the payment through banking channel.

9. The Ld. Counsel also submitted four judgments qua identical issue, by the Hon'ble Jurisdictional High Court, including in the case of **Principal Commissioner of Income Tax-2 Vs Refrigerated Distribute Private Limited** (ITA No. 1840/2018) decided on 05.03.2005, wherein the Assessing Officer estimated the gross profit @25%, which was confirmed by the then Ld. CIT(A). However, subsequently reduced by the tribunal to **10%** and therefore, the Hon'ble High Court, by considering the peculiar fact that the issue involved relates to only estimation of profit; ultimately opined/decided that no substantial question of law can be said to have arisen in the instant case.

10. Thus this Court is in concurrence with the contention raised by Mr. Dhaval and the claim made by the Assessee that this case is factually dissimilar to the case dealt with by the Hon'ble High Court **Principal Commissioner Of Income Tax-5 Vs. Kanak Impex (India) Ltd.** in ITA No. 791/2021 decided on 03.03.2025. Hence the addition @ 100% of the bogus purchases made by the AO and as claimed by the Ld. DR, cannot be restored.

11. This Court further observe that Tribunal in the cases of **Mr. Manish P. Lathia, HUF Vs. ITO** in ITA No. 2906/M/2024 decided on 12.12.2024 and **Mr. Vinesh Arvindkumar Shah Vs. ITO** in ITA No. 2121/M/2024 decided on 12.12.2024, has also dealt with identical issue as involved in this case, wherein the Assessee was also involved in the identical business such as ferrous or non-ferrous metals. The Hon'ble Coordinate Bench of the Tribunal restricted the addition from **12.5% to 5%.**

12. And therefore considering the peculiar fact and circumstances, for the just and proper decision of the case and substantial justice, this court deem it appropriate to restrict the addition @5% instead of 4% as restricted by the Ld. Commissioner.

13. Thus the Assessing Officer is directed to compute the profit element/margin/estimation %5% instead of 4%, as restricted by the Ld. Commissioner.

14. Resultantly, the appeal i.e. ITA No. 6546/M/2024 filed by the Revenue Department, stands partly allowed.

15. In view of judgment in ITA No. 6546/M/2024, all **03** appeals under consideration, are partly allowed in same terms.

Order pronounced in the open court on 03.04.2025.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Disha Raut
Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.