

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA Nos. 617 and 618 /MUM/2025
Assessment Years: 2012-13 & 2015-16**

DCIT CC-7(2),
Room No. 637, Aayakar Bhavan,
MK Road,
Mumbai-400020.

Appellant

Man Industries (I) Ltd.,
101, Man House, S.V. Road, Vile
Vs. Parle West,
Mumbai-400056.
PAN NO. AAACM 2675 G
Respondent

Assessee by : Mr. K. Gopal
Revenue by : Mr. R.R. Makwana, Addl. CIT

Date of Hearing : 14/05/2025
Date of pronouncement : 28/05/2025

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the Revenue are directed against two separate orders, both dated 29/11/2024, passed by the Ld. Commissioner of Income-tax (Appeals) – 49, Mumbai [in short ‘the Ld. CIT(A)’] for assessment year 2012-13 and 2015-16 respectively. As both the appeals being connected with one assessee, 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 Revenue having ITA No. 617/Mum/2025 for assessment year 2012-13. The grounds raised in the appeal are reproduced as under:

1. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition of Rs.2,60,61,006/- as unexplained cash credit u/s 68 of the Act, without appreciating the facts of the case.*

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the total income of the appellant at Rs. 1,55,13,50,398/- as against the income determined by the AO of Rs. 1,57,74,11,400, without properly appreciating the facts of the case.*

3. *The order of the Ld. CIT(A) is erroneous in law and on facts of the case and is liable to be set aside and the order of the AO be restored?*

3. Briefly stated facts of the case are that the assessee company was engaged in the business of manufacturing and export of large diameter carbon steel line pipes for various high pressure transport applications. The assessee filed its return of income electronically on 29.09.2012 declaring total income at Rs.154,94,33,700/- which was subsequently revised on 30.12.2013, declaring total income at Rs.148,93,31,110/-. The assessment u/s 143(3) r.w.s. 153A of the Income-tax Act, 1961 (in short 'the Act') was completed on 28.12.2017 assessing the total income at Rs.155,13,50,398/-. Subsequently, information was received from the Investigation Wing of the Income-tax Department, Mumbai regarding deposit of



Rs.2.50 crores in the bank account of the assessee, nature and source which, the assessee failed to explain during inquiry conducted by the Investigation Wing. In view of the information, the Assessing Officer recorded reasons to believe that income escaped assessment and accordingly issued notice u/s 148 of the Act on 29.03.2019. The assessee filed return of income in response to notice u/s 148 of the Act on 04.10.2019 and thereafter statutory notices under the Act were issued and complied with. During the course of reassessment proceedings, the Assessing Officer asked the assessee to explain the deposit of Rs.2,60,61,006/- in HSBC Bank Account No. 019-860063-001. The assessee explained that Rs.2,55,61,006/- was received by way of proceeds of export bill and Rs.5,00,000/- was transferred from other bank account of assessee company maintained with the ICICI Bank, but the explanations of the assessee were not accepted by the Assessing Officer and he made addition u/s 68 of the Act holding the credit as unexplained cash credit.

4. On further appeal, the Ld. CIT(A) forwarded the submission of the assessee calling for his comment but despite three reminders no comments were furnished by the Assessing Officer. The Ld. CIT(A) considering the submission of the assessee deleted the addition made by the Assessing Officer observing as under:

“9. I have considered the facts of the case, discussion made in the order of assessment and the submission of the appellant. Sole issue in the appeal is the addition of Rs.2,60,61,006/



made u/s 68 of the Act. The case of the appellant was reopened on the basis of information received from Investigation wing that there were credit entries of the said amount in the bank account of the appellant followed by immediate transfer of funds to another account. In the assessment proceedings, the explanation for the credits was not accepted by the AO and the entire amount of was added to the income of the appellant u/s 68 of the Act, which is being contested in the present appeal. Appellant has challenged the addition on merits. It has also raised legal grounds challenging the validity of the reasons for reopening and notice u/s 148 of the Act. I proceed to decide the issue on merits.

9.1. The amounts in question are two credit entries of Rs 5,00,000 and Rs. 2,55,61,006/- transferred to appellant's HSBC bank account no. 019-860063001. Appellant has explained that the Rs. 5,00,000/- was transferred from its ICICI Bank A/c No. 000451000358 to HSBC Bank A/c No. 019-860063-001 on 7/6/2011. It has submitted the account statement of both the banks as evidence. I have perused the bank statement and find that the name of the appellant and bank account no. of ICICI Bank is mentioned on the HSBC bank statement against the credit entry of Rs. 5,00,000/- on 07.06.2011. The explanation of the appellant is found to be in order.

9.2. The other amount of Rs 2,55,61,006/-, it is explained that the Appellant had made an export sale to its overseas customer M/s. Al Zahem International Group for a sale consideration of USD 5,20,740.76, vide Export Invoice no. 207 dated 09.02.2012. The relevant Export Invoice No.207/EXP/Anj/Saw/11-12 dated 09.02.2012 raised to M/s. Al Zahem International Group, Packing List, Certificate of Origin, Shipping Bill and Bill of Lading were submitted to the Assessing officer. The export sales have been accounted and offered as revenue in Audited Books of Account. The appellant had received the export proceeds of USD 5,20,740.76 from M/s. Al Zahem International Group on 02.03.2012 being converted into INR Rs. 2,55,61,006/- (which includes Rs. 4,94,561/- received on 06.03.2012 on account of currency exchange difference) in HSBC Bank A/c No. 019-860063001 through proper banking channel. The bank realization certificate and bank payment advice for the same was submitted to the assessing officer along with the reply to the show-cause notice filed on 21.12.2019.



9.3. Thus, the source of credit entries of Rs. 2,60,61,006/- in HSBC Bank A/c No. 019-860063-001 is as follows:

Date	Amount	Source
07.06.2011	Rs.5,00,000.00	Transfer from ICICI Bank A/c No. 000451000358
02.03.2012	Rs.2,50,66,445.09	Export proceeds of USD 5,20,740.76 from M/s Al Zahem International Group against Export Sale
06.03.2012	Rs.4,94,561.22	Receipt on account of exchange rate difference w.r.t. export proceeds received on 02.03.2012
Total	Rs.2,60,61,006.31	

During the appellate proceedings, appellant had produced the

1. Statement of HSBC Account No. 019-860063-001 for the financial year 2011-12
2. Statement of ICICI Account No. 000451000358 reflecting the transfer /debit entry of Rs. 5,00,000/- on 07.06.2011
3. Copy of Export documents that includes Export Invoice No.207/EXP/Anj/Saw/11-12dated 09.02.2012 raised to M/s. Al Zahem International Group, Packing List, Certificate of Origin, Shipping Bill and Bill of Lading.
4. Copy of letter addressed to HSBC Bank Ltd for negotiation and submission of export documents.
5. Copy of bank advice towards money received showing reference of our Commercial Invoice No. 207/EXP/Anj/Saw/11-12
6. Bank certificate for export realisation certifying the inward remittance of USD 5,20,740.76
7. Ledger account of M/s. Al Zaheem International Group of FY 2011-12 reflecting the export turnover duly accounted in the books of the appellant and export realisation against the sam.

9.4. I have considered the submissions of the appellant. From the same, it is evident that the said amount of Rs. 2,55,61,006 is received against the export sales. The amount has been received through banking channels for which the appellant has submitted the Bank certificate. The sale proceeds have been accounted for as sales turnover. Further, Rs 5,00,000/-



represents the interbank transfer. In view of the submission provided by the appellant, the said entire credits of Rs 2,60,61,006.31 /- stands explained. Therefore, the provisions of section 68 of the Act are not applicable in this case.

9.5. It is also seen that the entire amount was transferred from HSBC bank account to the bank account at ICICI Bank Account No. 000451000358, which is held by Man Industries (India) Limited as under-

- 1. Rs.4,12,550/-bank charges debited by bank during financial year 2011-12.*
- 2. Rs.4,50,000/-transferred to ICICI Bank on 17/02/2012.*
- 3. Rs. 2,50,00,000/- transferred to ICICI Bank Account No. 000451000358 on 05/03/2012.*
- 4. Rs. 5,30,000/- transferred to Corporation Bank on 14/03/2012.*

Therefore, it is very clear that the funds are transferred to from HSBC bank account to other bank accounts held and operated by the Company itself and not to any outsider. Thus, the appellant has explained the source of the funds as well as the destination of the funds.

9.6. The above explanation was also provided during the assessment proceedings. However, the AO had rejected the appellant's contention. Para 3.2 of the assessment order in which carried the AOs comments on the submissions made by the appellant is reproduced as under

“3.2 The assessee's submission is considered but the same is not found to be acceptable. The transactions entered into by the assessee are not vague but specific with reference to certain credit entries. Therefore, the basic issue in question is whether or not the afore-mentioned credit entries into the assessee's bank account are genuine or otherwise. In these circumstances, the onus lies on the assessee to establish along-with supporting evidences that the credit entries into the assessee's bank account are genuine. However, the assessee has failed to furnish the cogent evidences in respect of the claim made by it. It has, therefore, failed to satisfactorily explain the nature and genuineness of the aforesaid transactions”.

With these observations, the AO has proceeded to invoke the provisions of section 68 of the Act.



9.7 On perusal of the Para 3.2. of the order, it appears that the explanation provided by the appellant was rejected without assigning any specific reasons. AO has not elaborated on what other evidence was required to prove that the said credit entries were genuine sale proceeds. I feel that the Appellant had duly discharged its onus in explaining the source of credits. The onus was on the AO to conduct further enquiries to disprove the appellant, if he was not satisfied with the explanation. AO has not carried out any such enquiry. The information received by the Investigation wing has been adopted without considering the submission made by the appellant in the assessment proceedings.

9.8 From the overall facts of the case, it is seen that the appellant has explained the credits of Rs 2,60,61,006/- in the bank account with documentary evidences. The addition Rs 2,60,61,006/- u/s 68 of the Act cannot be upheld. AO is directed to delete the said addition. Ground nos 1 and 3 are allowed.”

5. We have heard rival submissions of the parties and perused the relevant materials on record. We find that the issue in dispute is in respect of source of the credit of Rs.2,60,61,006/-. The assessee explained that United State dollar (USD) 5,20,740.76 (Indian Rupees 2,55,61,006/-) was received from overseas customers against the material supplied vide export invoice No. 207 dated 09.02.2012. The assessee filed all the documentary evidence in support of export documents *inter alia*- Commercial Invoice, Packing List, Certificate of Origin, Shipping Bill and Bill of Lading, copy of bank advise, copy of bank certificate etc. With respect to amount of Rs.5,00,000/- (Rs.2,60,61,006 – Rs.2,55,61,006) the assessee explained that same was transferred from the company's other bank account maintained with the ICICI bank. Thus, it is evident that assessee has explained source of the total amount of



Rs.2,60,61,006/- . Before the Ld. CIT(A) also the assessee reiterated the source of the deposit and filed all the documentary evidence in support thereof. In our opinion, order of the Ld. CIT(A) on the issue in dispute is well reasoned and we do not find any infirmity in the same. Accordingly, we uphold the same. The grounds of appeal of the Revenue are accordingly dismissed.

6. Now, we take up the appeal of the Revenue having ITA No. 618/Mum/2025 for assessment year 2015-16. The grounds raised by the Revenue in its appeal are reproduced as under:

1. Whether, on the facts and circumstances of the case and in law, the Learned CIT(A) erred in allowing the appeal of the assessee solely on the basis of natural justice.

2. Whether, on the facts and circumstances of the case and in law, the Learned CIT(A) erred in deleting penalty of Rs. 15,54,634/- u/s. 271(1)(c) of the Act at the rate of 100% of tax sought to be evaded on the addition of Rs. 45,73,796/- as confirmed by the Hon'ble ITAT i.e. estimated profit margin 5% of impugned bogus purchases of Rs. 9,14,75,919/- made from M/s. Harmony Exim Pvt. Ltd., basis of an estimated profit margin from alleged bogus purchases rather than concrete evidence of concealment or furnishing of inaccurate particulars.

3. Whether, on the facts and circumstances of the case and in law, the Learned CIT(A) erred in deleting the penalty stating that penalty levying on impugned addition which did not arise out of any incriminating materials found during the search proceedings and which was merely based on statement on third party, without appreciating the facts on addition made by Assessing Officer basis of an estimated profit margin from alleged bogus purchases rather than concrete evidence of concealment or furnishing of inaccurate particulars.



4. The order of the Ld. CIT(A) is erroneous in law and on facts of the case and is liable to be set aside and the order of the AO be restored.

5. The appellant craves leave to add to alter, amend, modify and/ or delete any or all of the above said grounds of appeal. The appellant reserves its right to file further submission in the appeal.

6.1 Briefly stated, facts of the case are that the assessee filed its original return of income on 30.11.2015 declaring total income at Rs.32,38,23,920/-. Thereafter the return of income filed by the assessee was selected for scrutiny and notice u/s 143(2) of the Act was issued and served upon the assessee. Subsequently, a search was conducted u/s 132 of the Act on 10.12.2014. Thereafter, the assessment was completed u/s 143(3) of the Act on 29.12.2016 determining total income at Rs.78,27,92,610/- under normal provisions of the Act and book profit of Rs.87,74,75,621/- u/s 115JB of the Act after making various additions including addition for the bogus purchases of Rs.9,14,75,919/-. The Assessing Officer initiated penalty proceedings u/s 271(1)(c) of the Act. On further appeal against the quantum addition, the Ld. CIT(A) partly allowed the appeal of the assessee against which both the Revenue and the assessee preferred appeal before the Income-tax Appellate Tribunal (ITAT). The ITAT vide its order dated 25.11.2021 restricted the addition made on account of bogus purchases to 5% of the amount of Rs.9,14,75,919/-. In view of addition to the extent of 5% in respect of bogus purchases confirmed by the Tribunal, the Assessing Officer issue a show cause notice dated 12.07.2022 to the



assessee asking as why the penalty u/s 271(1)(c) of the Act might not be levied in respect of addition sustained by the ITAT. The assessee contested that there was no concealment of the income or furnishing inaccurate particulars of the income and disallowance was merely made on the ad-hoc estimation of the profit. The Assessing Officer rejected the contention of the assessee and levied a penalty at the rate of 100% of the tax evaded on the said addition, which was worked out to Rs.15,54,634/-. On further appeal, the Ld. CIT(A) deleted the penalty for the reason that same was levied in respect of addition sustained on the estimate basis relying on the decision of the Co-ordinate Bench of the Mumbai ITAT. Aggrieved, the Revenue is in appeal before the Tribunal by way of raising the grounds as reproduced above.

7. We have heard rival submissions of the parties and perused the relevant materials on record. In the course of assessment proceedings addition was made in respect of purchases from M/s Harmony Exim Pvt. Ltd. amounting to Rs.9,14,75,919/-, in view of statement of the supplier manager and director of the company. However, the said addition has been restricted to 5% by the Tribunal. The relevant finding of the Tribunal is reproduced as under:

“126. We have heard the rival parties and perused the materials on records. Undisputed facts are that the assessee as well as M/S Harmony Exim Pvt. Ltd have admitted to fact that these were accommodation entries only and no physical delivery of materials were made to the assessee. However the assessee filed



various documents viz. Ledger account of Harmony Exim Pvt. Ltd, copy of Store issue report wherein HR coil purchase from M/s Harmony Exim Pvt. Ltd. were shown to be issued for production / manufacturing of spiral pipes, copy of inspection report was also filed before AO, copy of lorry receipt in respect of goods transported from Mumbai to Anjar and stock register showing month wise receipt and consumption of HR Coil. Under these circumstances the only possibility is that though the purchases are held to be bogus but certainly the purchases were made from some other source in the grey market. Such purchases can not be ruled out as the materials were used in the manufacturing process, the inspection report whereof was on the records and stock register showing monthwise receipt and consumption of materials. So under these circumstances it is settled position now that entire alleged bogus purchases can not added to the income of the assessee as it would affect the profits of the assessee unrealistically and unreasonably. Therefore under such circumstances only profit margin on those bogus purchases can at the most be added. Accordingly we set aside the order of id CIT(A) on this issue and direct the AO to apply a profit rate of 5% on the bogus purchases of Rs.9,14,75,919/-. The appeal of the assessee is partly allowed.”

7.1 The Ld. CIT(A) deleted the penalty observing mainly for the reason that addition was upheld on the estimation basis. The relevant finding of the Ld. CIT(A) is reproduced as under:

“7.2.1 Decision-

During the search action, evidences were gathered which suggested that the appellant had taken accommodation entries of purchases amounting to Rs 9,14,75,919- from a concern named M/s Harmony Exim Pvt ltd. Based on this evidences, entire purchases of Rs 9,14,75,919 were added to the income of the appellant. The said addition was confirmed by the CIT(A). Hon’ble ITAT while deciding the issue restricted the addition to 5% of the purchases. The relevant extract of the order of ITAT is reproduced as under:

“126. We have heard the rival parties and perused the materials on records. Undisputed facts are that the assessee as well as M/S Harmony Exim Pvt. Ltd have admitted to fact that these were accommodation entries only and no physical delivery of materials were made to the assessee. However the assessee filed various documents viz. Ledger account of Harmony Exim Pvt. Ltd, copy of



Store issue report wherein. HR coil purchase from M/s Harmony Exim Pvt. Ltd. were shown to be issued for production / manufacturing of spiral pipes, copy of inspection report was also filed before AO, copy of lorry receipt in respect of goods transported from Mumbai to Anjar and stock register showing month wise receipt and consumption of HR Coil. Under these circumstances the only possibility is that though the purchases are held to be bogus but certainly the purchases were made from some other source in the grey market. Such purchases can not be ruled out as the materials were used in the manufacturing process, the inspection report whereof was on the records and stock register showing monthwise receipt and consumption of materials. So under these circumstances it is settled position now that entire alleged bogus purchases can not added to the income of the assessee as it would affect the profits of the assessee unrealistically and unreasonably. Therefore under such circumstances only profit margin on those bogus purchases can at the most be added. Accordingly we set aside the order of Id CIT(A) on this issue and direct the AO to apply a profit rate of 5% on the bogus purchases of Rs.9,14,75,919/-. The appeal of the assessee is partly allowed.”

Hon’ble ITAT has observed that the purchases form Ms Harmony Exim Pvt ltd were bogus, but the purchases would have been made from some other source in grey market. Since the appellant has shown consumption of the material and corresponding sales, the profit margin was worked out at 5% of such purchases.

7.2.2 As regards filing of inaccurate particulars, I am of the view that the appellant had filed inaccurate particulars of purchases in its books of account. However, it has been held that the purchases were made, not from the parties shown by the appellant but from the grey market. Further, the income arising out of such purchases has been estimated at 5% of such purchases. Appellant has cited number of judicial pronouncements including that of Jurisdictional Mumbai ITAT, wherein it is held that the penalty should not be levied on estimated additions. I find that the present case gets covered by the case laws relied upon by the appellant.

7.3 Considering the overall facts of the case, I hold that the penalty u/s 271(1)(c) cannot be sustained in this case as the penalty is calculated on estimated income.”

7.2 Before us, the Ld. counsel for the assessee has relied on the Tribunal in the case of ITO v. IORA Diamonds Pvt. Ltd. in ITA Nos.



6396, 6395 & 6397/Mum/2024 for assessment years 2008-09 to 2010-11 wherein the Tribunal has deleted the penalty levied on estimation of the addition. The relevant para is reproduced as under :

“5. We have heard both the sides and perused the material on record. We find that the CIT(A) has deleted the penalty by following the decision of the Tribunal in the case of Supertech Construction Co. Vs. ACIT [ITA No. 910/Mum/2023, dated 05/12/2023] and judgment of the Hon'ble Rajasthan High Court in the case of CIT vs. Krishi Tyre Retreading and Rubber Industries [360 ITR 580]. The relevant extract of the decision of CIT(A) reads as under:

“8. Decision:

8.1. The instant appeal has been filed against the order u/s.271(1)(c) dated 05- 01-2022 for A.Y.2008-09. In the assessment order the AO had made addition of Rs. 3,42,644/- being 12.5% of bogus purchases. The above estimated addition was reduced by CIT(A) by reducing the percentage of estimation from 12.5% to 8%. The above order was confirmed by Hon. ITAT. The AO has levied penalty of Rs. 67,762/- u/s 271(1)(c) on the above addition, against which the appellant has filed the instant appeal.

8.2 I have considered the submissions filed by the appellant Assessment Year 2008-2009, 2009-2010 & 2010-2011 during the appellate proceedings, which have been extracted in the preceding para. In the case of Supertech Construction Co. Vs. ACIT, In ITA No. 910/Mum/2023, Hon. ITAT, Mumbai vide order dated 05.12.2023 has held that penalty u/s 271(1)(c) is not imposable on bogus purchase addition. The Hon. Rajasthan High Court in the case of CIT Vs. Krishi Tyre Retreading and Rubber Industry has held that, where addition is made purely on estimation basis, no penalty u/s 271(1)(c) of the Act is leviable. There are catena of decisions by different High Courts and various benches of ITAT wherein penalty u/s 271(1)(c) of the Act levied on the basis of estimated addition has been held to be unsustainable. Thus, in the facts of the instant case, penalty levied u/s 271(1)(c) of the Act levied based on estimated addition of bogus purchases is unsustainable. The assessing officer is directed to delete the penalty. The grounds of appeals are allowed. 9. In the result, the appeal is allowed.



9. In the result, the appeal is allowed."

6. There is nothing on record to persuade us to take a view different from the above view taken by the CIT(A). The Learned Authorized Representative for the Appellant has also placed on record the decisions of Mumbai Bench of the Tribunal in the case of (a) Fancy Diamonds India Pvt. Ltd. Vs. DCIT 5(1)(1), Mumbai [ITA No.961 to 963/Mum/2023, Assessment Years 2010-11 to 2012-13, dated 20/06/2023] and (b) M/s. Vijay Jewellers Vs. Deputy Commissioner of Income Tax 19(3), Mumbai [ITA No.4203 & 4304/Mum/2024, Assessment Years 2012-13 & 2011-12, dated 03/10/2024] whereby, in identical facts and circumstances, the Tribunal had deleted penalty levied under Section 271(1)(c) of the Act on the ground that addition was made on estimate basis. In view of the above, we decline to interfere with the order passed by the CIT(A) deleting the penalty levied under Section 271(1)(c) of the Act, and therefore, Ground No.1, 2 and 3 raised by the Revenue are dismissed."

7.3 Respectfully following the finding of the Tribunal (supra), we uphold the finding of the Tribunal on the issue in dispute, the ground of appeal of the Revenue are accordingly dismissed.

12. In the result, both the appeal of the Revenue are dismissed.

Order pronounced under Rule 34(4) of the ITAT Rules, 1963 by way of placing result on notice board on 28.05.2025.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 28/05/2025
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