

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री पार्थ सारथी चौधरी, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 155/RPR/2025
(निर्धारण वर्ष Assessment Year: 2018-19)

Deputy Commissioner of Income Tax-1(1), Raipur, C.G.	V	Shanta Techno Private Limited, s C-12, Shanta Techno, Anupam Nagar, Raipur-492007, C.G.
PAN: AAJCS8353E		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	None
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	03.06.2025
घोषणा की तारीख/Date of Pronouncement	:	18.06.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeal), NFAC, Delhi, [in short "Ld. CIT(A)"] passed under section 250 of the Income Tax Act, 1961 (in short "the Act"), dated 06.01.2025, for the Assessment Year 2018-19, which in turn arises from the order u/s 147 r.w.s. 144B of the Act, dated 20.03.2023, passed by Assessment Unit, Income Tax Department (in short, "Ld. AR").

2. The grounds of appeal raised by the revenue are as under:

- (1) *Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) was justified in restricting addition to the extent of 12.5% of bogus purchases instead of disallowing 100% of the bogus purchases relying upon the decision of Hon'ble High Court of Bombay in the case of PCIT vs. S.V. Jiwani [2022] 145 taxmann.com 230 (Bombay) (supra) and the decision of Hon'ble High Court of Gujarat in the case of CIT vs. Simit Sheth (supra) ignoring the facts brought on record by the AO and without going into the merits of the case.*
- (2) *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred while deciding the appeal in favour of the appellant, failed to allude to relevant facts on record, misread the evidence and its probative value thereby giving rise to perversity in the order of Ld. CIT(A), which itself gives rise to Question of Law as held in several case laws including in the case of Sudarshan Silk and Sarees 300 ITR 205 (SC)?.*
- (3) *The order of the CIT(A) is erroneous both in law and on facts.*
- (4) *Any other ground which may be adduced at the time of hearing.*

3. The brief facts of the case are that the assessee is a corporate entity, had filed its Return of Income (ROI) for AY 2018-19, declaring total income of Rs. 93,46,676/-. In the matter, the Ld. AO had possess the information that, in the year under consideration, the assessee had received accommodation entries in the form of bogus purchases amounting to Rs.76,21,830/- from M/s Shree Shyam Sales Corporation, who was indulged in the activity of issuance of bogus bills in respect of trading in Iron & Steel. Accordingly, the case of assessee was reopened, notice u/s 148 was issue, and show cause u/s 142(1)

was served on the assessee. During the assessment proceedings, assessee tried to explain as to why the purchase of Rs. 76,21,830/- through Shri Shyam Sales Corporation should not be treated as an accommodation entry in the form of a bogus purchase. However, Ld. AO was not convinced with the information furnished by the assessee; therefore, had made a disallowance of the aforesaid figure invoking the provisions of Section 69C of the Act, treating the alleged disputed purchase as bogus transactions recorded in the books of the assessee.

4. Aggrieved with the aforesaid disallowance by the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A), wherein the plea of the assessee, placing reliance on various decisions, was deliberated upon, and the appeal of the assessee was partly allowed with sustaining the disallowance to the extent of 12.5% of the non-genuine/suspicious/bogus purchases instead of 100% disallowance. The observations of Ld. CIT(A), while deciding the issue, are culled hereunder for the sake of completeness and reference:

5.0 I have perused the appeal documents filed by the assessee. In the background of the above facts and circumstances, I give my findings.

- 1. The onus is on the assessee to prove the genuineness of purchases by producing the parties from whom the purchases were purportedly made, which the assessee failed to produce before the AO.*
- 2. The onus was on assessee to prove the genuineness of the transaction.*

5.1 It is well settled law that strict rules of evidence do not apply to Income-tax proceedings and conclusive proof is also not necessary to arrive at any conclusion or to establish a fact. The AO is entitled to arrive at a conclusion on appreciation of several facts, the cumulative effect whereof may be considered to judge the soundness of the conclusion. It is conceivable that a mere denial by the assessee is not sufficient to rebut the circumstantial evidence which considered along with the conduct of the assessee has led to the inescapable conclusion that the assessee had taken accommodation entries and alleged purchases were not genuine.

*5.2 The Hon'ble Gujarat High Court in the cases of **M/s Sanjay Oil Cake Industries Vs. CIT (10 DTR 153)** and Hon'ble Ahmedabad Tribunal in the case of **M/s. Vijay Proteins Ltd. Vs. ACIT (58 ITD 428)** has extensively dealt with this issue and came to conclusion that disallowance of 25% of impugned purchases would suffice the matter. Similarly, the Hon'ble Jaipur Tribunal in the case of **Deepak Dalela Vs. ITO (50 DTR 502)** had extensively dealt with this issue. However, in the Misc. Application filed before it, the Hon'ble Jaipur Tribunal in the case of **Shri Anuj Kr. Varshney Vs. ITO & Ors. Revenue Authorities ITA 187/JP/2012** dated 22.10.14 sustained the addition to the extent of 15% after elaborate discussion and extensive findings instead of 25%. It is a settled law that Income Tax Authorities are entitled to look into the surrounding circumstances to find out the reality of the recitals made in documents. It is the duty of the authority to go behind the smoke-screen and discover the true state of affairs. The authority is not to be satisfied with the form but with the substance of the transactions. Though the transactions in the present case were initially settled through banking channel but these were ultimately settled in cash. Merely because a paper trail had been created, that would not by itself make the transaction genuine. It was held by Hon'ble Punjab & Haryana High Court in the case of **Mittal Belting and Machinery Stores Vs. CIT (253 ITR 341)** that if on the examination of the evidence, it is found that there was no genuine transaction between the parties, a pure paper transaction could not have entitled the assessee to claim benefit under the law.*

Similarly, the Hon'ble Mumbai Tribunal held in the case of **Balaji Textiles Industries Pvt Ltd Vs. ITO (49 ITD 177)** that issue of bills by the alleged suppliers was not a conclusive proof. On the same facts, in the case of **ITO Vs. Sunsteel (92 TTJ 126)**, the Hon'ble Ahmedabad Tribunal upheld 10% of the purchase price as inflated amount where suppliers were found to be non-existent and did not respond to the notices issued by the Department. There are number of decisions by the various courts, wherein 25% to 100% disallowances of bogus purchases, have been upheld. Some of these are mentioned below:

5.3 100% disallowance of bogus / unverifiable purchases was upheld, in following cases:

1. *CIT Vs. La Medica (2001) 250 ITR 575 (Del)*
2. *Sri Ganesh Rice Mills Vs. CIT (2007) 294 ITR 316 (All)*
3. *Khandelwal Trading Co. Vs. ACIT (1996) 55 TTJ (JP) 261 Swetambar Steels Ltd. Vs. ITO 707 / 1075 / 1262 / 1263 / JD (2002) ITAT (Ahd).*

In the case of *Swetambar Steels Ltd. (supra)*, the Hon'ble ITAT, Ahmedabad had confirmed the is allowance of the bogus purchase in entirety stating that the purchases shown from the respective parties were found ingenuine. It was not a matter to be looked into whether the assessee had made purchases from different parties other than the alleged ones. It was also worth mentioning that the appeal against the decision of Hon'ble ITAT was not admitted by the Hon'ble Gujarat High Court and the assessee had also lost before the Hon'ble Supreme Court. So, the decision over the issue had become final. There were judicial decisions wherein the whole amount of bogus purchases was disallowed and the said orders were also confirmed by the High Courts. It was held that after invocation of provisions of section 145(3) of the Act, the Assessing Officer acquired the mandate even to add the whole amount of purchases found as bogus to the total income of the assessee. One such case was *Sri Ganesh Rice Mills Vs. CIT 294 ITR 316 (All)* wherein the entire amount of bogus purchases, from 5 parties, was disallowed and same was also upheld. The relevant portion of the order

of the Tribunal as confirmed by High Court of Allahabad is reproduced, here as under:

“Once it is found that the purchases were bogus, addition has to be made to the extent of the purchases found to be fictitious. The consideration that the gross profit disclosed by the assessee compares favorably as compared to the earlier years is wholly irrelevant. To neutralize the effect of inflation in purchases, the only course open to the Income-tax Officer is to add back that amount to the income irrespective of the fact whether the rate of gross profit goes up and whether the resultant gross profit is higher than the gross profit normally shown in the earlier years.”

5.4 *25% disallowance of bogus/unverifiable purchases has been upheld in following cases:-*

1. *Sanjay Oil Cake Industries Vs. CIT (2008) 316 ITR 274 (Gujarat HC)*
2. *Vijay Proteins Ltd Vs. ACIT 58 ITD 428 (Ahmedabad)*
3. *M/s. Nand Kishore Meghraj Jewellers, Jaipur Co. No. 105/JP/09 arising out of ITA No. 433/JP/2009 by ITAT Jaipur*
4. *M/s. Trident Jewellers ITAT Jaipur ITA No. 552/JP/2013.*

Disallowance @ 25% out of Bogus purchases, was held as a reasonable in the case of Vijay Proteins Ltd. (supra) in view of the fact that the savings occurred to the suppliers on account of sales tax, duties and Income-tax having MMR of 30%. By buying the goods from grey market at lower rates and booking the purchases at normal rate, the assessee got the benefit of this proportion. In view of this, the disallowance @ 25% was held to be fully justified. Further in the case of M/s. Trident Jewellers Vs. ITO, ITA No. 552/JP/2013, on account of bogus purchases, an addition of 25% of such purchases was confirmed by the Hon'ble ITAT, Jaipur Bench.

5.5 15% disallowance of bogus/unverifiable purchases has been upheld in following cases :-

1. *Shri Anuj Kr. Varshney Vs ITO & Ors. Revenue Authorities ITA 187/JP/2012 dated 22/10/14.*
2. *ITO Vs. Bhansali Trading Corporation ITA No. 253/JP/2012.*

5.6 10% disallowance of bogus/unverifiable purchases has been upheld in following cases:

- (i) *Uniword Telecom Ltd. Vs. Addl. CIT (45 DTR 433) (Delhi ITAT).*
- (ii) *ITO Vs. Sunsteel (92 TTJ 1126) (Ahmedabad ITAT).*

5.7 In view of the foregoing discussion, the percentage of disallowance of bogus purchases/ accommodation entry must be based on the facts of each case. The same cannot be generalized in every case. The decisions rendered in the cases of Sanjay Oil Cake Industries (supra) and Vijay Protein Ltd. (supra) are however distinguishable on facts since in case of Sanjay Oil Cake Industries, a specific finding was given by the Assessing Officer that purchases were made from the alleged bogus suppliers at higher rate as compared to the other parties. In the case of Vijay Proteins Ltd. (supra), after examining the bank account, it was established that cheques issued to various parties were deposited in one of the accounts, which were found to be owned by the assessee himself but there are no such circumstances in the present case, Moreover, the question whether entire purchases should be disallowed or addition should be restricted to the profits embodied on sale proceeds was answered by Hon'ble Gujarat High Court in the case of CIT Vs. President Industries (258 ITR 654) and Hon'ble Madhya Pradesh High Court in the case of CIT Vs, Balchand Ajit Kumar (263 ITR 610).

5.8 Considering the above decisions, and a catena of recent decisions passed by the Tribunals relying on the aforesaid decisions, only the profits embodied on sale

proceeds should be taxed instead of addition on account of entire purchases, Looking to the circumstantial evidence in the present case, it is evident that impugned purchases from the alleged supplier were not genuine and such purchases were made from open market One must consider the totality of facts, surrounding circumstances and human probability for arriving at such a conclusion.

5.9 Therefore, such purchases claimed by the assessee, could not be treated as genuine. In view of facts and circumstances in the present case, I hold that the appellant failed to prove the genuineness of purchases made from accommodation provider. Therefore, based on the facts and circumstances in the appellant's case, I believe the AO's decision to reject the books of account and making addition is justified. *(emphasis supplied by us)*

5.10 *At this point, it is pertinent to note that the entire purchases debited cannot be disallowed. I would like to place reliance on the recent decision of the Hon'ble High Court of Bombay in the case of PCIT vs. S.V. Jiwani [2022] 145 taxmann.com 230 (Bombay) wherein, under similar set of facts and circumstances of the case, the Hon'ble High Court has upheld the decision the Hon'ble ITAT Mumbai that addition to the extent of 12.5% of the bogus purchases is fair and reasonable. The relevant portion of the decision is reproduced below for ready reference.*

“2. The following questions of law have been proposed for our consideration:

“6.1 Whether on the facts and in the circumstances of the case and in law, the order of the Hon'ble ITAT is perverse in not considering the order of Hon'ble Supreme Court in the case of N K Protein Ltd. dated 16-1-2017, which is on the similar issue of bogus purchases and when the Hon'ble Apex Court order was already the law of the land when the Hon'ble ITAT has pronounced its order on 3-5-2017?

6.2 *Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in ignoring the decision in the case of N K Proteins by Hon'ble Ahmedabad High Court, further affirmed by Hon'ble Supreme Court, as mentioned at ground No. 1 above,, wherein Hon'ble High Court, relying on the findings of the Hon'ble ITAT, Ahmedabad, that the suppliers are bogus, has given a finding that once the suppliers are held bogus, then it is not correct to tax only 25% of the bogus claims? This is further supported by the fact that in this case also, the AO has categorically and conclusively held that the parties from whom the purchases are shown to be made are bogus purchases as the concerns are providing bogus bills and this finding of the AO has been further strengthened by the findings of the higher appellate authority which is never controverted by Hon'ble ITAT?*

6.3 *Whether on the facts and in the circumstances of the case and in law, the Hon'ble /TAT erred in overlooking the fact that addition made by AO based on details of scam unearthed by Sales Tax Department wherein it was established that the assessee had taken bills from bogus parties without actually making purchases from them?*

6.4 *whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in ignoring that the purchases from bogus parties are debited in P & L Account for which the assessee had not submitted any evidences, and the same was not allowable?*

6.5 *Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in upholding the order of the Ld. CIT(A) who had limited and disallowance to the extent of 12.5% of the total alleged purchase without verification and confirmation of quantitative data of material sourced and its subsequent movement during the year?"*

3. Briefly stated the material facts are as under:

The Assessee undertakes civil contract works awarded mostly by Municipal Corporation of Greater Mumbai (MCGM). Return of income was filed for the assessment year 2009-10, declaring a total income of Rs. 92,36,071/-. The assessment was completed under section 143(3) of the Act, at a total income of Rs. 93,72,290/-. The case of the assessee was reopened on the basis of information received from Sales Tax Department through DGIT (Inv.), Mumbai, that the assessee had made purchases of Rs. 4,50,08,383/-, which seemed to be accommodation entries. An order under section 143(3) r/w section 147 was passed on 26th March, 2014, making an entire addition of Rs. 4,50,08,383/- as bogus purchase under section 69C of the Act, thereby determining the assessee's income at Rs. 5,43,80,670/-.

4. *An appeal was preferred before the Commissioner of Income Tax, (Appeals), who allowed the appeal partly vide its order dated 19th May, 2015. The Appellate Authority held that payments made by the assessee were through banking channels and that there was no evidence to prove that the cash had flowed back to the appellant. Purchase invoices and ledger statements also appear to have been produced before the Appellate Authority. It was held that what was taxable under the Income tax Act, was only the real income.*

Even when the transaction was not verifiable only the income component, could be taxed and not the entire transaction amount. It was also held that it was undisputed that the sale proceeds of the goods had been duly accounted for in the books and offered to tax, hence, the entire purchase amount could not have been added in the present case and that with a view to plug any revenue leakage in the aforementioned circumstances, disallowance of @ 12.5% was held to be reasonable to safeguard the interest of revenue. It, therefore, confirmed the addition to the extent of 12.5% of the alleged purchases of Rs. 4,50,08,383/- i.e. Rs. 56,26,047/-, therefore, relief was granted to the appellant to the extent of Rs. 4,50,08,383/- - Rs. 56,26,047/- = Rs. 3,93,82,336/-.

The order of CIT(Appeals) was challenged before the Tribunal vide its order dated 03rd May, 2017, dismissed the same. It was held that without purchasing materials and goods, it would not have been possible on the part of the assessee to execute the contract work with the MCGM, which is a Government Authority. It also held that the A.O. had not disputed the turnover of the contract work executed by the assessee and that unless the assessee procured the materials and goods, if not from the declared sources but from some other sources, it would not be possible on the part of the assessee to execute work awarded by MCGM. The Tribunal, therefore, held that the entire purchase made by the assessee could not be added back as income, but only profit element embedded therein, be treated as income of the assessee.

5. We have gone through the well-reasoned order of the Tribunal, which has taken into account all relevant facts before passing the order impugned. In our opinion, the order does not warrant any interference. No substantial questions of law arise in the present appeal and the same is, accordingly, dismissed.”

(emphasis supplied)

5.11 *In view of the matter, considering the factual matrix of the case, I am of the opinion that the ratio of the decision of the Hon'ble High Court of Bombay in the case of PCIT vs. S.V. Jiwani [2022] 145 taxmann.com 230 (Bombay) (supra), apart from the decision of Hon'ble High Court of Gujarat in the case of CIT vs. Simit Sheth (supra), is squarely applicable mutatis mutandis to the instant case. Accordingly, the AO is directed to restrict the addition to the extent of 12.5% of the non-genuine /suspicious/bogus purchases instead of disallowing 100% of the purchases in the assessment order. The ground of appeal 1 is partly allowed.*

6.0 *Ground No. 2 & 3 are general in nature and do not require any adjudication.*

*In the result, the appeal is **partly allowed**.*

5. Being dissatisfied with the aforesaid order by Ld. CIT(A) now the department felt aggrieved and, therefore, had filed the present appeal.

6. At the outset, Ld. Sr. DR representing the revenue submitted that in the present case the assessee was unable to substantiate as to how the provisions of Section 69C of the Act are not applicable. The onus cast upon the assessee could not be discharged either before the Ld. AO or before the Ld. CIT(A). To draw support, Ld. Sr. DR further placed her reliance on the Judgment of Hon'ble Bombay High Court in the case of **PCIT vs. Kanak Impex (India) Ltd., ITA No. 791/2021 dated 03.03.2025**, wherein it is held that if the assessee has offered no explanation of source of expenditure incurred on account of purchases, the Ld. AO was justified in making the addition of the said amount, the appellate authorities were not justified in estimating the profit rate and thereby impliedly grant deduction of such unexplained expenditure which is contrary to the express provisions of Section 69C of the Act. For the sake of completeness, the relevant observations of Hon'ble Mumbai High Court in the case of **PCIT vs. Kanak Impex (supra)** are extracted hereunder:

34. We may observe that CIT(A) in paragraph 5.2.1 has given a clear finding of fact that the respondent-assessee was involved in getting bogus bills. This finding has not been challenged by the respondent-assessee before the Tribunal, and only submission made before the Tribunal was on the estimation of gross

profit by relying upon the decision in the case of Mohammad Haji Adam & Co. (supra).

35. In our view, the Tribunal was not justified in relying upon the decision in the case of Mohammad Haji Adam & Co. (supra). In that case, the assessee had participated in the assessment proceedings, and CIT(A) compared the purchases and sales statement, and there was a finding that the purchases cannot be rejected since there was a correlation between purchases and sales. The Coordinate Bench proceeded on this finding of fact recorded by the authorities and dismissed the revenue's appeal on the ground that no substantial question of law arises. The issue in the present appeal is on failure of discharging onus by the respondent as to purchases including the source of the purchases made by the respondent-assessee and which source has not been explained by the respondent-assessee.

36. The question of law admitted in this appeal states explicitly that neither of the Appellate Authorities has considered the provisions of Section 69C of the Act. Even the decision in the case of Mohammad Haji Adam & Co. (supra) is not a decision on the applicability of Section 69C of the Act, which is the case before us. The only reference of Section 69C in the case of Mohammad Haji Adam & Co. (supra) is where there is an extraction of the Gujarat High Court decision in the case of N. K. Industries limited (supra). There was no question framed on Section 69C before the Coordinate Bench of this Court in the case of Mohammad Haji Adam & Co. (supra). We have already observed above, how provisions of Section 69C of the Act are attracted in the present case.

37. The learned counsel for the respondent-assessee has not made any submissions on the provisions of Section 69C of the Act, although the same were

explicitly framed in the admission order and relied upon by the counsel for the appellant-revenue in the course of the hearing. Therefore, the only conclusion that can be arrived at is that the respondent-assessee does not dispute the applicability of the provisions of Section 69C of the Act to its facts.

38. *In our view, in the instant case, the respondent-assessee has offered no explanation of the source of the expenditure incurred on account of purchases of Rs.20,06,80,150/- and, therefore, the AO was justified in making an addition of the said amount and the Appellate Authorities were not justified in estimating the profit rate and thereby impliedly grant deduction of such unexplained expenditure which is contrary to the express provision of Section 69C of the Act.*

39. *In the instant case before us, the respondent-assessee has not appeared in the re-assessment proceedings to discharge its onus on proving purchase transactions under consideration. Before the CIT(A) for the first time, scanty details of sundry debtors, creditors and stocks were given. The CIT(A) gave a finding of the respondent-assessee's involvement in bogus transaction. Therefore, the finding of the AO on the genuineness of the purchases was confirmed by the CIT(A). Before the Tribunal, the respondent- assessee has not canvassed any submission on the genuineness of the purchases but only pleaded for an estimation of a certain percentage of such bogus purchases to be added. Therefore, before all three authorities, the respondent-assessee has not proved the genuineness of the purchases, which inter alia include the source of making the payment for such purchases. In the light of these factual findings by three authorities, today before this Court, the respondent-assessee's submissions that they have discharged the onus cast upon them to prove the genuineness of the purchases, including the source cannot be accepted.*

40. In view of the above, the appeal of the appellant-revenue is allowed by answering the question in favour of the appellant- revenue and against the respondent-assessee. Consequently, the order of the AO dated 19 March 2015 is restored, and the order passed by CIT(A) and the Tribunal is reversed. However, we make it clear that the aggregate addition after considering the CIT(A) and the Tribunal's order should not exceed Rs.20,06,80,150/-.

7. Ld. Sr. DR, though, had not pointed out any specific defect in the findings of Ld. CIT(A), however, as per statement of facts furnished by the revenue along with the appeal memo in Form 36, it is noted that the Ld. CIT(A) has partly allowed the appeal of the assessee relying upon the decision by Hon'ble Bombay High Court in the case of **PCIT vs. S.V. Jiwani (2022) 145 taxmann.com 230** and the decision of Hon'ble Gujarat High Court in the case of **Commissioner of Income-Tax-I vs. Simit P Sheth, Tax Appeal No. 553 of 2012 dated 16.01.2013**, whereas looking to various judicial pronouncement on the issue of bogus purchase it is paramount to distinguish between the bogus purchase and untested purchases, and accordingly, it is required to decide as to whether *(i) entire purchases are to be added back being bogus in nature, without any actual purchases to inflate the amount of purchases by obtaining bogus bills thereby making the payments but equivalent amount after reducing commission have been taken back in cash by the assessee or (ii) reasonably estimate the profit from such bogus purchases based on GP as per past history of the assessee or in accordance with the prevailing market rates.*

It was the contention of revenue that Ld. CIT(A) while deciding the issue had restricted the addition to the extent of 12.5% instead of 100% disallowance ignoring the facts brought on record by the Ld. AO. With such assertions it was the prayer that the order of Ld. CIT(A) is liable to be reversed, and the addition / disallowance made by Ld. AO deserves to be restored.

8. Per contra, there was no representation on behalf of the assessee even in the second round of hearing before us, therefore, the matter is taken up for adjudication based on material available on record along with statement of facts and grounds raised by the revenue.

9. Having considered the submissions of the revenue, material available on record and judicial pronouncements relied upon. The issue in the present case revolves around the alleged bogus purchase transactions entered by the assessee with a particular party namely M/s Shri Shyam Sales Corporation. Apropos, the aforesaid transaction, a lengthy discussion has been described in the assessment order. Ld. AO conducted necessary inquiries, discussed statement of related persons by the investigation wing, refer to various documents like purchase bills, GST information (unveiling the involvement of M/s Shri Shyam Sales Corporation and M/s Shanta Techno Private Limited in bogus purchase bills/transactions and availing fraudulent Inward Tax Credit (ITC) for which proceedings are initiated by the GST

department also). During the assessment proceedings no submissions were made by the assessee to clarifying about the nature of such sham transactions of purchase, for which Ld. AO have categorically observed as under:

3.5.1 However, in response to the above show cause notice, the assessee neither filed any explanation to the proposed disallowance of Rs.76,21,830/- treating the same as bogus purchase nor any supporting documents to substantiate its claim that the purchases are genuine till date. Given the above facts, there is no alternate to complete the assessment on the basis of information material available on record.

10. Since, it is observed by the Ld. AO that the assessee was unable to furnish any explanation regarding the bogus purchases accounted for by it in the books of accounts and claimed as expenditure, therefore, the disallowance / addition u/s 69C was made. The relevant observations by the Ld. AO explaining the complete facts of the case and the reasons for addition / disallowance, are extracted as under:

3.7.1 Since the assessee has failed to explain with supporting documents in regard to purchases made from the said party are genuine .transaction except the furnishing of purchase ledger, copies of purchase invoices, therefore, the purchases made from the M/s Shree Shyam Sales Corporation were bogus purchases as the said party was indulged in issuance of fake bills in respect of iron and steel against which no material were supplied and the assessee was

one of the beneficiaries who had booked bogus purchase bills and availed fraudulent Input Tax Credit (ITC). The assessee was responsive during the assessment proceedings till the issuance of show cause notice and when the assessee came to know about that the proposed addition with detailed discussion of issues in the SCN, the assessee intentionally chosen not to respond. Further, Investigation team of two Departments GST and Income Tax have established that the referred entity was found indulged in issuance of fraudulent/fake GST invoices for passing irregular input tax credit to other business entities and for doing this they have also availed and utilized Input Tax Credit (ITC) against fake invoices issued by others. The said business entity was found to be a bogus entity having no existence at their declared places of business as well as the places where the consignments were purportedly received. Therefore, transactions made by the assessee is sham transactions and obtaining of bogus/fake purchase bills without actual receipt of goods were just to inflate the expenses to suppress the profit and to avoid taxation of true income.

3.7.2 *Further, statement of Sh. Rakesh Ahluwalia one of the Director of the assessee company on oath was recorded by the Investigation Wing and in the statement, in the statement he has admitted that input credit of CGST at Rs.12,15,944/- and SGST at Rs.12,15,994/- on purchases made from M/s Shree Shyam Sales Corporation had been reversed and thereafter the same was paid through challan to the GST Department. Further, the Director of the assessee company had stated that against the action of GST Department, no further appeal was made which proves that the purchases were bogus and fake purchase bills were obtained to inflate the expenses just to reduce the net profit so as to avoid taxation of correct income.*

3.7.3 *Therefore, in view of the facts of the case and the ratio laid down by the Hon'ble Supreme Court in the case of N. K. Proteins Ltd vs DCIT (2017) 292 CTR 354 (SC) is squarely applicable to the facts of the case of the assessee, where the Hon'ble Supreme Court has dismissed the appeal filed by the assessee and confirmed the findings of Hon'ble Gujarat High Court in respect of bogus purchases, where the Hon'ble Gujarat High Court, after analysing necessary facts of the case, held that once the Tribunal having come to a categorical finding that the purchases from certain parties are bogus, it was not incumbent on it to restrict the disallowance to the extent of 25% of such purchases. The relevant findings of the Court are as under:-*

“6. The Tribunal in the case of Vijay Proteins Ltd. (supra) has observed that it would be just and proper to direct the Assessing Officer to restrict the addition in respect of the undisclosed income relating to the purchases to 25% of the total purchases. The said decision was confirmed by this Court as well. On consideration of the matter, we find that the facts of the present case are identical to those of M/s. Indian Woollen Carpet Factory (supra) or Vijay Proteins Ltd. (supra) In the present case the Tribunal has categorically observed that the assessee had shown bogus purchases amounting to Rs.2,92,93,2887- and taxing only 25% of these bogus claim goes against the principles of Sections 68 and 69C of the Income Tax Act. The entire purchases shown on the basis of fictitious invoices have been debited in the trading account since the transaction has been found to be bogus. The Tribunal having once come to a categorical finding that the amount of Rs.2,92,93,2887- represented alleged purchases from bogus suppliers it was not incumbent on it to restrict the disallowance to only Rs.73,23,327-. ”

3.7.4 *In view of the facts of the case of the assessee and also keeping in view the ratio laid down by Hon'ble Supreme Court in the case of N K Proteins Ltd (Supra), addition of Rs.76,21,830/- towards bogus purchases made from the afore-mentioned shell entity by invoking the provisions of section 69C of the Act is required to be made in this case.*

Unexplained expenditure, etc.

“69C. Where in any financial year an 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 of the assessee for such financial year :

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.”

3.7.5 *In the present case, as per information available on Insight Portal, the assessee had shown purchases from M/s Shree Shyam Sales Corporation who was found indulged in availing/passing on of fraudulent Input Tax Credit (ITC) of Rs.6.5 crores on fake invoices of iron and steel and the entity is used for providing accommodation entries in the guise of issuance of fake sale bills. Therefore, it has been established that the transactions made by the said entity were sham transactions and all the sales made by the entity are bogus sales and all the sales proceeds in the hand of the recipients are to be treated as bogus purchase. So far as provisions of section 69C is concerned, the onus is wholly lies upon the assessee to explain the genuineness of purchases made from the said entity, the assessee*

has completely failed to discharge its onus with supporting documentary evidences. Therefore, in view of the facts and circumstances of the case as discussed in the fore-going paragraphs, an amount of Rs.76,21,830/- is to be treated as deemed income of the assessee and the same is required to be added back by invoking the provisions of section 69C of the Act.

4. Conclusion drawn: -

4.1 *From the analysis of written submission along with details/information available on records and report of the Investigation Wing as discussed in fore-going paragraphs and also failure on the part of the assessee to give any plausible explanation to issues pointed out in show cause notice, it is established that the assessee has debited the bogus purchases just to inflate the expenses so as to avoid taxation of true income. Therefore, the genuineness I correctness of expenses to the extent related with these parties could not be verified and found to be non-genuine and the reasons of such conclusion has been discussed in detailed in the above paragraphs. And also keeping in view the report of the Investigation Wing after conducting physical investigation/enquires, it has been established that M/s Shree Shyam Sales Corporation was indulged in issuance of fake bills with the supply of actual goods. Therefore, transactions made by the entity were sham transactions and all the sales made by the entity are bogus sales.*

4.2 *Therefore, keeping in view the entire facts and circumstances of the case as discussed in the above paragraphs, an amount of Rs.76,21,830/- debited under the head purchase is found to be bogus purchases booked for the purpose to inflate the expenses just to avoid declaration of true income. Accordingly, the same is hereby disallowed by invoking the provisions of section 69C of the Act*

thereby treating the same as bogus entries made under the head purchases is added back to the taxable income of the assessee.

11. On a thoughtful consideration to the aforesaid observations of Ld. AO along with conjoint perusal of the impugned appellate order of Ld. CIT(A), we observe that the decision granted by the Ld. CIT(A) found to be influenced under exceptional reliance on the judgments of Hon'ble High Courts, however, had squarely failed in considering the facts of the present case, without which the applicability of judicial pronouncements in generalize form had led towards a futile exercise, which does not commensurate with or fulfills the mandate of law enumerated under the provisions of Section 250, as expected and incumbent upon the First Appellate Authority. Ld. CIT(A), in his observations at para 5.9 (extracted supra) had categorically observed that the alleged bogus purchases claimed by the assessee could not be treated as genuine, in view of the facts and circumstances of the present case. He further held that, *"in the present case I hold that the appellant failed to prove the genuineness of purchases made from accommodation provider, therefore, the facts and circumstances in the present case, I believe the AO's decision to reject the books of account and making addition is justified."* Ld. First Appellate Authority, however, abruptly shifted stand and had estimated the income at 12.5% of the bogus purchases treating it as fair and reasonable

without any adherence to the factual matrix of the issue. We are afraid that without dealing with or analyzing the facts of the case of the assessee, how the Ld. CIT(A) had arrived at a conclusion based on certain judgments without even referring to the facts of the bogus transactions which are the genesis for addition in the present case. Ld. CIT(A) had not considered it appropriate to at least reconcile and look into the facts of present case as to whether the same are having any consonance or proximity with the facts, circumstances and observations accorded in the judicial pronouncements relied upon to estimate the profit.

12. In sum and substance, being the final fact-finding authority, we are of the considered opinion that in instant matters, the assessee squarely failed in discharging the onus regarding bogus purchases transacted by it and claimed as expenditure. Ld. AO elaborated the facts and surfaced that the assessee was involved in bogus purchases transactions, however, there was gross failure on the part of Ld. CIT(A) to investigate the facts of the case, there was no whisper in the order of First Appellate Authority about any factual disclosure by the assessee, therefore, relying upon certain jurisprudence without analyzing the facts, constitutes that the impugned order of Ld. CIT(A) is suffering with perversity. The observations of Ld. CIT(A) are found to be perverse as; at one place he is accepting the findings of the Ld. AO *qua* the rejection of books of accounts and assessee's failure in substantiating its

claim of genuineness of purchases, on the other hand he is allowing the estimation of profit based on certain judgments without correlating the facts of present case to the facts of such judgments. The genuineness of transactions is a factual finding, which cannot be established without understanding the facts properly along with substantial corroborative evidence to support the same. Only after getting a clear depiction of the facts, the pertinence of judicial pronouncements would come into the play to justify their applicability under the given facts and circumstances, whereas in present case, on perusal of facts on records, the assessee was not able to substantiate the genuineness of transactions doubted by Ld. AO.

13. In view of the aforesaid facts and circumstances, we are of the considered view that the assessee is liable to substantiate that there are genuine purchases to achieve the turnover / sales declared by it in its Return of Income for the relevant year. Whereas the assessee squarely failed in offering any plausible explanation about the bogus purchases, nor was it able to justify that there was no inflation in the purchase expenses on account of such sham transactions. As all such facts of the present matter are not examined by the Ld. CIT(A) before deciding the issue, he only kept his entire focus and remain self-centered on the jurisprudence *dehors* relating the factual aspect of the alleged bogus transactions. Therefore, the matter needs thorough examinations and enquiries by the First Appellate Authority by

himself or through Ld. AO, in accordance with the mandate of Section 250 of the Act.

14. Before parting with, we may herein observe that as the matter in present case pertains to bogus purchases/ sham transactions, the observations of this tribunal in the case of **Subedar Pathak vs. ACIT, Central Circle-1, Raipur, in ITA No. 338/RPR/2025 Dated 09.06.2025**, would be relevant, the same therefore, are extracted hereunder to be adhered to by the First Appellate Authority while deciding the restored appeal in the set aside appellate proceedings:

9. We are of the considered view that this is not simply ex-parte matter since fact suggests as has been examined afore-stated that there may be colourable device used by the assessee or adopted by the assessee to defraud the revenue, it is now the onus on the part of the Ld. CIT(Appeals)/NFAC to verify and examine in detailed manner whether any fraud has been committed by the assessee towards department. That though on the ground of natural justice, one final opportunity has been given to the assessee but the genesis of the entire facts and circumstances needs proper verification by the department so to find out whether any lawful taxes remain unpaid to the department due to sham transactions adopted which will be within purview of tax evasion amounting to fraud to the revenue and in such case, fraud vitiates everything including natural justice.

*10. The application of principle of fraud was even considered by the **Hon'ble Supreme Court** in the case of **Badami (deceased) by her LRs v. Bhali in Civil Appeal No.1723/2008, dated 22/05/2012** wherein the Hon'ble Supreme Court has held as follows:-*

"20. In S. P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others AIR 1994 SC 853 this court commenced the verdict with the following words:-

"Fraud-avoids all judicial acts, ecclesiastical or temporal"

It had been held that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court.

*11. In another decision of the Hon'ble Supreme Court in the case of **Smt. Shrist Dhawan v. M/s. Shaw Brothers AIR 1992 SC 1555**, it has been held that fraud and collusion vitiates even the most solemn proceedings in any civilized system of jurisprudence including natural justice. Further, the **Hon'ble Supreme Court** in the case of **Mc Dowell & Company Ltd. Vs. CTO [1985] 154 ITR 148 (SC)** has held that "Tax planning may be legitimate provided it is within the framework of law, Colourable devices cannot be part of tax planning....".*

12. Therefore, in our considered view, in the present matter it is the responsibility of the revenue authorities to investigate the matter in detailed manner as per law whether there is tax planning or tax evasion as per the transactions entered into by the assessee. If tax evasion is determined by the revenue in such circumstances, additions are to be sustained in the hands of the assessee.

15. In terms of aforesaid observations, the order of Ld. CIT(A) is set aside and the matter is restored back to his file for *denovo* adjudication, with adequate opportunity of being heard to the assessee to prove the genuineness of the disputed bogus purchases pointed out by the Ld. AO,

failing which the First Appellate Authority shall be at liberty to pass an appropriate order in terms of our aforesaid observation, following the mandate of law, within 3 months of receipt of this order.

16. In result, the appeal of revenue is **allowed** for statistical purposes.

Order pronounced in the open court on 18/06/2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 18/06/2025
Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- DCIT-(1), Raipur
2. प्रत्यर्थी / The Respondent- Shanta Techno Private Limited
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur