आयकर अपीलीय अधिकरण
गुवाहाटी पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH AT KOLKATA

[वर्चुअल कोर्ट]
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य
एवं
श्री राकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

SHRI MANOMOHAN DAS, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 266/GTY/2024
Assessment Year: 2021-22

Rishi Agarwal	Vs.	ITO, Ward-2(2), Guwahati
(Appellant)		***(Respondent)***
PAN: AFRPA5157N		

Appearances:

Assessee represented by : Sanjay Mody, FCA.

Department represented by : Kausik Ray, JCIT.

Date of concluding the hearing : 26-Mar-2025
Date of pronouncing the order : 24-June-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2021-22 dated 08.11.2024,

which has been passed against the assessment order u/s 143(3) r.w.s. 144B of the Act, dated 28.12.2022.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

> *"1. For that the Id. CIT(Appeal) ought to have hold that the Order of Assessment dated 28.12.2022 passed by the ld. AO u/s 143(3) r.w.s. 144B of the 1. T. Act, 1961 (Act) is bad in law, facts and procedure.*
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> *2. i) For that the ld. CIT(A) erred both in law and on facts in arbitrarily confirming the addition made by the ld. AO of Rs. 3,53,35,148/- by invoking provisions of section 69C of the Act.*
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> *ii) For that in absence of any material having been brought on record by the Revenue to show that payment/investment of Rs. 3,53,35,148/- was actually made by the assessee at any time during the year under consideration, the ld. CIT(A) ought to have hold that the aforesaid addition of Rs. 3,53,35,148/- made by the ld. AO by invoking provisions of section 69C of the Act by the ld. AO is without satisfying the pre-requisite condition of the law, without jurisdiction and bad in law.*
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> *3. For that the ld. CIT(A) has failed to appreciate that when the assessee has categorically and repeatedly denied to have made any purchases from or had any transaction with any such 'Shri Vinod' as alleged and coupled with the fact that the Revenue also could not bring on record any material to show that the assessee has actually claimed to have made any purchases from Shri Vinod, and, on these facts, still to arbitrarily, whimsically and erroneously brand a non-claimed purchase by the assessee as 'fictitious purchases' of the assessee by the ld. AO is incongruous and bad in law.*
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> *4. For that on the facts and circumstances of the case, the ld. CIT(A) ought to have hold that when the assessee has never claimed any deduction and/or benefit of the alleged purchase of Rs. 3,35,35,148/- from said 'Shri Vinod', the ld. AO was not justified in still drawing an adverse inference against the assessee merely on the basis of a claim of the said third party in its own return over which the assessee has no control.*
>
> *5. For that the ld. CIT(A) ought to have hold that when the assessee has categorically denied to have any transaction with the said 'Shri Vinod' and produced all his books of account and materials which were in his command, the ld. AO was not justified in still drawing an adverse Inference against the assessee merely on the basis of an unsubstantiated and*

unverified GSTR-1 of the said third party and that too without allowing any opportunity to the assessee to cross-examine the said 'Shri Vinod' and in gross violation of all the principles of natural justice and all settled principles of justice and fair-play.

6. For that the ld. CIT(A) has erred both in law and on facts in not holding that the ld. AO was not justified in ignoring all the materials submitted by the assessee including purchase register before him, without finding any error in the same and without appreciating the fact that an assessee cannot be compelled to prove negative and cannot be expected to do impossible act.

7. For that the ld. CIT(A) ought to have hold that the action of the ld. AO in making arbitrary addition of huge amount of Rs. 3,53,35,148/- to the income of the assessee is self-contradictory and against all principles of justice and conscience and without discharging the onus which was upon the Revenue under the law.

8. For that the ld. CIT(A) ought to have hold that the order of assessment was passed by the ld. AO in gross violation of principles of natural justice and fair play and therefore, the same was bad in law and untenable.

9. For that the ld. CIT(A) has erred in arbitrarily observing to the effect that onus to prove negative is on assessee and to draw an adverse inference against the assessee on that erroneous principle.

10. For that the impugned appellate order having been passed by the ld. CIT(A) in gross violation of principles of natural justice and without allowing reasonable opportunity of being heard, the same is bad in law and unsustainable.

11. For that the appellant craves leave of your honour to take additional ground or grounds of appeal and/or to modify or resign any ground(s) of appeal before or at the time of hearing."

3. Brief facts of the case as culled out from the statement of facts filed before the Ld. CIT(A) on Form No. 35 as under:

"1. That the appellant is an individual person having PAN: AFRPA5157N engaged in the business of trading in Iron & Steel product. The appellant running its business in the name & style M/s Om Siddhi Vinayak Traders. The business of the appellant is located at: A.K. Deb Road, Near State Bank of India, Dhirenpara, Guwahati-781025.

2. The appellant is also registered under GST Law having GSTIN:18AFRPA5157N1ZW.

3. The appellant was maintaining complete books of accounts and further the case of the appellant was subject to Tax audit under the provisions of section 44AB during the impugned period of A.Y.2021-22.

4. That accordingly, the appellant furnished tax audit report and return of income for the A.Y.2021-22 by declaring a gross total Income of Rs 14,65,162/- which included Income under the head Profit from Business & Profession Rs 14,53,999/- & Income from other Sources Rs 11,163/- The net taxable income after deductions under chapter VIA was reported Rs 13,02,740/-.

5. That the case of the appellant was selected for scrutiny based on the details of non-filers to verify the genuineness of the purchases booked by the appellant. Accordingly, notice u/s 142(1) and requisition was issued on several occasions which were complied.

6. That finally, a Show Cause notice u/s 143(3) was issued to the appellant on 13.12.2022 by the Assessment unit, Income Tax Department whereby a proposal to make addition of purported purchases made from one Mr .Vinod amounting to Rs 3,53,35,148/- u/s 69C was made on the ground that the said party was not genuine so the purchase made by the appellant was found to be fictitious / bogus. The time to reply the above notice was fixed till 18.12.2022.

7. That the appellant was having some health issues since 15.12.2022 and was also not attending office. So,in view of poor health the appellant on 18.12.2022 itself filed an adjournment petition whereby 5 days further time was sought till 23.12.2022.

8. That since the appellant was not in good health so he could not get reply prepared from his tax consultant against the show cause notice issued by the Income Tax department. As a result, the appellant could not submit reply against the impugned show cause notice.

9. That the assessing Officer without giving any further time and opportunity passed the instant assessment order on 28.12.2022 unilaterally by making addition of the alleged purchase amounting to Rs. 3,53,35,148/- to the total income of the appellant u/s 69C of the Income Tax Act 1961. As a result, a mammoth demand of Rs 3,39,68,135/- was raised on account of tax (charged u/s 115BBE) &interest (u/s 234A, B & C) on the appellant.

10. That further proceedings for levy of penalty u/s 271AAD(1((i) and 271AAC(1) of the Income-tax Act,1961 was also initiated on the very same date."

3.1 Thus, as against the returned income of Rs. 13,02,740/-, the assessment was made at the total income of Rs. 3,66,37,890/-.

3.2 Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A), who has reproduced the relevant extract from the assessment order, discussed the submission of the assessee and after going through various judicial pronouncements, has not allowed the appeal after holding as under:

> ***"DECISION OF THE APPELLATE AUTHORITY W.R.T GROUNDS NO.-1 TO 3:***
>
> *The contentions of both the Assessing officer and the appellant assessee resp. have been carefully considered and this Appellate authority has noted the following points:*
>
> *i. The case was selected for Scrutiny to verify the substantial purchases made by the assessee from the suppliers who are either non-filers or have filed non-business ITR or reflected a substantially lower turnover in ITR as compared to turnover shown in GSTR1 return. There is a possibility that assessee has booked bogus expenses in order to reduce its profit / taxable income.*
>
> *ii. The assessee filed the return of income for the A.Y. 2021-22 electronically furnished on 25/12/2021 vide acknowledgement No.420225080251221 declaring income of Rs.13,02,740/-. The case was selected for complete scrutiny under CASS. A Notice u/s 143(2) was issued on 28/06/2022 and duly served upon the assessee. Thereafter, to examine the CASS reason, notices u/s.142(1) were issued through e-assessment module of ITBA. In response to these notices, replies have been received.*
>
> *iii. To verify the genuineness of the above transaction entered into by the above party with the assessee, the assessee vide notice u/s.142(1) issued on 29/11/2022 was asked to submit the details of the above party with latest address and email ID and also requested to submit copies of invoices raised by the above said purchase parties along with the copies of delivery challans in support of goods being delivered to his business location along with e-way bills. The assessee also asked to submit the details of corresponding sales of the goods purchased from the above parties.*
>
> *iv. The Ld Assessing officer sent various notices to the appellant assessee and the appellant assessee took part in the assessment proceedings by providing its submissions/replies.*
>
> *v. The **AO has stated** in its order that:*

*".....**To verify the above transactions entered into by the above party with the assessee, this office issued notice u/s.133(6)** to the above party through ITBA on 29/11/2022 which was served and delivered through DIN:ITBA/AST/S/133(6)(N)/2022-23/1047705231(1) on the above party. The **above party has not filed any reply or confirmation about the transaction entered into with the assessee till date.***

On verification of the available data with the department, from the GST data it was found that the above party Shri Vinod had filed his GST return for the F.Y.2020-21 showing sales of Rs.3,53,35,148/- to assessee Shri Rishi Agarwal having PAN AFRPA5157N during the year under consideration.

***Assessee has not submitted his reply to show cause notice dt.13/12/2022 till date.** Therefore, it is presumed that the assessee has nothing more to explain against the said Show cause notice. In view of the above, the assessment order is passed as per the information available with the department.*

*In the light of the discussion in the preceding paragraphs, **the transactions of purchases made by the assessee from the above said party namely Shri Vinod is found to be fictitious/bogus.** This party namely Shri Vinod has not submitted his Income Tax Return for A.Y.2021-22 and it is seen from information available on record that Shri Vinod in his GST Return filed showing transaction with the assessee Mr. Rishi Agarwal Prop. Om Siddhi Vinayak Traders. Copy of GST details available on Insights Portal of the Department is reproduced below for both, the assessee as well as said party Mr.Vinod.*

***The assessee first denied being having any transaction with the above said party and on asking vide show cause about the transaction the assessee has not replied to show cause till date.** Therefore, as the assessee failed to furnish complete quantitative details of the items purchased from the above said party during the year under consideration and their corresponding sales. As the assessee has failed to proof the identity and genuineness of the transactions pertaining to purchases made from the above mentioned party (Namely Mr. Vinod) and also failed to offer any explanation about genuineness of the source of such purchases, it is inferred that the assessee has made entries in the books of accounts for purchases made from the said parties, when in fact, no purchases have been made and the assessee has inflated expenditure on account of bogus purchase amounting to Rs. Rs.3,53,35,148/- to reduce taxable income.*

Therefore, the transactions of purchases made by the assessee from the aforesaid four parties are found to be fictitious and hence the purchases amounting to Rs.3,53,35,148/- made by the assessee from the aforesaid party is hereby treated as Unexplained Investment on account of bogus purchase…..".

vi. The Ld AO after giving proper opportunity to be heard and considering the submissions made by the appellant assessee went ahead and made the reasonable addition amounting to Rs 3,53,35,148/- u/s 69C of the Income Tax Act, 1961.*Thus, the argument of the appellant in its* ***ground no.-2*** *that, the ".....addition in the instant case is made arbitrarily, capriciously, vindictively on the basis of erroneous presumptions, surmise, conjuncture, and guess works only and without following principles of natural justice and precedent judicial pronouncements…",* ***is incorrect and thus*** **untenable and hence this ground no.-2 is rejected.**

vii. The ***appellant assessee*** *in its submissions have stated that, ".....That the case of the appellant for the F.Y 2020-21 was selected for complete scrutiny and according notices were received by the appellant from time to time. In response of the notice issued u/s 142(1) dated 13.10.2022, the appellant duly submitted his reply on 17.11.2022 and 22.11.2022 along with all the supporting documents such bank statements, purchase invoices, stock register, account ledger cum account confirmation from the creditors and other relevant documents. That again a notice u/s 142(1) was issued on 29.11.2022 against which the appellant submitted his reply on 07.12.2022 explaining the fact that party with name as "Vinod" neither appears in the Sales Register nor in the Purchase register of the appellant. Further there is no transaction in the bank also with the said party.* ***This signifies beyond any doubt that the appellant never done any transaction with Mr. Vinod nor with any of the entity owned by Mr. Vinod during the impugned period....".***

viii. The appellant assessee has stated that, the assessee does not have any transactions with Mr Vinod during the assessment year. To verify the contentions of the appellant assessee the LD AO had also sent a notice u/s 133(6) of the Income Tax Act, 1961 to Mr Vinod dated 29.11.2022, but Mr Vinod did not file any response to the above said notice to the Assessing officer.

ix. The appellant assessee has also not provided any evidence, details/letter which the assessee may have sent to the GST Authorities that, he does not have any transaction with the above party i.e. Mr Vinod. The onus to prove the transactions with the above party is also on the appellant

assessee, but the appellant assessee has not provided any communication or objection regarding the same to this Appellate authority. Further, ***the appellant has not even cared to file a notarised affidavit in order to prove his genuineness or to come clean****. It is seen that, in general trade practice in such cases the appellant side generally prefers to* ***file an FIR*** *against such fraudulent persons. However, the appellant in this case has not preferred to take any such action against the said person/ party "Mr.Vinod". In situations like this case, one may fall into realm of* ***"preponderance of probability"*** *where there are many probable factors, some in favour of the assessee and some may go against the assessee. But the probable factors have to be weighed on material facts so collected. Here in this case the material facts strongly indicate a probability that, the appellant has been charged with making substantial purchases from the suppliers who are either non-filers or have filed non-business ITR or reflected a substantially lower turnover in ITR as compared to turnover shown in GSTR1 return. There is a possibility that assessee has booked bogus expenses in order to reduce its profit / taxable income.*

x. Further, it is seen that, the Assessing Officer has done all within in his power w.r.t. the proper collection and balancing the concrete evidence with the human probability aspect of the case before making an assessment, and the taxpayer has been found wanting w.r.t providing a satisfactory explanation for the discrepancies and anomalies in order to avoid being assessed adversely. Now keeping in mind the judgment in case of ***CIT vs. Durga Prasad More (1971), of the Hon. Supreme Court***, the assessing officer has not relied on mere suspicion, conjecture or surmise to make this assessment, but has substantial material on record to support his assessment. The AO has taken into account the circumstances and probabilities of the case, along with the concrete evidence, before making an assessment and whereas the taxpayer has evidently not provide a satisfactory explanation for such discrepancies in its books of accounts and other documents and has hence been assessed adversely. Reliance is placed on the Apex court's judgment in the case of ***Sumati Dayal vs. CIT on Taxation (1995) 214 ITR 801 (SC)****-the finding of the Hon. Supreme Court of India in this case of Sumati Dayal is a clear example of the application of the principle that the apparent must be considered real until it is shown that there are reasons to believe that it is not the real, and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality.*

Thus in view of the above findings and discussions the ground no.-3 of the appellant is patently incorrect and un-tenable and hence rejected.

xi. Thus, this Appellate authority places its reliance on the following judgments of the Hon'ble Supreme Court and High court:

a. The Hon'ble Supreme Court in the case of Chuharmal Vs CIT (1988) 172 ITR 250 while affirming the view of the Madhya Pradesh High Court has held that 'the expression 'INCOME' as used in Section 69A of the Act, 1961 had a wide meaning which meant **anything which came in or resulted in gain and on this basis, concluded that the assessee had income which he had invested in purchasing article and he could be held to be owner and the value could be deemed to be his income by virtue of Section 69A of the Act.**

b. The Hon'ble Supreme Court in the case of Smt. Srilekha Banerjee and others Vs CIT, Bihar & Orissa, reported in 1964 AIR 697, dated 27/03/1963, held that the source of money not having been satisfactorily proved, the Department was justified in holding it to be assessable income of the assessee from some undisclosed source. The Hon'ble Supreme Court further held that "The correct position is as follows. If there is an entry which shows the receipt of a sum or conversion of the notes by the assessee by himself, it is necessary for the assessee to establish**, if asked, what the source of that money was and to prove that it did not bear the nature of income. The department is not at this stage required to prove anything. The fact that there was receipt of money or conversion of notes is itself prima facie evidence against the assessee on which the Department can proceed in absence of good explanation.'**

c. In Manindranath Das v. Commissioner of Income Tax, Bihar & Orissa, the tax-payer had encashed Notes of the value of Rs. 28,600, which he contended were his accumulated savings. His explanation was accepted in respect of Rs. 15,000, because 15 notes could be traced to a bank, but was rejected in respect of the balance. The Patna High Court pointed out that if an assessee received an amount in the year of account, it was for him to show that the amount so received did not bear the character of income, and the tax-payer in the case had failed to prove this fact in respect of the remaining notes. The Hon'ble Supreme Court has held that 'The cases involving the encashment of high denomination notes are quite numerous. In some of them the explanation tendered by the taxpayer has been accepted and in some it has been rejected. **Where the assessee was unable to prove that in his normal business or otherwise, he was possessed of so much cash, it was held that the assessee started under a cloud and must dispel that cloud to the reasonable satisfaction of the assessing authorities, and that if he did not, then, the Department**

was free to reject his explanation and to hold that the amount represented income from some undisclosed source.'

xii. The appellant assessee filed its response before this Appellate authority dated 12.10.2024 and other stating that, "….*I need a personal hearing through VC for my appeal case. The appeal proceedings will be attended by my authorised representative CA MANOJ NAHATA. His Authority letter cum Power of Attorney is attached herewith. Please provide a hearing at a notice of at least one week in advance.…".*

xiii. As per the request of the Appellant assessee and in favor of natural justice this Appellate authority immediately granted an opportunity for video conferencing / personal hearing and the date provided on the said VC notice was 28.10.2024[DIN: ITBA/NFAC/F/VC_APL/2024-25/1069946516(1)], but the assessee/ AR did not opt for the VC/ personal hearing on the ITBA system and merely reiterated their response/ demand for VC vide a response dated 26.10.2024.

xiv. Now, understandably there was some confusion and hence this Appellate Authority presuming this to be an error on the part of the appellant / AR provided another opportunity to the appellant to attend to the same and in the interest of natural justice, thus issued another hearing notice dated 26.10.2024 [DIN : ITBA/NFAC/F/17/2024-25/1069971585(1)] mentioning the above default about not opting online for the VC via the ITBA which would enable this Appellate Authority to go ahead with it. It was alerted that, in case the appellant /AR does not opt for the VC online, this Authority would not be in a position to go ahead with the VC and it would be considered that, the VC has been foregone by the appellant. However, till date of this Appellate decision no response of any sort has been received by this Appellate Authority from the Appellant. It clearly means that, the appellant assessee is showing negligent behaviour and intentionally wasting the time of this Appellate authority and hence there is no merit in its demand for VC and hence no more wait is justified.

xv. This Appellate authority also places its reliance on the Hon. Calcutta High Court Judgment in case of **PRINCIPAL COMMISSIONER OF INCOME TAX - 9 KOLKATA VS MRS. PREMLATA TEKRIWAL in which its held that:**

> *"….It was held that from materials available on record it is proved beyond doubt that the alleged purchase claimed by the assessee against the parties were bogus. The PCIT referred to Section 69C of the Act and pointed out that once it is established that the expenditure is unexplained/bogus, the entire amount of bogus expenditure is to be*

added to the total income of the assessee. Reliance was placed on the decision of the Hon'ble Supreme Court in N.K. Proteins Vs. DCIT [2017] 84 taxmann.com 195(SC).

it would be relevant to note that when the assessing officer gave an opportunity to the assessee to explain the transaction, the assessee did not produce any document, but stated that 2% of the purported bogus purchase may be added to the total income. Thus it would mean that the assessee had accepted the allegations against them and precisely for such reason they offered that 2% of the bogus purchase may be added to the total income. If such was the factual position in the case on hand then it is incumbent upon the Assessing Officer to inquire into the matter and take the proceedings to the logical end. Having not done so, the PCIT was fully justified in exercising jurisdiction under Section 263 of the Act. Thus, we are of the view that Tribunal erroneously interfered with the order passed by the PCIT.

In the result, the appeals filed by the revenue are allowed and the order passed by the Tribunal is set aside."

In the light of above discussed facts at point no.-(i) to (xv), judgments of Hon'ble Apex/ High Court, this Appellate authority is in the view that, the appellant assessee failed to discharge the onus cast upon him or to produce the parties in front of the Assessing officer and also showed negligent behaviour before the AO and now also before this Appellate Authority. Consequently, the addition made by the Assessing officer amounting to Rs 3,53,35,148/- u/s 69C of the Income Tax Act, 1961 is found to be correct and thus UPHELD. The grounds no.-1 to 3 of the appellant are thus not allowed.

The ***ground no.-1 &4*** *are general and is hence not adjudicated upon further.*

In the result, the appeal is NOT ALLOWED.*"*

3.2 The appeal was accordingly dismissed by the Ld. CIT(A). Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

4. Rival contentions were heard and the submissions made and the paper book filed have been examined. During the course of the appeal the Ld. AR has filed written submission as under:

"1. Ground No. 2 Section 69C

a) No material has been brought on record by the Revenue to show that assessee has in fact made payment for expenditure of Rs 3,53,35,148/- at any time during the year under consideration. Thus, the condition precedent for invoking section 69C is not satisfied. Only after, the Revenue shows that the assessee has made payment, the assessee can be required to explain the source of such expenditure. For the above proposition reliance is placed on the decision of the Hon'ble Gujarat High Court in the case of Ushakant N. Patel v CIT, [2006] 282 ITR 553 wherein in respect of a para-materia provision it has been held that section 69 opens with the words 'where in the financial year immediately preceding the assessment year, the assessee has made investment'. Thus, in the first instance, it is the responsibility of the assessing authority to establish that there are investments made by the assessee and that such investments are not recorded in the books of account maintained by the assessee. Also, assessing officer have to prove that such investments had been made in the financial year immediately preceding the assessment year in question.

b) Reliance also placed on the decision of the Hon'ble Allahabad High Court in the case of Smt. Sarika Jain v. CIT (2018) 407 ITR 254 (ALL), for the proposition when the dispute before the Tribunal is for addition made under section 69C, the Tribunal cannot travel beyond that.

2. Ground Nos. 3 to 5: Addition on the basis of document of 3rd party:

The issue that addition cannot be made on the basis of an entry in the documents or books of account of a third party or a statement of third party, in absence of corroborative material, is no res-integra and is squarely covered in favour of the assessee by plethora of decisions. For example:

i) DCIT v. Shri Mahendra Singh Lourembam vide order dated 07.03.2018 in ITA Nos. 113 to 117/Gau/2016. (Copy enclosed)
The Hon'ble Tribunal at page 14 of the said order has held as under-

"25 .....It is an established position of law that no addition can be made in the case of an assessee on the basis of an entry in the books of account of a third porty or the statement of third party in absence of any corroborative evidence. To the same effect is the decision of the Tribunal in the case of DCIT vs. Yash Pal Narendra Kumar (ITA Nos 5340 to 5342/Del/2012 dated 07.02.2013). In the decision, it has also been stated, to quote:

"In the case of Rama Traders vs. First ITO (1998) 25 ITD 599 (Pat) [TM] it was held that no addition could be made, on the basis of presumption raised by section 132(4A), in the hands of the assessee where in the books of another firm, certain figures were found showing the purchase made by the assessee."

26. To the same effect is also the decision in the case of ACIT vs. Prabhat Oil Mills (1995) 52 TTJ 533 (Ahd) wherein it was held that mere entries in the accounts of a third party was not sufficient to prove that the assessee had indulged in such transaction as there was no guarantee that the entries were genuine.

27. The Hon'ble Bombay High Court in the case of ACIT vs. Lata Mangeskar (1974) 97 ITR 696 (Bom) has held that in absence of primary direct evidence, the entries in the ledger of third party is of no avail, as there would be no guarantee about the truthfulness or genuineness of the entries in the ledger. Entries in the ledger are at best merely corroborative evidences."

ii) In Commissioner of Sales Tax v. Moti Oil Mills, 1980 UPTC 557 relying upon the principle laid down by the Apex Court in the case of State of Kerala v. K.T. Shadulli and Nalla Kandy Yusuf, 1977 UPTC 363/ (1977) 39 STC 478 (SC) has held that where the entries are detected in the account books of other dealer are being relied upon against the assessee, the burden is on the Department to prove the authenticity of such entries and for that to produce that dealer for cross-examination and if the Department fails to do so no adverse inference can be drawn against the assessee.

iii) Further, the Hon'ble Supreme Court has more than once held that making of unilateral entry in the books of account in the name of other person will not fasten liability against such other person unless the truthfulness of such entry is established. The Hon'ble Supreme Court in Common Cause (A Registered Society) v. Union of India (2017) 394 ITR 220 (SC) has quoted at page no. 226 from its own decision in the case of CBI v. V. C. Shukla (1998) 3 SCC 410 (SC) as under:-

"It has further been laid down in V. C. Shukla (supra) as the value of entries in the books of account, that such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and they are only corroborative evidence. It has been held even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability."

iv) That reliance may also be placed on the decision of the Hon'ble Supreme Court in the case of 'CIT v. Odeon Builders P. Ltd.' (2019) 418 ITR 315 (SC), wherein it has been held that the disallowance cannot made on the basis of the third party information gathered by investigation wing of the department, which have not been independently subjected to further verification by the AO and thus, no material was brought on record to corroborate the statement of the third party and more further, when opportunity of cross-examination to the assessee was not allowed and still further, the assessee has prima facie discharged his burden to show his genuineness.

v) The information about payment of income provided by a 3rd party in its TDS return in PAN of assessee, appears in 26AS of the assessee. When assessee denies receipt of such income, the onus shifts on the Revenue to bring evidence on record to show that the said amount was actual income of the assessee. In absence of such evidence, the amount appearing in 26AS cannot be treated as income of the assessee. For the above submission reliance is placed on the decisions in the following cases:-

a) Ravindra Pratap Thareja v. ITO (2015) 154 ITD 633 (Jabalpur):
It has been held that merely because a payment was reflected in Form 26AS and was shown to have been made to the assessee, it could not be brought to tax as it could not be established by the Revenue that the assessee was actual beneficiary of the said amount and thus, addition made was to be deleted.

b) Dr. Swati Mahesh Vinchurkar v. DCIT (2021) 191 ITD 434 (Surat):
It has been held that once the assessee denied to have earned income as reflected in her 26AS, the onus shifts upon the Revenue to prove such income was actually earned by the assessee. The addition cannot be made by merely ignoring the submission of denial by the assessee.
Similar to the above, when a 3rd party shows has having made sales in GSTIN (GST number) of the assessee, it appears in GSTR-2A of the assessee. The same may be due to mistake in putting of GST Number. Merely from this it cannot be held that the assessee was the beneficiary of that sales of the 3rd party.
Encl: As stated above."

7. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). While the Ld. AR stated and argued that for a case to fall under section 69C, it should be established that the assessee had incurred some expenditure which was not recorded in the books of account, the Ld. DR vehemently argued that the assessee did not discharge the onus, no affidavit was filed and further enquiry needs to be done with the GST authorities relating to these transactions as also the examination of the ITR of Shri Vinod. The Ld. AR relied upon the decision of Dr. Swati Mahesh (supra) and stated that the assessee cannot be asked to prove the negative. The assessee had denied carrying out any such transactions and the purchases shown on the departmental portal were added to the income as bogus purchases by the Ld. AO and the addition

has been confirmed under section 69C by the Ld. CIT(A). It is also a fact that the assessee was unresponsive during the course of the assessment proceedings as no response was made to the show cause notice issued for making the addition and he also did not suitably rebut the findings of the Ld. AO before the Ld. CIT(A). The Ld. CIT(A) has relied upon some decisions which are not relevant to the issue before us. At the same time, once the assessee had denied that he did not carry out any such transactions, the onus shifted on the Department as no other information was available other than the information on the Insight portal of the Department to hold that the transactions were indeed carried out and the purchases were made by the assessee. The Ld. AO could have made verification with the GST authorities, both in respect of the assessee as well as the supplier, as to whether any evidence for the receipt of the goods by the assessee or the dispatch of goods by the seller by way of e-way bills or delivery challans or any other evidence was available which would have corroborated the addition and whether the transactions figured in respect of the assessee in the record of GST authorities as no such enquiry appears to have been carried out by the Ld. AO with the GST authorities. Merely because the notices issued to the supplier were returned unserved or the supplier was not showing the income under the head business, the addition on the basis of the information available on the portal could not be made; more so when the assessee was denying the transactions in totality and the possibility of mentioning the wrong details in the record of the supplier as per the information available on the Insight portal of the revenue could not be completely ruled out. The assessee also contends that no credit has been taken for the input tax credit relating to the alleged purchases by him. All these are matters of verification which ought to have been

carried out either by the Ld. AO or by the Ld. CIT(A) himself or through the Assessing Officer in order to establish that the assessee had received the goods and the denial was incorrect. That not having been done, the addition which has been sustained by the Ld. CIT(A) does not appear to be justified. Since there was no proper compliance before the Ld. AO as no evidence for taking any action against the alleged supplier by the assessee was filed, nor any affidavit denying the transactions has been filed at any stage of the proceedings, it would be appropriate if the order of the Ld. CIT(A) is set aside along with the assessment order of the Ld. AO and the matter is remanded to the Ld. AO to frame the assessment order de novo as the full facts of the case have not been examined which are essential to reach to any conclusion. The Department had information in the Insight portal which has been denied by the assessee. Thus, the matter needs to be verified with the GST authorities, from whom the information was received and uploaded on the portal and which has led to the addition. Hence, both the assessment order as well as the appeal order are set aside and the matter is remanded to the Ld. AO to frame the assessment de novo. The Ld. AO is also directed to carry out necessary verification with the GST authorities regarding the transactions relating to the addition made and only after getting evidence that the information on the portal is correct, and in case the assessee is not able to justify or explain the source of purchases or the nature of the transactions, the required addition, if any, shall be made as per law. The Ld. AO, after collecting the evidence, shall confront the same to the assessee and provide adequate opportunity of being heard and only thereafter make the required addition as there is merit in the argument of the assessee that the negative cannot be proved. The assessee is also directed to furnish any evidence and/or to file an

affidavit if he wants to deny the said transactions, which also shall be subject to examination by the Ld. AO. Hence for statistical purposes all the grounds of appeal are allowed.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 24th June, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-	*Sd/-*
[**Manomohan Das**]	[**Rakesh Mishra**]
Judicial Member	Accountant Member

Dated: 24.06.2025

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***Rishi Agarwal, Flat No. 2C, Bharalu View Apartment, Shantipur Main Road, Bharalumukh, Assam - 781009.***
2. ***ITO, Ward-2(2), Guwahati.***
3. CIT(A) (NFAC).
4. CIT/PCIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata