

**आयकर अपीलीय अधिकरण,सूरत न्यायपीठ, सूरत ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**SURAT BENCH, SURAT**  
**[conducted through Hybrid mode]**

**श्री संजय गर्ग, न्यायिक सदस्य एवं**  
**श्री बिजयानन्दा प्रुसेथ, लेखा सदस्य के समक्ष।**

**Before Shri Sanjay Garg, Judicial Member And**  
**Shri Bijayananda Pruseth, Accountant Member**

Sl. No(s)	आयकर अपील सं/ ITA No(s)	निर्धारण वर्ष/ Assessment Year(s)	Appeal(s) by :	
			अपीलार्थी / Appellant(s)	प्रत्यर्थी / Respondent(s)
1.	675/SRT/2023	2013-14	Lalit Garg (HUF) Plot No.612/H-2, Chanod, GIDC Vapi - 396 195 PAN: AADHG 5087 L (Assessee)	The ACIT Central Circle-1 Vapi - 396 191  (Revenue)
2.	676/SRT/2023	2014-15	Assessee	Revenue
3.	677/SRT/2023	2015-16	Assessee	Revenue
4.	392/SRT/2024	2011-12	Lalit Garg (HUF) 1502, Park Residency, Upper Govind Nagar Malad (East) Mumbai - 400 097	ITO, Ward-5
5.	393/SRT/2024	2012-13	-do-Assessee	-do-Revenue
6.	394/SRT/2024	2016-17	-do-Assessee	The ACIT, CC-1, Vapi
7.	868/SRT/2023	2012-13	ACIT, Vapi	Lalit Garg (HUF), Mumbai
8.	678/SRT/2023	2013-14	Dinesh Garg (HUF) 601/H-II, B-501 Shriram Nivas Chanod Colony Vapi GIDC Silvassa Road,Vapi, Valsad - 396 195 PAN:AADHG 5088 F	ACIT Central Cir-1, Vapi
9.	679/SRT/2023	2014-15	-do- Assessee	-do-Revenue
10.	680/SRT/2023	2015-16	-do-Assessee	-do-Revenue
11.	681/SRT/2023	2016-17	-do-Assessee	-do-Revenue
12.	395/SRT/2024	2017-18	-do-Assessee	-do-Revenue
13.	396/SRT/2024	2018-19	-do-Assessee	-do-Revenue
14.	397/SRT/2024	2019-20	-do-Assessee	-do-Revenue

Assessee by :	Shri P.M. Jagasheth, CA
Revenue by :	Shri Ravi Kant Gupta, CIT (DR) with Shri Mukesh Jain, Sr.DR

सुनवाई की तारीख /Date of Hearing : 20/03/2025  
घोषणा की तारीख /Date of Pronouncement: 19/06/2025

**आदेश/ORDER**

**Per Sanjay Garg, Judicial Member:**

This bunch of appeals by two different Assesseees and only one appeal by the Revenue are directed against the separate orders of the Commissioner of Income Tax (Appeals)-4, Surat (hereinafter referred to as "the CIT(A)") for the Assessment Years (AYs) 2011-12 to 2019-20.

2. Although these appeals pertain to different assessment years, the primary issues are identical except for the assessment years and quantum. Therefore, all these appeals were heard together. For the sake of convenience, we proceed to dispose of all these appeals of the Assesseees and Revenue by this consolidated order.

3. First, we take up the Appeal of the assessee in ITA No.393/SRT/2024 for AY 2012-13, in the case of Lalit Garg (HUF), as a lead case, wherein the assessee has raised the following grounds of appeal:

*"1. On the facts and in the circumstances of the case as well as the law on the subject, the learned Assessing Officer has erred in re-opening the assessment u/s 147 of the Act and issuing notice u/s 148 of the Income Tax Act. 1961.*

*2. On the facts and inn the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.2,14,90,568/- on account of alleged 25% of the total URD purchase of Rs.8,59,62,270/-*

3. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeal) has erred in making addition and concluded the alleged 25% purchase out of total URD purchase is unverified purchase without any verification of facts, required inquiry and cogent evidence.

4. It is therefore prayed that the above addition may please be deleted as learned members of tribunal may deem it proper.

5. Appellant craves liberty to add, alter or delete any ground(s) either before or during the hearing of the appeal."

4. The Revenue in ITA No.868/SRT/2023 for AY 2012-13 has raised the following grounds of appeal:

"1) On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in restricting the disallowance of Rs.6,44,71,702/- to Rs.2,14,90,568/-made by the AO u/s 40A(3) of the IT. Act 25% of URD purchases as unverifiable purchase without appreciating the fact that the assessee failed to furnish any documentary evidences to prove the genuineness of entire URD purchases debited in the P&L account.

2) On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in restricting the disallowance of Rs.6,44,71,702/- to Rs.2,14,90,568/-made by the AO u/s 40A(3) of the I.T. Act 25% of URD purchases as unverifiable purchase without appreciating the fact that in A.Ys 2013-14 to 2015-16 the addition was made by AO u/s. 690 of the Act rejecting the books of accounts of the assessee u/s. 145(3), and estimating the disallowance 25% of total URD purchases, whereas in the instant year the disallowance was made u/s. 40A(3) of the Act as assessee made cash payment in excess of Rs.20,000/- for URD purchases.

3) On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in restricting the disallowance of Rs.6,44,71,702/- to Rs.2,14,90,568/-mode by the AO u/s 40A(3) of the IT. Act 25% of URD purchases as unverifiable purchase and deciding the appeal on the principle of consistency, especially in the light of fact that in the A.Ys 2013-14 to 2015-16 the disallowance have been made under different provision/section of the Act. and therefore principle of consistency does not apply in the year under consideration.

4) On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in restricting the disallowance to 25% of URD purchases, ignoring the fact

*that the A.O. has rightly made disallowance u/s. 40A(3) of full amount of URD purchases as there is no provision u/s. 40A(3) for making partial disallowance.*

*5) On the facts and in the circumstances of the case and in law, the Ld. CIT (A)-4. Surat ought to have upheld the order of the Assessing Officer.*

*6) It is, therefore, prayed that the order of the Ld. CIT (A) may be set aside and that the AO may be restored to the above extent.*

*7) The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made."*

5. The brief facts of the case are that the assessee is a HUF which is stated to be engaged in the business of trading of waste paper. The assessee filed its return of income for AY 2012-13 on 10-08-2012 declaring a total income of Rs.11,95,910/-. Subsequently the case was selected for scrutiny assessment and vide assessment order dated 24-03-2015 passed by the Assessing Officer (in short, "the AO") u/s 143(3) of the Income Tax Act (in short, "the Act"), the income of the assessee was assessed at Rs.31,87,870/- after making the addition on account of estimation of net profit ratio at 3% of the turnover. Being aggrieved by the said addition, the assessee preferred appeal before the CIT(A), however remained unsuccessful. The matter was carried by the assessee to this Tribunal, however the Tribunal vide order dated 17-04-2018 passed in ITA No.2603/Ahd/2016/SRT upheld the order of the CIT(A) determining the net profit of the assessee @ 3% of the turnover. The Tribunal while holding so, also relied upon the decision of the Co-ordinate Bench of the Tribunal in the own case of the assessee in AY 2010-11 passed ITA No.2073/Ahd/2013 (Revenue) along with C.O No.22/Ahd/2014 (Assessee) vide order dated 31-08-2016 wherein the Tribunal further relying upon another decision of Tribunal has upheld the

order of the CIT(A) estimating the net profit rate at the rate of 3% as against 2.68% shown by the assessee in relation to AY 2010-11.

5.1 Subsequent to the above stated order dated 17-04-2018 (supra) of the Tribunal in the own case of the assessee for the year under consideration, itself, i.e. AY 2012-13, a survey action was carried out in the case of the assessee on 06-03-2019, subsequent to which the assessment of the assessee was re-opened by issuing notice u/s 148 of the Income Tax Act dated 30-03-2019. The reasons for re-opening the assessment were recorded wherein it was mentioned that as per the information available with the department, the assessee had made payments in violation of provision of section 40A(3) of the Act and that therefore the AO was of the belief that the income of the assessee for the year under consideration has escaped assessment. During the assessment proceedings carried out u/s 147 r.w.s. 143(3) of the Act, the AO made the addition of Rs.8,59,62,270/- disallowing the unverified purchases holding that the payment was made in cash in excess of the prescribed limit u/s 40A(3) of the Income Tax Act.

6. Being aggrieved by the said order of the AO, the assessee preferred appeal before the CIT(A). The Ld. CIT(A), though accepted the plea of the assessee that it was not a fit case for making the impugned addition u/s 40A(3) of the Income Tax Act, he however estimated the net profit at the rate of 25% of total URD purchases (purchases made in cash to unregistered dealers). The Ld. CIT(A), accordingly restricted the disallowance/addition to the extent of Rs.2,14,90,968/- i.e., at the rate of 25% of the total URD purchases of Rs.8,59,62,270/-

7. Being aggrieved by the said order of the CIT(A), the Revenue has come in appeal assailing the action of the Ld. CIT(A), in restricting the addition to the extent of 25% of the total disallowance made by the AO by way of estimating the net profit as against the disallowance made by the AO u/s 40A(3) of the Act. The assessee on the other hand is aggrieved not only on the issue of re-opening of the assessment but also of enhancement estimated net profits @ 25% as against 3% upheld by the Tribunal during the first round of litigation vide order dated 17-04-2018 (supra).

8. We have heard the rival contentions and gone through the record. So far as the issue of re-opening of the assessment u/s 147 r.w.s. 148 of the Income Tax Act is concerned, we note that there is no mention by the AO of any fresh information coming into his possession that the assessee had made cash payment in excess of Rs.20,000/- to any particular party in a day in to attract the disallowance u/s 40A(3) of the Act. A perusal of the assessment order reveals that in this case the assessment has been re-opened by way of re-appreciation of the existing facts on the file. The AO just noted the assessee had made purchases in cash to the extent of Rs.8,59,62,270/- from unregistered dealers. These facts are already on the file and have been duly discussed in the course of original assessment carried out u/s.143(3) of the Income Tax Act vide order dated 24-03-2015, whereby, the net profits of the assessee on account of unverified URD purchases was estimated @ 3% of the turnover as against @ 0.72% disclosed by the assessee. The said addition was confirmed by the Tribunal vide order dated 17-04-2018(supra). Moreover, the AO on the one hand has suspected the genuineness of the expenditure on purchases and thus himself estimated and assessed the net profits @ 3% of the turnover as against 0.72 % declared by the assessee

during the scrutiny assessment proceedings u/s 143(3) of the Act, on the other hand he has re-opened the assessment and made the impugned additions on the belief that the assessee has actually made the above payment on purchases in cash, however, invoking provision of section 40A(3) of the Income Tax Act observing that the same were in excess of the prescribed limit of Rs.20,000/- per day per party. The reasons mentioned by the AO for re-opening of the assessment, thus, are contrary to his own observations during scrutiny assessment, whereby, he had doubted the incurring of the expenditure on URD purchases. Under the circumstances the re-opening of assessment in this case is not based on reasonable belief of escapement of income, rather the same is just on account of change of opinion of the AO observing that the assessee might have made payments in cash in excess of the prescribed limit of Rs.20,000/- per day per party. Neither there was any reliable information with the AO of making the payment exceeding the prescribed limit to any party in a day nor the said fact is coming out of the records. The re-opening has been made only on the basis of suspicion and change of opinion which is not permissible in law.

8.1 The issue is covered by various decisions of the higher courts and even of the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of "Dr. Jagmittar Sain Bhagat & Ors vs Dir. Health Services, Haryana" in Civil Appeal No.5476 of 2013 decided on July 11, 2013, while relying upon another decision of the Hon'ble Supreme Court in the case of "Sushil Kumar Mehta v. Gobind Ram Bohra" (1990) 1 SCC 193 and further placing reliance on the other decisions of the Hon'ble Supreme Court in the cases of "Premier Automobiles Ltd. v. K.S. Wadke & Ors.", (1976) 1 SCC 496; "Kiran Singh v. Chaman Paswan", AIR 1954 SC 340; and "Chandrika Misir & Anr. v.

Bhaiyalal", AIR 1973 SC 2391 has observed that where a statute places obligation and enforces the performance in specified manner, "performance cannot be forced in any other manner." Under the relevant provisions of section 147 & section 148 of the Income Tax Act, for assuming jurisdiction to reopen an assessment by the Assessing Officer, there is a condition precedent that the Assessing Officer must have reasons to believe that the income of the assessee for that year has escaped assessment. It has been held time and again that such reasons to believe must have a material bearing on the question of escapement of income. It does not mean a purely subjective satisfaction of the assessing authority. Such reason should be held in good faith and cannot merely be a pretence. The reasons to believe must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of belief regarding escapement of income. The powers of Assessing Officer to reopen an assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income-tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income-tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. Such an action of the Assessing Officer regarding formation of belief of escapement of assessment and thereby in starting proceedings u/s 147 is open to challenge in a court of law. The entire law as to what would constitute "reason to believe" has been

summed up by the hon'ble Supreme Court in the case of "Income Tax Officer v Lakhmani Mewaldas" (1976) 103 ITR 437. Reliance in this respect can also be placed on the decision of the Hon'ble Punjab & Haryana High Court in the case of 'CIT vs Paramjit Kaur' (2008) 311 ITR 38 (P&H), wherein, making identical observations, the Hon'ble High Court has held that in the absence of sufficient material to form satisfaction of the Assessing Officer that income of the assessee had escaped assessment, the issuance of notices u/s 148 of the Act was not valid. In view of the above discussion, the re-opening of the assessment in this case on the basis of mere suspicion and vague information received from the Investigation Wing without correlating the same with the assessment records available with the department, is not sustainable. Therefore, the consequential assessment order passed u/s.147 of the Act is also not sustainable and the same is hereby quashed.

9. Even on merits there was no reliable evidence on the file that the assessee had made payments in cash in violation of the provision of section 40A(3) of the Income Tax Act. Therefore, we do not find any infirmity in the order of CIT(A) in setting aside the order of the AO for making disallowance u/s 40A(3) of the Income Tax Act.

10. So far as the action of CIT(A) in enhancing the net profits to the extent of 25% of the URD purchases as against the earlier order of the AO estimating the net profits of the assessee @ 3% of the turnover as against 0.72% declared the assessee, is concerned, as observed above, the issue has already attained finality as the same has been decided by the Tribunal vide order dated 17-04-2018 dismissing the appeal of the assessee against the

order of the CIT(A) upholding the order of the AO. No new facts have come on the file.

10.1 The issue of determining the net profits of the assessee has already been adjudicated upon by the Tribunal and under the circumstances, the Ld. CIT(A) has no jurisdiction to re-estimate and enhance the net profits of the assessee in the year under consideration. Even otherwise, the assessee, admittedly, is a trader in waste paper. The sales have been admitted. Therefore, there is no question of doubting the quantity of purchases. At the most it can be a case of suppression of some element of the net profits by the assessee showing less expenditure on the purchases. It is not the case of the lower authorities that the corresponding sales did not match or coincide with the purchases. Considering that the purchases were made from unregistered dealers, the AO, himself, had assessed the net profit @ 3% as against 0.72 % declared by the assessee, which order has been affirmed by the Tribunal vide order dated 17-04-2018 which has attained finality and therefore the action of the CIT(A) in enhancing the net profit by way of re-appreciation of the same facts is not sustainable . Moreover, the re-opening in this case was not made on the issue of estimation of net profits. In view of the above discussion, the impugned order of the CIT(A), estimating/enhancing the net profits @ 25% of the URD purchases is not sustainable and the same is set aside. The order of the Tribunal dated 17-04-2018 upholding the order of the CIT(A) for adopting the net profits @ 3% of the turnover is re-affirmed.

Therefore, the appeal of the Revenue is dismissed, whereas, the appeal of the assessee stands allowed.

**ITA No.392/SRT/2014 for AY 2011-12 in the case of Lalit Garg (HUF)**

11. The facts of this appeal for AY 2011-12 are identical to that have been discussed above while adjudicating the appeals of the assessee as well as Revenue for AY 2012-13. Though, the AO had made addition on other issues i.e. of Rs.94,78,835/- and Rs.67,60,480/- on account of unexplained cash and credit entries in the bank account of the assessee and of Rs.45,38,600/- on account of disallowance of sundry creditor totaling Rs.2,07,77,915/-, however, the said addition made by the AO already stood deleted by the CIT(A) vide impugned order dated 18-01-2024. The Revenue has not preferred any appeal in the said order of the CIT(A) deleting the aforesaid addition made by the AO. The only issue that has been brought in appeal by the assessee is in relating to the addition made by CIT(A) of Rs.1,15,11,194/- @ 25% of the total unverified purchases of Rs.4,60,44,775/-.

12. The assessee apart from contesting the addition made by the CIT(A) has also raised the legal ground relating to the jurisdiction of the CIT(A) in making the addition on any other issue which was not the ground or subject matter for re-opening of the assessment by the AO, when, the issues relating to which the assessment was re-opened stood negated and additions made on those issues already stood deleted by the CIT(A).

13. So far as the legal issue relating to the jurisdiction of the CIT(A) to make the impugned addition is concerned, it is to be noted here that the issue relating to the estimation of net profit on unverified URD purchases was not recorded in the reason to believe of escapement of income from

assessment by the AO for re-opening of the assessment. The issues upon which the assessment was re-opened and consequently additions were made, stood already set-aside by the CIT(A) and therefore as per the settle law the Ld. CIT(A) exceeded his jurisdiction in making the addition on an another issue which was neither the subject matter for re-opening of the assessment nor of the impugned addition made by the AO. Moreover, no show-cause notice was issued to the assessee for re-opening of the above issue of estimation of net profit either by the AO or by the CIT(A). The issue had already attained finality and under the circumstances the Ld. CIT(A) had no jurisdiction to re-open or re-adjudicate this issue when the additions made by the AO on the issues for which the assessment was re-opened stood already deleted by the CIT(A). The issue is squarely covered by the following case laws.

- i. Pr. CIT Vs. Lark Chemicals (P.) Ltd. (2018) 99 taxmann.com 312(SC)
- ii. Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bombay)

In view of above discussion, the impugned addition made by the CIT(A) is not sustainable and the same is accordingly ordered to be deleted.

14. So far as the validity on merits of the addition made by the CIT(A) is concerned, as discussed above the identical issue had cropped up in earlier assessment year 2010-11 as well as in subsequent assessment year AY 2012-13 in the own case of the assessee and the Tribunal has consistently upheld the action of the Revenue in adopting net profit rate @ 3% of the turnover. There is no distinguishing fact brought to out knowledge for taking a different view relating to the estimation of net profit of the assessee for the year under consideration. Accordingly, the order of the CIT(A) is not

sustainable and the addition at the most can be restricted to the extent @ 3% of the turnover. However, in view of our findings on the legal issue relating to the validity of re-opening of the assessment, the assessment order having the impugned addition made by the CIT(A) is ordered to be deleted. The appeal of the assessee stands allowed.

15. The sole issue pressed by the Ld. Counsel for the assessee in the remaining captioned appeals i.e.

ITA Nos.675/SRT/2023 for AY 2013-14, ITA Nos.676/SRT/2023 for AY 2014-15, ITA No.677/SRT/2023 for AY 2015-16, ITA No.394/SRT/2024 for AY 2016-17 in the cases of Lalit Garg (HUF).

And

ITA Nos.678/SRT/2023 AY 2013-14, 679/SRT/2023 AY -2014-15, 680/SRT/2023 for AY 2015-16, 681/SRT/2023 for AY 2016-17, 395/SRT/2024 for AY 2017-18, 396/SRT/2024 for AY 2018-19, 397/SRT/2024 for AY 2019-20 relating to Dinesh Garg (HUF)

is relating to the validity of estimation of net profits by the CIT(A) @ 25% of the URD purchases. Since, the facts and issue involved are identical to that has been discussed above, therefore, in view of the discussion made above, and respectfully following the earlier decision of the Tribunal dated 31-08-2016 (supra) and 17-04-2018(supra), for the sake of consistency, it is directed to the AO to assess the income of the assessee for the aforesaid assessment years by adopting net profits @ 3% of the turnover. The impugned orders of

the CIT(A) are modified accordingly. These appeals are treated as partly allowed.

16. In the combined result, ITA Nos.392/SRT/2024 for AY 2011-12 and ITA No.393/SRT/2024 for AY 2012-13 stand allowed, the appeal of the Revenue in ITA No.868/SRT/2023 for AY 2012-13 stands dismissed, whereas the remaining appeals ITA Nos.675/SRT/2023 for AY 2013-14, ITA Nos.676/SRT/2023 for AY 2014-15, ITA No.677/SRT/2023 for AY 2015-16, ITA No.394/SRT/2024 for AY 2016-17 in the cases of Lalit Garg (HUF).

And

ITA Nos.678/SRT/2023 AY 2013-14, 679/SRT/2023 AY -2014-15, 680/SRT/2023 for AY 2015-16, 681/SRT/2023 for AY 2016-17, 395/SRT/2024 for AY 2017-18, 396/SRT/2024 for AY 2018-19, 397/SRT/2024 for AY 2019-20 relating to Dinesh Garg (HUF) stand partly allowed.

**Order pronounced in the Open Court on 19/06/2025.**

**Sd/-  
(Bijayananda Pruseth)  
Accountant Member**

**Sd/-  
( Sanjay Garg )  
Judicial Member**

(True Copy)

दिनांक/Dated 19/06/2025

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि,अधिकरण अपीलीय आयकर ,सूरत /AR,ITAT, Surat/Ahmedabad.
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT,Surat/Ahmedabad