

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE MS SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.1342/SRT/2024**

**Assessment Year: (2011-12)**

**(Hybrid Hearing)**

Nareshbhai Arjanbhai Lathiya, Plot No.97, Laxmi Society, Gajera School Road,Behind Gajera School, Katargam, Surat - 395006	<b>Vs.</b>	ITO, Circle – 3(3)(3), Surat
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ADLPP8388A</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri P. M. Jagasheth, CA
<b>Respondent by</b>	Ms Jayashree Thakur, Sr. DR
<b>Date of Hearing</b>	09/06/2025
<b>Date of Pronouncement</b>	22/07/2025

**आदेश / O R D E R**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 22.10.2024, by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2011-12.

2. Grounds of appeal raised by the assessee are as under:

*"1. 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 (Appeals) has erred in confirming the action of the Assessing officer in re-opening the assessment u/s. 147 and issuing notice u/s.148 of the Act was issued.*

*2. 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 (Appeals) has erred in confirming the action of the addition of Rs.11,01,115/-on account of alleged bogus purchase credit u/s 68 of the I.T. Act, 1961.*

*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 (Appeals) has erred in confirming the action of the Assessing officer in initiating penalty u/s 271(1)(c) of the Income Tax Act, 1961.*

*4. 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 (Appeals) has erred in confirming the action of the Assessing Officer in levies interest u/s 234A/234B/234C/234D of the Income Tax Act, 1961.*

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

*6. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”*

3. Brief facts of the case are that the assessee filed his return of income for AY.2011-12 on 07.09.2011, declaring total income of Rs.10,97,650/-. A search and seizure action was conducted on 03.10.2013 by the Investigation Wing, Mumbai on Rajendra Jain group, Sanjay Chaudhari group and Dharmichand group. It was found that the said groups through various benami concerns and their employees were providing accommodation entries of unsecured loans and bogus purchases to various beneficiaries. On examination of information, it was found that the assessee indulged in non-genuine transactions of Rs.44,04,458/- during the year under consideration from the concerns of the above groups. Accordingly, notice u/s 148 of the Act was issued on 30.03.2018. In response to which, assessee filed return of income, disclosing the original income. Thereafter, the reasons for re-opening was given to the assessee. The assessee subsequently filed a reply, which was considered by the Assessing Officer (in short, 'AO') but was not accepted. He added 25% of the bogus purchase of Rs.44,04,758/- from these concerns, amounting to Rs.11,01,115/-, to the total

income. The total income was determined at Rs.21,98,770/- against the returned income of Rs.10,97,658/-. Penalty u/s 271(1)(c) was also separately initiated for furnishing inaccurate particulars of income.

4. Aggrieved by the order of AO, the assessee filed this appeal before the CIT(A). The CIT(A) issued three notices, which were not complied with. Thereafter, the CIT(A) has extracted the assessment order and confirmed the addition made by the AO.

5. Aggrieved by the order of CIT(A), the assessee has filed appeal before the Tribunal. The appellant has challenged both reopening as well as merit of addition @25% of the bogus purchase of Rs.44,04,458/-, as upheld by CIT(A). The Id. AR has relied on the following decisions: (i) PCIT vs. Surya Impex, 148 taxmann.com 154 (Guj.), (ii) PCIT vs. Navratan jain, R/Tax Appeal No. 617 of 2022 (Guj.), (iii) PCIT vs. Pankaj K. Chaudhari, R/Tax Appeal No.617 of 2022 (Guj.), (iv) M/s Raiyani Brothers vs. ITO, ITA No.8/SRT/2021 (Surat – Trib.), (v) Exotic Jewels vs. ITO, ITA No.29/SRT/2023 (Surat – Trib.) and (vi) Sonu Dharmichand Bafna & Ors., ITA No.167 to 170/SRT/2021 (Surat – Trib.). He submitted that in all these cases disallowances were restricted to 6% of the bogus purchase.

6. On contrary, the learned Senior Departmental Representative (Id. Sr. DR) has supported order of lower authorities. He, however, admitted that the ITAT has been restricting such addition to 6% of the impugned purchases.

7. We have heard both the parties and perused the materials on record. We also deliberated various case laws relied upon by the parties. At the outset of hearing, both parties agreed that this issue is a fairly common and repetitive issue before the Tribunal and is covered by a number of decisions of the ITAT, wherein similar additions have been restricted @ 6% of the respective bogus purchases. It was further submitted that such decision of ITAT in restricting the addition to 6% has been confirmed by the Hon'ble jurisdictional High Court in case of Surya Impex (supra). The Id. Sr. DR also agreed that the issue is also covered by the decisions of ITAT and Hon'ble jurisdictional High Court. We find that the Hon'ble jurisdictional High Court, in the latest decision in case of PCIT vs. Keshri Exports, R/Tax Appeal No.723 of 2024, has upheld the order of ITAT in restricting the addition to 6% of the bogus purchases/accommodation entries. It was observed that the tax appeals of the department have been dismissed in several matters arising out of transactions with the Bhanwarlal Jain group, where the ITAT assessed the disallowance at 6%. The Hon'ble Gujarat High Court in case of Surya Impex (supra) has also held that the Tribunal was justified in limiting addition in the hands of the assessee @ 6% of the impugned purchases. Respectfully following these decisions, the order of CIT(A) is set aside and the AO is directed to restrict the addition to 6% of the impugned purchases from the said Bhanwarlal Jain and Rajendra Jain group. The ground is partly allowed.

8. Ground No.1 regarding validity of assessment u/s 147 has not been seriously argued by the Id. AR. The same is accordingly dismissed.
9. Ground No.3 pertains to initiation of penalty u/s 271(1)(c) of the Act. Though penalty has been initiated, the AO is yet to pass the penalty order u/s 271(1)(c) of the Act. Hence, the appeal is premature and does not require adjudication.
10. Ground No.4 pertains to levy of interest u/s 234A/234B/234C/234D of the Act. Levy of interest is mandatory as held by the Hon'ble Supreme Court in case of Anjum M. H. Ghaswala, 252 ITR 1 (SC). It is also consequential to the addition in the assessment order. The AO is directed to rework the interest after giving effect to the order of the ITAT. Accordingly, the ground is partly allowed.
11. In the result, the appeal of the assessee is partly allowed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 22/07/2025.

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Surat

दिनांक/ Date: 22/07/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**// TRUE COPY //**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat