

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

आयकरअपीलसं./ITA No.765/SRT/2024

Assessment Year: (2015-16)
(Hybrid hearing)

Mangharam Moolchand Verma 703, Smita Park, Sarela Wadi, Ghod Dod Road, Surat – 395007	vs.	ITO, Ward - 1(3)(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABCPV1629D		
(Appellant)		(Respondent)

Appellant by	Shri Mehul Shah, CA
Respondent by	Ms. Jayashree Thakur, Sr. DR
Date of Hearing	09/06/2025
Date of Pronouncement	11/08/2025

आदेश / ORDER

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 04.04.2024 by the Commissioner of Income-tax (Appeal)/Addl/JCIT(A)-12, Mumbai [in short "the CIT(A)"] for the assessment year (AY) 2015-16, which in turn arises out of assessment order passed by the Assessing Officer (in, short 'AO') u/s 143(3) of the Act on 22.12.2017.

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 Ld. CIT(A) ought to have admitted the additional evidence under Rule 46A of the Income Tax Rules, 1962.

2. On the facts and in the circumstances of the case as well as the law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making disallowance of Rs.41,33,813/- on account of alleged bogus purchase.

3.It is therefore prayed that the above disallowance made by the Assessing Officer and confirmed by CIT(A) may please be deleted.

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

3. The appeal filed by the assessee is barred by 42 days in terms of provisions of section 253(3) of the Act. The assessee has filed an affidavit for delay in filing of appeal before the Tribunal. In the affidavit, it has been stated that delay in filing appeal was caused owing to the fact that order of CIT(A) was served on the email ID of previous tax consultant of the assessee, who inadvertently forgot to forward the same to the assessee. Subsequently, when it came to the knowledge of the assessee, he filed the appeal urgently. The learned Authorized Representative (Id. AR) of the assessee submitted that the delay in filing the appeal by the assessee was not intentional and that he was prevented by sufficient and reasonable cause for not filing the appeal in time. Therefore, in the interest of justice, delay may be condoned and admitted for hearing. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue did not have any objection, if the delay is condoned.

4. We have heard both the parties and perused the material available on record. We find that the delay in filing the appeal was not deliberate and intentional on the part of the assessee. Moreover, the assessee is not going to be benefitted by filing the appeal belatedly. It is now fairly settled that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Hence, the delay in filing the appeal is condoned and we proceed to decide the case on merit.

5. Brief facts of the case are that the appellant filed his return of income for AY 2015-16 declaring total income at Rs.5,32,660/- on 28.09.2015. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued on 28.07.2016. In response, assessee submitted various details. During the year under consideration, assessee was engaged in the business of embroidery job work. On verification of balance-sheet ending on 31.03.2015, it was found that the assessee has shown Rs.1,41,91,687/- as sundry creditors. The assessee submitted the details of sundry creditors along with copies of ledger account of parties where the amount outstanding was above Rs.1,00,000/-. Thereafter, the AO issued notices to the creditors u/s 133(6) of the Act, but most of them were returned 'unserved'. It was submitted by the assessee that the correct addresses of the creditors were not furnished by mistake. It was requested to resend the notices u/s 133(6) of the Act on the correct addresses. However, due to paucity of time, the aforesaid request of assessee to re-issue notices u/s 133(6) of the Act could not be accepted and assessee was requested to remain present in person along with the creditors, viz., M/s. Shree Creation, Vidhi Creation, Ankita Fashion, Dev Jarilon, R. K. Industries, Kamdhenu Impex and Harmie Trading. The assessee did not comply with the said request and instead submitted the replies of aforementioned parties. Thereafter, the AO conducted on-spot verification through his Inspector of the aforementioned parties. The verification report of the AO is at para 4.2 of the assessment order. Thereafter, show cause notice was issued, which is at para 4.3 of the assessment order. In

the said show cause notice, the AO asked assessee as to why disallowance should not be made in respect of the following parties, if they are not presented before the AO:

Sr. No.	Name of the party	Total purchases
1.	Vidhi Creation	Rs.7,43,106/-
2.	Dev Jarilon	Rs.7,90,808/-
3.	R.K. Industries	Rs.1,22,188/-
4.	Madhav Dhupian	Rs.1,18,648/-
5.	Shree Creation	Rs.9,89,860/-
6.	Kaamdhenu Impex	Rs.1,72,546/-
7.	Harmie Trading	Rs.1,42,776/-
8.	Ankita Fashion	Rs.10,53,881/-
	TOTAL	Rs.41,33,813/-

5.1 The AO further observed that these transactions shown as purchases were mostly at the end of the year and are not genuine transactions. In view of the same, the aforesaid purchases were treated as bogus in nature. It was held that these purchases were just shown in the profit and loss account by the assessee to reduce his profit for the year under consideration. Therefore, the purchases of Rs.41,33,813/- made from these parties were disallowed and added to the total income of the assessee.

6. Aggrieved by the order of AO, the assessee filed appeal before the Addl. CIT(A). The Addl. CIT(A) observed that the appellant was given sufficient opportunities to prove the genuineness of the purchases, which were not availed by the assessee. The assessee was now coming forward with a details of unverified purchases from 8 sundry creditors, which are self-serving in nature. If they were genuine, the same could have been submitted before the AO during the assessment proceedings. Hence, the additional evidence submitted by the

assessee, were not admitted under Rule 46A. The Addl. CIT(A) further observed that no application for admission of the same was made by the AO. Thereafter, the appeal was dismissed.

7. Aggrieved by the order of the Addl. CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted the tax audit report along with audited financial statements of Radha Madhav Textiles, return of income along with computation of total income, ledger account, month-wise purchase summary, account confirmation, purchase invoices, bank statement, copy of return of income in respect of purchases made from creditors, viz., Vidhi Creation, Dev Jarilon, R.K. Industries, Madhav Dhupian, Shree Creation, Kamdhenu Impex, Harmie Trading, Ankita fashion and copy of written submission made before the CIT(A). The Id. AR submitted that all details had been given to the lower authorities and no additional evidence was furnished before the Addl. CIT(A). The Id. AR also submitted that simply because notice u/s 133(6) of the Act has not been served or complied with, the same cannot be sole ground for addition when assessee had produced all the evidence and details. He submitted that the assessee had no control over third party compliance and in absence of any contrary evidence or material that the creditors represent unaccounted income of the assessee, the disallowance is purely presumptive and untenable. He also submitted that the AO did not reject the books of account u/s 145(3) of the Act in the assessment proceeding; therefore, additions of bogus purchases should not be

made. Reliance was placed by the assessee in the case of Nikunj Exim Enterprises Pvt. Ltd., 372 ITR 619 (Bom.). The Id. AR further submitted that even in cases where creditors are not traceable but when purchases are entered in the purchase register and assessee is in the business of trading, the entire purchase cannot be disallowed. For this, reliance was placed on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Nangalia Fabrics Pvt. Ltd., 40 taxmann.com 206 (Guj.). Moreover, all the payments were made through banking channels and there is no evidence that money has come back to the assessee. The Id. AR further relied on the following decisions, viz., Mather and Platt (India) Ltd. Vs. CIT [1987] 32 taxman 38 (Calcutta HC), DCIT vs. Global Wool Alliance (P.) Ltd. [2022] 145 taxmann.com 466 (Kolkata Trib.), Hindalco Industries Ltd. vs. DCIT [2024] 165 taxmann.com 606 (Mumbai Trib.) and ACIT vs. Jaybharat Textiles & Real Estate Ltd. [2017] 82 taxmann.com 59 (Mumbai – Trib.).

8. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities. She submitted that the AO made detailed enquiry regarding the creditors and allowed adequate opportunity of hearing to the assessee. The CIT(A) has also considered the entire factual matrix and dismissed appeal of assessee. Hence, the addition may be upheld.

9. We have heard both the parties and perused the material available on record. We have also deliberated upon the decisions relied upon by the Id. AR.

The AO has added the entire purchases from 8 parties amounting to Rs.41,71,748/-. The AO has not invoked section 145(3) of the Act and rejected the books of account of the appellant. Once books are not rejected and purchases are recorded therein, disallowance of entire purchases contradicts the accounting records unless contrary evidence is brought on record. The Hon'ble Bombay High Court in case of Nikunj Exim Enterprises Pvt. Ltd. (supra) held that addition of bogus purchases cannot be made when books of account are not rejected, only on ground that suppliers did not appear before the AO. It has also been held by various authorities that mere non-service of notice u/s 133(6) or non-traceability of parties cannot *ipso facto* result in entire purchases being treated as bogus. Once payments are made through banking channels and the purchases are recorded in the books, disallowance of entire purchases is unjustified. There is no evidence that the payment to the creditors were received back by assessee. In the present case, the sales made by the assessee are not doubted. Therefore, even if purchases are held to be non-genuine or unverified, the appropriate method is to estimate the profit element embedded in such purchases and not to disallow the entire purchase. Keeping in mind the nature of business (embroidery job work), the fact that confirmations were filed for several parties, payments were through banking channels, and purchase entries were recorded in regular books, we are of the consider view that it would be just and proper to estimate profit at 12.5% of such purchases.

Accordingly, the disallowance is restricted to Rs.5,16,727/- (12.5% of Rs.41,33,813/-). The ground is partly allowed.

10. In the result, the appeal of the assessee is partly allowed.

Order is pronounced in accordance with Rule 34(3) of the ITAT Rules, 1963 on 11/08/2025 in the open court.

Sd/-
(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 11/08/2025

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 //

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat