

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRIPRADIP KUMAR CHOUBEY, JM**

**ITA Nos.373 & 374/KOL/2025
(AYs:2016-17 & 2017-18)**

ITO, Ward 4(1)
Aayakar Bhavan, 8/11, P-7,
Chowringhee Square,
Kolkata-700069, West Bengal

(Appellant)

MAA Vaishno Fuels Pvt. Ltd.
56, 2nd Floor, Room No.2F,
Metcafe Street, Kolkata-700013
West Bengal

Vs.

(Respondent)

PAN No. AAECM3072H

Assessee by : Shri Siddharth Agarwal, AR
Revenue by : Shri Mangtinlen Haokip, DR

Date of hearing: 28.07.2025
Date of pronouncement: 26.08.2025

ORDER

Per Rajesh Kumar, AM:

These are appeals preferred by the Revenue against the orders of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 15.01.2025 for the AYs2016-17 & 2017-18.

02. As the facts and circumstances are similar in both the appeals in ITA No. 373/Kol/2025 & ITA No. 374/KOL/2025, hence, we will take the facts of ITA No. 373/KOL/2025 for A.Y. 2016-17 and decide the issue.

03. The only issue raised by the Revenue in various grounds of appeal is against the deletion of addition by the Id. CIT (A) of ₹1,59,13,085/- in respect of bogus sales u/s 68 of the Act and

₹4,77,393/- u/s 69C of the Act in respect of estimated commission at the rate of 4.3% on the bogus sales.

04. The facts in brief are that the assessee filed the return of income on 21.09.2016, declaring total income at ₹2,15,330/-. The assessee is engaged in the business of trading of coal and coal related products. The case of the assessee was selected for scrutiny based on the risk profiling of the assessee's case conducted by the Risk Management system of the Department an information is received that assessee has taken bogus Sales & Purchases to the tune of ₹15,99,000/-. Accordingly, the case was reopened u/s 147 of the Income-tax Act, 1961 (the Act) by issuing notice u/s 148 of the Income-tax Act, 1961 (the Act) on 29.06.2021 after recording the reasons to belief. After the decision of the Hon'ble Apex Court in the case of Union of India Vs. Ashish Agarwal in Civil Appeal No. 3005/2022, Vide order dated 04.05.2022, the CBDT has issued instruction on implementation of the decision in exercise of powers u/s 119 of the Act. Pursuant to the decision of the Hon'ble Apex Court and subsequent instructions of the CBDT, opportunity was provided to the assessee by issuing notice u/s 148A(b) of the act on 23.05.2022 and assessee filed the reply thereto and thereafter order u/s 148A(d) of the Act was passed. Again, notice u/s 148 of the Act was issued on 08.07.2022 and the assessee filed the return of income on 11.11.2022, declaring the same income. The Id. AO after examination of the documentary evidences filed by the assessee came to the conclusion that assessee has bogus sales to the tune of ₹1,59,13,085/-. According to the Id. AO, the assessee has actually involved in doing paper trading without doing any actual business and without any movement of goods and therefore, the same

lacked the genuinity and creditworthiness and hence, the addition was made. The Id. AO also made an addition of ₹4,73,393/- towards estimated commission at the rate of 3% of the above amount for giving this accommodation entry.

05. In the appellate proceedings, the Id. CIT (A) deleted the addition after taking into account the submission and contentions of the assessee. The Id. CIT (A) noted that in the appellate proceedings, the assessee has filed all the evidences qua the said sales comprising ledger extracts, sales register, sales invoices of the bank statement, e-way bill issued by VAT department, transport vehicle details, VAT return etc. and also noted that the assessee has duly recorded these sales in the books of account. The Id. CIT (A) also noted that following on search action was conducted in the case of M/s Maharaja Shree Agrasen Jee Aapno Ghar Pvt. Ltd. group of cases on 16.11.2017, in which Shri Rohit Sharma was also covered and post search investigation revealed that some coke manufactures in Dhanbad who availed the benefit of linkage coal at a cheaper rate from BCCL sold some component of the linkage coal clandestinely at a higher rate in cash in the open market which were unaccounted sales. So, this is how Shri Rohit Sharma treated as beneficiary of bogus sales transactions. The Id. CIT (A) further noted that the assessee discharged primary onus by filing the supporting documents to substantiate the nature of transactions. However, the Id. AO merely relied on the statement recorded of Shri Rohit Sharma and made an addition. The Id. CIT (A) specifically referred to the e-way bills issued by the VAT department along with transporter details which

strengthen the arguments of the assessee that actual sales were in fact been made and finally allowed the appeal of the assessee.

06. After hearing the rival contentions and perusing the materials available on record, we find that following search conducted on M/s Maharaja Shree Agrasen Jee Aapno Ghar Pvt. Ltd. group of cases on 16.11.2017, on which Shri Rohit Sharma was also part. It was revealed that the some coke manufactures in Dhanbad, who availed the benefit of linkage coal at a cheaper rate from BCCL sold some component of the linkage coal clandestinely at a higher price in cash in the open market and Shri Rohit Sharma was beneficiary and that was the triggering point for reopening the case of the assessee u/s 147 of the Act. In this case, we note that assessee has filed all the evidences before the Id. AO comprising ledger extracts, sales register, sales invoices, bank statement, e-way bills issued by VAT department, transport vehicle details, VAT returns etc. and also noted that the assessee has duly recorded these sales in the books of account. We also note that the addition was made on the basis of statement of Shri Rohit Sharma without there being any corroborative or substantive material being brought on record by the Id. AO. The Id. AO has also not disputed the evidences filed by the assessee such as e-way bills issued by the VAT department of State Government, Transport vehicle details, VAT returns, sales invoices, sale register, bank statement etc. We note that the Id. AO has acted only on the finding given by the investigation wing that Shri Rohit Sharma is a bogus purchaser. Thus, we do not find any infirmity in the order of Id CIT(A). Consequently, we are inclined to dismiss the appeal of the Revenue by upholding the order of the Id. CIT (A).

07. The issue raised in ITA No. 374/KOL/2025 for A.Y. 2017-18, is similar to one as decided by us in ITA No. 373/KOL/2025 for A.Y. 2016-17. Accordingly, our decision would, mutatis mutandis, apply to this appeal of assessee in ITA No. 374/KOL/2025 for A.Y. 2017-18. Hence, the appeal of Revenue in ITA No. 374/KOL/2025 is dismissed.

08. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 26.08.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 26.08.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata