

THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

Through Hybrid Mode

**Before Ms. Suchitra Kamble, Judicial Member
And Shri Bijayananda Pruseth , Accountant Member**

**ITA No. 923/Srt/2024
Assessment Year 2018-19**

Jayvadan Rughnathwala, 6/7 Khatodara Ind Service Society, B/h. Sub Jail Katodara, Surat-395002 PAN: AAQPR4348L (Appellant)	Vs	ITO, Ward-1(2)(1) Surat (Respondent)
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**Assessee by: Shri Rasesh Shah, A.R.
Revenue by: Shri Ajay Uke, Sr.D.R.**

Date of hearing : 17-07-2025
Date of pronouncement : 29-08-2025

आदेश/ORDER

Per Suchitra Kamble, Judicial Member:

This is an appeal filed against the order dated 09-08-2024 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2018-19.

2. The grounds of appeal are as under:-

“1. On the facts and circumstances of the case as well as law on the subject the learned CIT(A) has erred in confirming the action of assessing officer in re-opening assessment u/s 147 by issuing notice u/s 148 of the IT Act 1961.

2. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making an addition of Rs. 14,84,152/- u/s. 69C on account of alleged bogus purchases.*

3. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in taxing the income u/s 115BBE of the act instead of taxing the same as business income.*

4. *It is therefore prayed that the assessment framed u/s 147 rws 144B of the Act may kindly be quashed and/or addition made by the assessing officer and confirmed by CIT(A) may please be deleted.*

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

3. Information was received from the Investigation Wing that M/s. S.K. Enterprises (Prop. Shahrukhkhan Pathan) is primarily engaged in generating and passing on GST credit to their buyers without any physical movement of goods. During the investigation, it was found that the assessee is one such beneficiary and made purchases of Rs. 13,26,030/- from S.K. Enterprises and filed book GST credit. During the proceedings u/s. 148A of the Act and show cause notice u/s. 148A(b) was issued on 15-03-2022 providing opportunity to the assessee. However, the assessee did not file any submissions to the said notices. Accordingly order u/s. 148A(d)(2) of the act was passed on 30-03-2022 and notice u/s. 148 of the Act was issued on 31-03-2022 for making re- assessment of the escaped income. The statutory notices were given to the assessee and the assessee field the submissions/response along with the details. The Assessing Officer observed that after issuing the information from the investigation wing, the assessee was asked the file audited financial statement along with head-wise computation of income for the assessment year under consideration. The

assessee filed ITR on 17-06-2022 in response to the notice u/s. 148 of the Act. The assessee submitted before the Assessing Officer that he is engaged in the business of manufacturing of yarn under the trade name Jayesh Textile and produced yarn from M/s. S.K. Enterprises amounting to Rs. 13,26,030/-. In support of claim, the assessee submitted the copy of invoices issued, copy of ledger, bank statement highlighting payment made. After considering the assessee's submissions, the assessee held that the assessee has purchased items from M/s. S.K. Enterprises at four instances in the month of Jan, 2018 for the total amount of Rs. 14,85,152/- (including GST). After that no further purchase was made from M/s. S.K. Enterprises in subsequent years to payment of Rs. 1,11,386/- was made till date even after passage of five years of time an amount of Rs. 13,73,766/- was mentioned outstanding. The Assessing Officer suspected that the full payments has not been made till date even when no regular business is done by the assessee without M/s. S.K. Enterprises and therefore held that these purchases are only bogus purchase where the other parties is not present for payment even after the passage of five years . The statement of Sh. Shahrukhkhan Pathan Prop. Of M/s. S.K. Enterprises and Shri Madhav Shah, accountant of M/s. S.K. Enterprises were recorded on oath on 14-09-2018 and during the inquiry they have admitted that M/s. S.K. Enterprises is used to generate invoices and passed on GST credit to other company without any actual movement of goods. Thus, the Assessing Officer concluded that M/s. S.K. Enterprises is only a paper entity which is not doing real business and involved in providing bogus entries to the beneficiaries. The assessee has taken the bogus entry of Rs. 14,84,152/- from M/s. S.K. Enterprises without actual movement of goods during the year under

consideration. Hence, the purchase expenses of Rs. 14,84,152/- made from M/s. S.K. Enterprises was disallowed and treated as income u/s. 69C of the income Tax Act, 1961. The assessee submitted that assessee maintained books of accounts without quantity tally and in Form no. 3CD assessee has also given details of the actual quantity tally as per column no. 35A and B of Form 3CD of tax audit report. But the said contention of the assessee also related to cross examination of proprietor of M/s. S.K. Enterprises in consonance with these documents was rejected by the Assessing Officer.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The ld. A.R. submitted that the assessee has made genuine purchase of yarn from M/s. S.K. Enterprises and made the payment through banking channel. The assessee furnished the invoices but did not make full payment to M/s. S.K. Enterprises against the purchase of Rs. 14,84,152/-. The assessment order is not just and proper as the assessee had made the payments and paid the GST with interest and penalty. The ld. A.R. filed following arguments in the form of written submissions:-

“5. As stated above, assessee in his statement before the GST authority stated that he received the delivery of the goods but the broker has given the false bills.

6. Therefore, it is clear that assessee has actually purchased the goods and because of the bogus billing, the ITC was reversed and assessee paid the GST with interest and penalty. However, so far as the purchases are concerned the assessee is eligible for deduction of such purchases as the purchases are accounted in the books supported by stock tally. Accordingly, there is no escapement of the income.

7. In the course of proceedings u/s 148A(b), the assessing officer didn't supply the statement of the Shahrukh Khan Pathan recorded by the GST department This information was supplied only on 15.03.2023 after issuing the notice u/s 148 on 31.03.2022 The investigation report was not supplied to the assessee in the course of proceedings u/s. 148A(b) and even in the course of assessment proceedings.

8. in this case the notice u/s 148 was issued by the jurisdictional assessing officer The CBDT has vide notification no 18/2022 dated 29th March 2022 notified the faceless reassessment scheme with effect from 29th March 2022 On perusal of the scope of the faceless reassessment scheme, it is safely concluded that from 29th March 2022 the show-cause notice u/s 148A(b) should have been issued only by the National Faceless Assessment Centre ("NFAC") and not by the Jurisdictional Assessing Officer ("JAO") Therefore, show cause notice issued by any authority other than NFAC is liable to be quashed. The reliance is placed on the Ahmedabad Tribunal in the case of ACIT vs. Resham Petrotech Ltd (2021) (21 taxmann.com 161) wherein it has been held that notice u/s 148 of the Act can be issued only by the AO having jurisdiction over the Assessee Notice issued by any other officer will be invalid and vitiate the entire proceedings Post 29.03 2022, the jurisdiction would lie with NFAC and hence the issuance of show cause notice by NFAC is a mandatory requirement And in the absence of the same, the entire proceeding becomes void ab initio. The reliance is placed on the decision of the Telangana High Court in the case of Kankanala Ravindra Reddy v/s ITO - Writ Petition No. 25903 of 2022 (Tel HC).

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12. The purchases are supported by following papers:

- i Form No 3CD showing quantitative details,
- ii Ledger account of the party,
- iii Purchase Bills obtained from the party,
- iv. Delivery Challans,
- v. Ledger account of S.K Enterprise for FY 2018-19,
- vi. Bank statement of the assessee evidencing the payment

13. As stated above assessee in his statement before the GST authority stated that he received the delivery of the goods but the broker has given the false bills. Therefore, it is clear that assessee has actually purchased the goods and because of the bogus billing, the ITC was reversed and assessee paid the GST with interest and penalty. However, so far as the purchases are concerned the assessee is eligible for deduction of such purchases as the purchases are accounted in the books

supported by stock tally Accordingly there is no escapement of the income.

14. Assessee maintains the quantity tally and the details of the quantity of raw material and finished goods were mentioned in Form No. 3CD of Tax Audit Report at column no 35(a) & (b) The assessing officer has not pointed out any defect in this quantity tally The alleged purchases are in respect of grey cloth which were sold by the assessee As there is the corresponding sales against the alleged purchases, the addition cannot be made. The assessing officer has not pointed out that assessee purchased the goods at the inflated price.

15. In the course of assessment proceedings all the books of accounts were produced before the Assessing Officer with purchase invoices and other details and he did not find any defect in the Books of Accounts The Assessing Officer did not reject the Books of Accounts in the Assessment Proceedings. It has been held in case of Nikunj Exim Enterprises Pvt Ltd - 372 ITR 0619 (Bom) that the addition of bogus purchases cannot be made when the books of accounts are not rejected and merely because the suppliers had not appear before the assessing officer.

16. The addition cannot be made u/s 69C as can be seen from the observation of Honbourable Gujarat High Court in case of ACIT vs Vardhman Exports - Tax Appeal No. 265 of 2008 (Gu)) where in the similar circumstances the following finding was given:

"5. The Assessing officer has made disallowances u/s 69C of the Act. However in our opinion, the same is erroneous since section 69C is applicable to cases where the source of expenditure has not been explained by the assessee Even if we take a plea that assessee has incurred expenditure, it is a case where the source of expenditure is duly explained as the payment for the purchase has been made by assessee out of its bank account. Therefore, the Tribunal rightly concluded that provision of section 69C of the Act will not apply to the case on hand"

17. Further the reliance is placed on the decision of CIT vs M.K Brothers 163 ITR 249 (Gu)). CIT V Nangalia Fabrics Tax Appeal No. 689 of 2010(Guj) and ACIT vs Akruti Dyeing & Printing Mills Pvt Ltd Tax Appeal No 997 of 2008 (Guj.)

18. It is to be noted that the cross examination of Shahrukh Khan Pathan was denied on the fact that he has never filed ITR and he is not registered on e-filing portal However, it is to be noted that the statement of Shahrukh Khan Pathan was recorded by the GST department and was also registered with the GST

Department The reason that he is not registered on e-filing portal is not tenable. Further it is to be noted that the assessing officer has not supplied the full statement of Madhav Shah. The assessing officer has only supplied the statements recorded by the GST Department However, neither investigation report nor the statements recorded by the Income Tax Department if any was provided to the assessee The assessing officer didn't make the further inquiry Accordingly, the addition made by the assessing officer is not valid in view of the following judgments of the courts:

- i Andaman Timber Industries vs Comm of Central Excise [Civil Appeal No 4228/2006 (SC)]*
- i. Kishanchand Chellaram v/s CIT [125 ITR 0713 (SC)]*
- iii DCIT vs Mahendra Ambalal Patel (Tax Appeal No. 462 of 1999) (Guj.)*
- iv PCIT Vs Chartered Speed Pvt Ltd [Tax Appeal No. 126 of 2015 with 127 of 2015) (Gu)]*
- v CIT v Ashwani Gupta [322 ITR 0396) (Del)*
- vi HR Mehta v ACIT [289 ITR 0561) (Bom)*

Wrong invocation of S. 115BBE:

Arguments.

19. The addition relates to the disallowance of the purchases Because of the disallowance of the purchases the income from business is increased and therefore S 115BBE cannot be invoked. Even otherwise, the addition for alleged bogus purchases cannot be made u/s 69C as the payments for the purchases have been recorded in the books of accounts. It is to be noted that the assessing officer has not invoked section 115BBE in the assessment order.

20 In support of the above the reliance is placed on the under mentioned decisions of courts:

- I Dr. TA Qureshi vs CIT-287 ITR 0547 (SC)*
- ii. Lakhmichand Baijnath v CIT 35 ITR 416 (SC)*
- Nalinikant Ambalal Mody v/s CIT 61 ITR 428 (SC)*
- iv CIT v/s D P Sandu Bros Chembur (P) Ltd 273 ITR 1 (SC)*
- v CIT v Shilpa Dyeing & Printing Mills (P) Ltd 39 taxmann.com 3 (Gu)*
- vi JK Chokshi vs ACIT - Tax Appeal 149 of 2003 (Guj.)*
- vii Green Associates vs PCIT-Tax Appeal No 1199 of 2018 (Gu)*
- viii DCIT v/s Radhe Developers India Ltd 329 ITR 1 (Guj.)*
- ix CIT vs Mhaskar General Hospital in Tax Appeal No 1474 of 2009 (Gu)*
- x Daulatram Rawatmull v CIT 64 ITR 593 (Cal)*

- xi. Mansfield and Sons v. CIT 48 ITR 254 (Cal.)*
- xii. CIT v Chensing Ventures [(2007) 291 ITR 258 (Mad)]*
- xiii CIT v S K Srigir & Bros 171 Taxman 264 (Kar)”*

At the time of hearing, the ld. A.R. submitted that ground nos. 1 & 2 are not pressed. The ld. A.R. further submitted that the Hon'ble Gujarat High Court in case of Vardhaman Exports (265/2008) has categorically held that the payment when proved should be allowed. The ld. A.R further relied upon the case of the wife of the assessee wherein the Tribunal has considered this issue and restricted the disallowance at 5% of purchases from M/s. S.K. Enterprises. The ld. A.R. submitted that in alternate, the same should be considered and taken into account.

6. The ld. D.R submitted that the proprietary concern M/s. S.K. Enterprises was involved in bogus invoices including that of GST component. From the perusal of records, it appears that the GST registration of M/s. S.K. Enterprises was cancelled suo moto w.e.f. 05-09-2017. In fact, the proprietary of M/s. S.K. Enterprises and the accountant of the said firm has admitted about generating and passing on GST credit to their buyers without any physical movement of goods. The ld. D.R. further emphasized despite several years, the assessee though stated that he has paid the purchase through cheque, the same was only entered into the ledger without reference of cheque payment to M/s. S.K. Enterprises which can be seen from page 92 of assessee's bank account, the ledger entry of assessee at page 83 for M/s. S.K. Enterprises. Thus, the ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. At the time of hearing, the assessee has not pressed ground no. 1 and hence the same is dismissed.

8. We have heard both the parties and perused all the relevant material available on record. The assessee in his written submissions has categorically mentioned that assessee in his statement before the GST authorities stated that he received the delivery of goods but the broker has given the false bills. The submissions of the ld. A.R. that assessee actually purchased the goods and because of the bogus billing, the GST department imposed penalty and the demand of GST with interest. The assessee paid GST with interest alongwith penalty. Thus, the assessee proved his case as per the submissions of the Ld. AR. But the fact remains that the assessee has not given the details of actual movement of purchase of yarns as contemplated by the assessee. The assessee in his submissions despite giving ledger of these delivery challan, ledger account and bank statement has not given the stock register of the assessee as the details related to the purchase of whether the same was that of yarn or something else and whether the same was properly mentioned or not, was not demonstrated either before us or before the lower authorities. The assessee is relying on the decision of his wife's case, but in the said case 5% addition has been restricted without taking into account the stock register entry and the other details such as delivery from M/s S. K. Enterprises to the assessee's premises with inward and outward entries which will prove that the assessee actually purchased these goods and it is not only the paper purchase. Even if we accept the additional ground of the assessee, the Assessing Officer has to first verify the component of the actual movement of purchased goods and whether the entire sale was rejected or

whether there was no sale at all and only the gross profit has been shown also needs to be verified. Therefore, this matter needs verification and adjudication and will not be treated as identical to case of assessee's wife. Besides this the decision of Hon'ble Gujarat High Court in case of Vardhaman Exports (supra) clearly set out that when payment proved the same should be allowed, but it also take into account the genuine purchase. But in the present assessee's case the purchase has been doubted. Hence, the said decision will not be applicable. The matter is remanded back to the file of the Assessing Officer for proper verification and adjudication as mentioned hereinabove. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

9. In result apple of the assessee is partly allowed for statistical purpose.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 29-08-2025.

Sd/-
(Bijayananda Pruseth)
Accountant Member
Ahmedabad : Dated 29/08/2025

Sd/-
(Suchitra Kamble)
Judicial Member

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Surat
6. Guard file.

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By order,
Assistant Registrar,
Income Tax Appellate Tribunal,
Surat