

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

आयकर अपील सं./ITA Nos.702 & 703/SRT/2024

AYs: (2014-15 & 2015-16)

(Hybrid hearing)

Lexus Softmac, F -3 to F-6, Gujarat Hira Bourse, Gems and Jewellery Park, Ichchhapore, Surat - 394510	बनाम/ Vs.	Deputy Commissioner of Income-tax, Circle 1(1)(1), Surat Room No.108, Aayakar Bhawan, Majura Gate, Opp. New Civil Hospital, Surat-395 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AABFL 0495 P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Deven K Kapadia, C.A.
राजस्व की ओर से /Respondent by	Shri Ajay Uke, Sr. DR
सुनवाई की तारीख/Date of Hearing	19/08/2025
उद्घोषणा की तारीख/Date of Pronouncement	25/09/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These two appeals by the assessee emanate from the separate orders passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') both dated 20.05.2024 by the National Faceless Appeal Centre, Delhi/ Ld. Commissioner of Income Tax (Appeals) [in short, 'CIT(A)'] for the assessment years (AYs) 2014-15 and 2015-16, which in turn arose out of separate assessment orders passed by the Assessing Officer (in short, 'AO') u/s 143(3) r.w.s. 147 of the Act both dated 28.11.2019. In both appeals, facts are common and grounds of appeal are similar. With the consent of both the parties, appeals were clubbed, heard together and

are decided by a common order for brevity and convenience. For appreciation of facts, appeal in ITA No.702/SRT/2024 for AY-2014-15 is treated as '**lead**' case.

2. The grounds of appeal raised by the assessee in ITA No.702/SRT/2024 (AY 2014-15) are as under:

1. *The AO has erred in law and on facts and in circumstances of the case by finalizing assessment u/s.143(3) rws 147 of the Act without following procedure for reopening of the case as well as the procedure for completion of reassessment proceeding as per direction of Hon'ble High Courts and without providing opportunity of cross examination of alleged parties.*
2. *The AO has erred in law and on facts and in circumstances of the case by reopening the case on the basis of change of opinion.*
3. *Both the lower authorities have passed the order without appreciating the facts and they have further erred in grossly ignoring various submissions although the appellant has properly adhered to every notice and directions of Ld. AO as well as CIT(A) and has fully cooperated during the whole proceedings. Thsi action of lower authorities is clear breach of law and principle of natural justice. Therefore, deserve to be quashed.*
4. *The CIT(A) has erred in law and on facts and in circumstances of the case by confirming additions of purchases made from the alleged parties/entities whose names were not included in list mentioned either in the order passed for disposal of objection or in assessment order passed u/s. 143(3) rws 147 of the Act.*
5. *The Ld. CIT(A) has erred in law and on facts and in circumstances of the case by confirming the addition and alleged notional commission made by the AO u/s.69C of the Act just on the basis of the survey carried out at some third party premises without putting on record any evidences to prove that the purchases are bogus.*
6. *Both the lower authorities have erred in law and on facts of the case without considering various documentary evidences submitted before them to corroborate the genuineness of alleged bogus purchases.*
7. *The Ld. CIT(A) has erred in law and on facts in confirming the action of AO in levying interest u/s.234A, 234B and 234C.*
8. *The AO has erred in law and on facts and in circumstances of the case by initiating the penalty proceedings u/s.271(1)(c) of the Act.*
9. *On the facts and merits of the case, the appellant craves for admission of additional evidences in the interest of natural justice and equity.*
10. *Appellant craves for stay of demand.*
The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.

3. The grounds of appeal raised by assessee in ITA No. 703/SRT/2024 (AY 2015-16) are as under:

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1. *The AO has erred in law and on facts and in circumstances of the case by finalizing assessment u/s.143(3) rws 147 of the Act without following procedure for reopening of the case as well as the procedure for completion of reassessment proceeding as per direction of Hon'ble High Courts and without providing opportunity of cross examination of alleged parties.*
2. *Both the lower authorities have passed the order without appreciating the facts and they have further erred in grossly ignoring various submissions although the appellant has properly adhered to every notice and directions of Ld. AO as well as CIT(A) and has fully cooperated during the whole proceedings. Thsi action of lower authorities is clear breach of law and principle of natural justice. Therefore, deserve to be quashed.*
3. *The CIT(A) has erred in law and on facts and in circumstances of the case by confirming additions of purchases made from the alleged parties/entities whose names were not included in list mentioned either in the order passed for disposal of objection or in assessment order passed u/s. 143(3) rws 147 of the Act.*
4. *The Ld. CIT(A) has erred in law and on facts and in circumstances of the case by confirming the addition and alleged notional commission made by the AO u/s.69C of the Act just on the basis of the survey carried out at some third party premises without putting on record any evidences to prove that the purchases are bogus.*
5. *Both the lower authorities have erred in law and on facts of the case without considering various documentary evidences submitted before them to corroborate the genuineness of alleged bogus purchases.*
6. *The Ld. CIT(A) has erred in law and on facts in confirming the action of AO in levying interest u/s.234A, 234B and 234C.*
7. *The AO has erred in law and on facts and in circumstances of the case by initiating the penalty proceedings u/s.271(1)(c) of the Act.*
8. *On the facts and merits of the case, the appellant craves for admission of additional evidences in the interest of natural justice and equity.*
9. *Appellant craves for stay of demand.*
The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.

ITA No.702/SRT/2024 (AY.2014-15):

4. The facts of the case in brief are that the assessee is engaged in the business of manufacturing of diamond processing machinery. The return of income was filed on 26.11.2014, declaring total income of Rs.1,63,84,710/-. The same was processed u/s.143(1) of the Act and assessment u/s.143(3) of the Act was finalized on 31.08.2016, determining total income at Rs.1,65,52,770/-. Subsequently, the

case was set aside u/s.263 of the Act by the Pr. CIT, Surat. The assessment order u/s.143(3) rws 263 of the Act was passed on 14.10.2019, determining total income at Rs.2,28,59,170/- by making addition of Rs.5,06,200/- u/s.40A(2)(b) of the Act and another addition of Rs.58,00,200/- u/s.40(a)(ia) of the Act.

5. In this case, an information was received from ACIT(OSD), Ward 1(2)(5), Surat and also from ITO, Ward - 2(3)(5), Surat that a survey action u/s.133A of the Act was undertaken by the Investigation Wing, Surat in the case of Shir Kamal J. Zaveri, proprietor of M/s. Rishit Corporation on 24.03.2015 and information was gathered that Mr. Zaveri was engaged in the business of providing accommodation entries for bogus bills etc. on a commission basis through various proprietary concerns and firms, namely, M/s. Radhika Enterprises, M/s Jay Traders, M/s Rishit Corporation, M/s Shubham Enterprises, etc. and various other dummy concerns, in the name of his father, mother, wife, friends and other non descript persons of little means. During the survey proceedings, statement of Shri Kamal J. Zaveri was recorded wherein he categorically stated that he was engaged in providing all type of bogus bills like sale bills, purchase bills and job work bills. He further stated that he receives account payee cheques in the name of his concerns from various persons. These cheques were deposited in any of his concerns and subsequently, the amount was transferred into another concern. From this concern, the amount was given back to the party in cash after deducting his commission @0.5%.

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6. As per the information received, it was seen that the following entities of Kamal J. Zaveri group had provided accommodation entries of bogus purchases amounting to Rs.95,44,367/-, during the AY 2014-15 to the assessee:

Sr. No.	Name of the person/parties from whom bogus purchase bill amount is received	Amount of bill (Rs.)
1	Radhika Enterprises	18,29,934/-
2	Jai Traders	27,83,696/-
3	Rishit Corporation	15,43,850/-
4	Shubham Enterprises	33,86,887/-
TOTAL		95,44,367/-

6.1 In view of the above facts, the AO had reason to believe that the income of Rs.95,44,367/- had escaped the assessment, therefore; case of the assessee was reopened by issuing notice u/s.148 of the Act. In response to the same, the assessee had filed the return of income for AY 2014-15 on 25.04.2019, declaring total income at Rs.1,63,84,710/-. Thereafter, notices u/s.143(2) / 142(1) of the Act, along with detailed questionnaires were issued to assessee. In compliance, the assessee had submitted the required information, which was examined by the AO. The AO, however, observed that the assessee had failed to furnish the copies of confirmation from the suppliers and also failed to produce credible documents to justify the genuineness of these purchases. It was further observed by the AO that evidences and material facts found during the course of survey in the case of Shri Kamal J. Zaveri Group prove that the purchase bills of Rs.95,44,367/- issued to the assessee by the various fictitious and bogus concerns are nothing but bogus and accommodation entries whereby as against the bogus bills equivalent amount of cash had changed the hands. The assessee had received bogus purchase bills only

to reduce the profit by the same amount. Therefore, the amount of Rs.95,44,367/- was treated as unexplained expenditure u/s.69C of the Act and the same was added back to the total income of the assessee firm. Also, commission of Rs.47,722/-, being @ 0.5% of the total bogus purchase bills, was also treated as unexplained expenditure and added to the total income of the assessee.

7. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The CIT(A) after considering the facts and material available on records, requested the assessee to furnish certain details/information, via video conferencing. In compliance of the same, the assessee furnished the details. However, on perusal of the same and looking to the contention raised by the assessee, CIT(A) observed that Ld. AR of the assessee had squarely failed to furnish the details in the manner in which the same were required during the video conferencing. As regards the various case laws cited by the Ld. AR of the assessee, it was noticed that the facts and circumstances of the cited cases were different from the facts and circumstances of the case of the assessee, hence the same were not applicable. The CIT(A) on the other hand, noticed that the AO had given clear cut findings, which proved beyond doubt that the appellant had siphoned its profit by debiting the bogus purchases of Rs.95,44,367/-. It was also observed that these bogus purchases of Rs.95,44,367/- had been detected by the Investigation Wing during the course of survey proceeding, who had also recorded the statements of the concerned person u/s.131 of the Act. In view of the same, the CIT(A) held that the AO was fully justified in disallowing these bogus purchases of Rs.95,44,367/-

u/s.69C of the Act. Therefore, the addition made by AO was sustained and all the grounds of appeal raised by the appellant were dismissed.

8. Aggrieved by the order of CIT(A), the appellant filed appeal before this Tribunal. The learned Authorized Representative (Ld. AR) of the appellant filed a paper book giving various details, viz., copy of ITR-4 computation of income, copy of audit report, copy of bills, ledger account, confirmation and bank statement regarding alleged bogus purchases, working of ratio of cost of goods sold (COGS) to sales and GP, copy of certificate for material used in manufacturing of machines, list of machines manufactured, machinery wise list of major items used in manufacturing of machineries, list of machinery parts purchase from alleged parties utilised for manufacturing of machineries, submissions made before CIT(A) and copies of case laws relied upon, etc.

8.1 The Ld. AR contended that the AO had finalized the assessment without following due procedure and that the AO had applied casual approach while finalizing the assessment proceedings. The AO, himself was not aware of any fact and did not have proper reasons to believe to reopen the proceedings and accordingly, reopening was void ab-initio and reassessment order is liable to be quashed. The Ld. AR further contended that the AO has erred by reopening the case of the assessee on the basis of change of opinion. Ld. AR also stated that both the lower authorities had passed their assessment orders without appreciating the facts and they have further erred in grossly ignoring the various submissions of the appellant.

8.2 The Ld. AR of the assessee submitted that CIT(A) has erred by confirming additions of purchases made from the alleged parties whose names were not included in the list mentioned either in the order passed by AO for disposal of objection or in assessment order passed u/s.143(3) rws 147 of the Act. The Ld. AR contended that the AO had produced list of 44 alleged bogus concerns headed by Shri Kamal J. Zaveri, however, such list did not include the name of two parties, viz., M/s Radhika enterprise and M/s Shubham enterprise. However, the AO had also made additions, w.r.t. purchases made from these two parties which is against the law. The Ld. AR further contended that the Ld. CIT(A) has erred in confirming the additions made by the AO just on the basis of information received from the Investigation wing regarding survey carried out at some third party premises without putting on record any evidences to prove that the purchases were bogus.

8.3 The Ld. AR also submitted that the assessee is regularly assessed to tax and the books of account of the assessee are audited u/s.44AB of the Act. It is also submitted that during the year under consideration, the assessee had purchased machinery spares from M/s Radhika Enterprises, M/s Jay Traders, M/s Rishit Corporation and M/s Shubham Enterprise, however, purchases from these entities were disallowed @100% by alleging the same to be bogus during the reassessment proceedings. All the details like copy of ledger account, copy of bank statement, party confirmation, etc. were submitted before them. It is contended that merely on the basis of some third party statement recorded u/s.131(1A) of the Act, it should not be alleged that the assessee had indulged in purchases which were not

substantiated or non genuine. It is also contended that in the impugned statement given by Shri Kamal J. Zaveri to Income tax authorities, name of the assessee had not been mentioned. It is submitted by the Ld. AR that once the assessee had provided all the documents, onus shifted to the department to show how the assessee had taken accommodation entries, however, such onus has not been discharged by the lower authorities.

8.4 The Ld. AR of the assessee also submitted that the AO had made addition of Rs.47,722/- u/s.69C of the Act being 0.5% of alleged purchases without providing any opportunity to rebut the evidence. No corroborative evidence has been brought on record by the AO to prove that the commission @ 0.5% had been paid by the assessee.

8.5 The Ld. AR of the assessee also submitted that the assessee is already declaring GP ratio at the rate of 32.74% which is much higher as compared to industry standards. Thus, the AO's view that appellant had shown bogus entries to inflate the purchases, does not hold true in view of such a huge GP ratio declared by the assessee, during the year. Further, GP ratio of the year under consideration is higher as compared to preceding two years. If the assessee had indulged in any bogus purchase transaction, then cost of goods sold ratio would have been significantly high and GP ratio would have been significantly low as compared to earlier year, which is not the case here. He also stated that all the aforesaid purchase transactions were done through proper banking channel and the said parties had received payments through proper banking channels and not by cash.

Moreover, no evidences had been brought on record proving that the alleged purchase parties had withdrawn cash immediately after deposits of cheques of the assessee. Besides, since the AO had not doubted the sales disclosed by the assessee, hence, the purchases should also be allowed as there cannot be any sales without the purchase of the material.

8.6 Without prejudice to the above, the Ld. AR submitted that if at all addition is to be made, then an *ad hoc* addition can be made only to the extent of difference between gross profit rate on genuine purchases and gross profit rate on alleged bogus purchases. The working of the same has been tabulated as under :

Particulars	%
GP ratio by including alleged bogus purchase	32.74%
GP ratio after excluding alleged bogus purchase	40.31%
Difference in GP %	7.57%

8.7 The AR of the assessee placed reliance on following case laws in support of his contentions/claims: (a) CIT Vs Odeon Builders Pvt. Ltd. (Civil appeal no. 9604-9605 of 2018, (b) CIT vs M K Bros (1987) 163 ITR 249 (Guj), (c) PCIT, Surat -1 Vs. Tejua Rohitkumar Kapadia (SLP (Civil) Diary, No.12670/2018, (d) M/s. Nangalia Fabrics Pvt. Ltd. Vs. CIT (Gujarat HC) Tax Appeal No. 689 of 2010 [2013], (e) CIT Vs. Bholanath Poy Fab (Pvt) Ltd. Tax appeal no. 63 of 2012, (f) CIT vs. Smith P. Sheth (2013) 356 ITR 451, (g) Shri Rupesh Chimanlal Savla Vs ITO (Mumbai ITAT) dated 30.12.2016, (h) Simoni Gems, Mumbai vs DCIT (ITAT, Mumbai), (i) Kumbh Gems vs. ACIT, Circle 23(2) dated 14.12.2020 and (j) Shri Sudeep Mahendrabhai Shah Vs. ITO, Ward - 1(3)(5), Surat (ITAT, Surat). The Ld. AR of the assessee therefore, prayed that additions made by the AO should be deleted.

9. On the other hand, Ld. Sr. DR for revenue relied on the orders passed by lower authorities and prayed that looking to the facts and circumstances of the case, the order of CIT(A) may be sustained. The Ld. Sr.-DR stressed that Shri Kamal J. Zaveri has admitted on oath to be providing bogus bills and assessee failed to produce suppliers for verification.

10. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied on by the Ld. AR. Ground Nos. 1 to 3 pertain to validity of reopening. We note that re-opening was based on specific information from the Investigation Wing of Surat pursuant to a survey u/s.133A, coupled with detailed modus operandi admitted by Shri Kamal J. Zaveri. It cannot be said to be mere change of opinion. Further, the Hon'ble Gujarat High Court in the case of Aaspas Multimedia Ltd. v. DCIT-Circle 1(1) [2017] 83 taxmann.com 82 (Gujarat) has held that the information received from PDIT(Investigation) regarding bogus transaction was sufficient tangible material to form an opinion for reopening of assessment proceedings and that income chargeable to tax has escaped assessment. The Court cannot examine the sufficiency reason. In the instant case, the AO had tangible material to form belief of escapement. Further, as held by the Hon'ble Supreme Court in the case of ACIT vs. Rajesh Jhaveri Stroker Brokers Pvt. Ltd. 291 ITR 580 (SC), the expression "reason to believe" would mean cause or justification and cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. Whether material would conclusively proved escapement of income

is not the concern at that stage. In view of the facts discussed above and the decisions cited supra, the ground Nos. 1 to 3 are dismissed and the reopening by the AO is upheld.

11. Ground Nos. 4 to 6 pertain to disallowance of purchases of Rs.95,44,367/-. The fact that Shri Zaveri is a known accommodation entry provider is not disputed. However, the assessee has produced purchase invoices, bank statements, ledger accounts, confirmations, and demonstrated consumption of material in its manufacturing process. It is pertinent to note that sales have not been doubted. In similar situations, Hon'ble Gujarat High Court in cases of CIT vs. President Industries 258 ITR 654 (Guj), Bholanath Polyfab Pvt. Ltd. (supra), Simit P. Sheth (supra), Vijay Proteins (supra), held that entire purchases cannot be disallowed; only profit element embedded needs to be taxed. We also find that facts of instant case are similar to those in the case of Sudeep Mahendrabhai Shah in ITA 2423/Ahd/2016 dated 29.05.2018, where the Tribunal observed that where GP rate was already high and sales undisputed, disallowance @ 5% of purchases was reasonable to meet ends of justice. In the present case, the appellant has shown GP @ 32.74% which is high by any standard. If the impugned purchases were bogus, GP would have been abnormally high. The comparative COGS and GP ratios of preceding years also do not indicate suppression of profit. Considering totality of facts, viz., undisputed sales, bank-routed payments, high GP ratio, absence of direct evidence of cash return and precedents on the subject issue, we hold that only profit element embedded in such purchases should be brought to tax.

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Disallowance of 5% of the impugned purchase of Rs.95,44,367/-, i.e., Rs.4,77,218/- would meet ends of justice. The AO is accordingly directed to add Rs.4,77,218/- and delete the remaining addition. The ground Nos. 4 to 6 are partly allowed.

11.1 The AO also added commission @ 0.5% amounting to Rs.47,722/- separately. Once the profit element on entire purchases is estimated, separate addition for commission would amount to double taxation of the same amount. The commission addition is subsumed in the estimated additional profit, which is over and above the profit already declared by the appellant. Hence, the separate addition of Rs.47,722/- is deleted. Ground Nos. 4 to 6 are partly allowed.

12. In the result, assessee's appeal ITA No.702/SRT/2024 is partly allowed.

ITA No.703/SRT/2024 (A.Y. 2015-16)

13. The facts and grounds of the above appeal are identical. Following our decision above in ITA No.702/SRT/2024 for A.Y. 2014-15, the AO is directed to restrict disallowance to 5% of the disputed purchases of the subject year also and delete remaining addition. The grounds are partly allowed.

14. In the result, assessee's appeal in ITA No.703/SRT/2024 is partly allowed.

15. In combine result, both appeals are partly allowed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963
on 25/09/2025 in the open court.

Sd/-
(SUCHITRA R. KAMBLE)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत/Surat
दिनांक/ Date: 25/09/2025
Dkp Outsourcing Sr.P.S*

Sd/-
(BIJAYANANDA PRUETH)
लेखासदस्य/ACCOUNTANT MEMBER

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

- **अपीलार्थी/** The Appellant
- **प्रत्यर्थी/** The Respondent
- **आयकर आयुक्त/** CIT
- **आयकर आयुक्त(अपील)/** The CIT(A)
- **विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/** DR, ITAT, SURAT
- **गार्ड फाईल/** Guard File

By order/आदेश से,

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सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत