

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

(HYBRID COURT)

**BEFORE SH. MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

I.T.A. No. 9/Asr/2024
Assessment Year: 2014-15

Neeraj Kumar Sethi,
2244, 1st Floor, Gali
Raghunandan Naya Bazar
Delhi 110006

Vs.

Income Tax Officer,
National Faceless Appeal
Centre (NFAC), Delhi

[PAN: AIYPS 3967L]

(Appellant)

(Respondent)

Appellant by	:	Sh. Ashwani Kalia, C.A.
Respondent by	:	Sh. Charan Dass, Sr. D.R.
Date of Hearing	:	06.08.2025
Date of Pronouncement	:	26.09.2025

ORDER

Per Udayan Dasgupta, J.M.:

This appeal is filed by the assessee against the order of the Id. CIT(A) NFAC, Delhi dated 26.12.2023 passed u/s 250 of the Income Tax Act, 1961 which has emanated from the order of the AO, NFAC, Delhi passed u/s 147 r.w.s. 144 and section 144B of the Act, 1961 dated 29.03.2022.

2. The grounds of appeal preferred by the assessee in form 36 has been subsequently revised and the revised grounds are as follows:

“1. That the assessment order framed by the AO is void ab-initio having been framed without giving reasonable opportunity to the appellant to respond to the statutory Show Cause Notice required to be issued to the assessee before framing the, assessment requiring the assessee to submit as to why the proposed variation to the returned income should not be made as a result the order passed by Id. CIT(A) also becomes null and void and infructuous.

2. That the Id. CIT(A) has erred in law and on facts in confirming the addition of Rs.1,98,47,645 made by the AO simply relying upon the statement of a third party recorded by DDIT (inv.) at the back of the assessee without allowing any opportunity to the assessee to rebut the same.

3. That the Id. CIT(A) has erred in law and on facts in confirming the addition of Rs.1,98,47,645 made by the AO by treating the certain items of purchase and sale as bogus completely ignoring all the evidences provided to prove the genuineness of purchase and sale.

4. That the Id. CIT(A) has erred in law and on facts in confirming the addition of Rs.1,98,47,645 made by the AO by totaling up the amount of alleged bogus purchase and sale transactions ignoring the Fund Flow Statement as well as various case laws that in a situation like this only the extra margin of profit earned, if any, could be added.

5. That the Id. CIT(A) has erred in law and on facts in confirming the addition of Rs.1,98,47,645 made by the AO by invoking the provisions of section 68 completely Ignoring the fact that the provisions of section 68 are not applicable to the facts of the case.

6. That the order is bad in law and on facts.

7. That the appellant craves leave to add or amend the ground of appeal before the appeal is heard and disposed off.”

3. Thereafter, the assessee has preferred an additional ground (being a legal ground) and prayed for admission of the same as per the view of the *Hon'ble Apex court in the case of NTPC vs CIT (SC)*:

"That the assessment order is void ab-initio having been framed without any opportunity /s 144B to the assessee to respond to the mandatory show cause notice required to be issued by the AO before framing the assessment seeking objections to the proposed variations to the Income. Moreover, the amount of addition worked out in the draft assessment order issued by the AO is absolutely irrelevant hence the notice is void ab-initio."

4. Brief facts emerging from records are that the assessee is engaged in the business of 'trading of rice' under trade name of *Shri Giriraj Foods* , and the regular return filed u/s 139, along with audited financials and audit report , has been under complete scrutiny in course of which all particulars of purchase and sales has been filed and examined to the satisfaction of the AO and assessment completed u/s 143(3) dated 24/10/2016, on a total income of *Rs.5.09 lakhs*, with a minor estimated disallowance of *Rs. 60,000/-* on account of unvouched expenses.

5. Subsequently, the case was reopened u/s 148 vide notice dated 31/03/2021 as per procedure (*after necessary approval from higher authorities*) , on the basis of information flowing from the *DDIT(Inv) Unit – 6(2) Delhi*, which was based on a statement recorded by one *Mr. Ashok Kumar Gupta* , in course of survey 133A of the Act conducted in the year 2018, where he has admitted to have issued purchase and

sales related accommodation entries to various persons (*Giriraj foods the assessee, being one such concern*).

6. The said Mr. Ashok Kumar Gupta (*holding PAN AAAPG2240G*) is stated to be the proprietor of two concerns namely *M/s Gayatri Maa and M/s Riddhi Siddhi*, and the statement issued by said Mr. Gupta, has formed the basis of recorded reasons, but a third entity (*M/s Parth International Prop Anuj Gupta PAN AGJPG3975B*) is also brought into the fold of the *reasons recorded* and it is not clear as to how Mr. Ashok Gupta's statement covers transaction of *M/s Parth international*, which is operating under a different PAN and a different taxing entity, and there is no recording of any statement of *Mr. Anuj Gupta*, and the only link in between them, appears to be both sharing a common email id caashokgupta@yahoo.co.in (*which again presumably points towards a common CA*).

7. The summary of the transactions alleged as bogus are as follows:

<i>Transactions with Ashok Gupta</i>	<i>Amount</i>	<i>All Bank Transactions</i>
<i>PURCHASE</i>		
<i>Alleged Bogus Purchase made by Assessee from Ashok Gupta M/s Gayatri Maa PAN AAAPG2240G</i>	69,50,917.00	<i>Supported by Purchase Bills and Ledger A/c</i>
<i>Transaction with Anuj Gupta</i>	28,18,618.00	<i>Supported by Purchase</i>
<i>Bogus Purchase Alleged</i>		<i>Bills and Ledger A/c</i>

<i>made by assessee from PAN AGJPG3975B Parth International</i>		
SALES <i>Alleged Bogus SALES made to Riddhi Siddhi Same PAN number</i>	<i>97,69,535.00</i>	<i>Supported by Sales invoice and Ledger A/c</i>
<i>Ashok Gupta</i>	<i>1,00,78,110.00</i>	

8. During reassessment proceedings, queries were raised and written submissions were filed , books produced, stock registers examined depicting inflow and outflow of goods traded , copies of purchase and sale bills filed vis a vis entries in books of accounts, supported by movement of funds through bank channel, but opportunity of cross examination of witness *Mr. Ashok Kumar Gupta*, was not possible because the said parties (*neither Ashok nor Anuj*) never appeared in spite of notices being successfully delivered by the revenue and there has been no further effort by the AO to produce the *departments witness* for cross examination , even though the entire reopening proceedings commencing from reasons recorded to assessment has been solely and wholly based on the statement of the person *Mr. Ashok Kumar Gupta*.

9. Subsequently assessment completed with an addition of *Rs.1.98 crores (being the sum total of alleged bogus purchase and sales)*, as cash credit u/s 68 of the Act 61, after issue of *SCN dated 27th March, 2022*, by *email digitally signed at 18.12 hours*

calling for response by 28th March by 23.59 hours, and passing assessment order on 29th March, 2022.

10. The first appellate authority has dismissed the appeal of the assessee by observing as follows:

“On perusal of all the facts of the case, Form No. 35, AOs order and submission of the appellant the following chronology of the case is important:

The case was reopened based on the information flagged from Insight portal of the tax department, wherein the DDIT (Inv.), Unit-6(2), Delhi informed that a survey action w/s 133A of the Income Tax Act, 1961 was carried out in the case of Shri Ashok Kumar Gupta, who in his statement admitted that through his numerous entities, he has given both purchase and sale related non-genuine/accommodation entries to various persons including to the Appellant of Rs. 1,98,47,645/-,

Notice u/s.133(6) of the Act, was issued by the AO on 26.02.2022 to Mr. Ashok Gupta, Proprietor of Gayatri Maa (AAAPG2240G) & Ridhi Sindhi Impex (AAAPG2240G) and to Anuj Kumar Gupta Proprietor of Parth International (AGJPG39758). Both the notices have been delivered to one e-mail caashokgupta@yahoo.co.in, but no compliance have been made by both the parties.

The payments made by cheque against unaccounted purchases or sale to hawala operators was received back in cash. The amount shown as paid to the bogus party comes back to the Appellant as no purchases and sale are made from them. The cash so received back is available for financing subsequent purchases and sale from undisclosed parties in cash. It is apparent from the facts that the above-mentioned modus operandi was used. PAR

The addition is made by the AO based on the admission of Shri Ashok Kumar Gupta that the aforesaid sales and purchases to the Appellant are bogus in nature it is pertinent to

note that the documents viz invoices, bank entries etc are created to give a picture that the transactions are genuine when the fact is that the transactions are bogus as admitted by Shri Ashok Kumar Gupta.

In view of the above, this ground is dismissed.

5.2 *Ground No. 2-That the learned A.O. has unlawfully applied provisions of section 68 whereas there was no sum found credited in books of assessee for which no explanation or unsatisfactory explanation was offered by Assessee.*

The above ground raised by the appellant is incorrect as the order has been passed correctly by following all the principles of natural justice. Hence, this ground is dismissed.

5.3 Ground No. 3-That the order is bad in law and on facts

The above ground raised by the appellant is incorrect as the order has been passed correctly by following all the principles of natural justice and is thus not bad in law or on facts. Hence, this ground is dismissed.

54 **Ground No. 4-That the assessee craves to add/modify or amend any ground of appeal subsequently.**

The above ground is general and is dismissed.

In view of all the facts and reasons provided hereinabove, the addition made by the AO is hereby confirmed and all the grounds raised by the appellant are hereby dismissed.

6. *In the result, the appeal is dismissed.”*

11. Before the tribunal the assessee has filed a short paper book containing copies of audited financials, complete stock registers depicting date wise inward and outward movement of traded goods which are in agreement with TAR , copies of purchase and

sales bills / invoices , of all three parties along with copies of ledger as appearing in books of assessee, copies of SCN dated 27/03/2022, and submitted that in the instant case the reassessment proceedings were initiated on the basis of information of alleged bogus purchase and sales , passed on by the *DDIT(Inv)*, arising from a recorded statement of one *Mr. Ashok Kumar Gupta* , and there is no indication neither in the recorded reasons or in the assessment order , which can point towards the individual application of mind of the AO to the materials on record which is just a third party statement and in support of his contention he relied upon the decision of the *jurisdictional High court* in the case of *CIT vs Paramjit kaur [2009] 311 ITR 38 (P & H)* , where on similar circumstances the Hon'ble court has observed in para – 7 of the order *that the AO has failed to incorporate the materials and his satisfaction for reopening the assessment:*

“7. It is undisputed that the Assessing Officer had initiated reassessment proceedings on the basis of information received from the survey circle that the assessee had got prepared a demand draft for a sum of Rs. 83,040 which was not accounted in the books of account of the assessee. The Assessing Officer had not examined and corroborated the information received from the survey circle before recording his own satisfaction of escaped income and initiating reassessment proceedings. The Assessing Officer had thus acted only on the basis of suspicion and it cannot be said that the same was based on the belief that the income chargeable to tax had escaped income. The Assessing Officer has to act on the basis of reasons to believe" and not on reasons to suspect". The Tribunal had, thus, rightly concluded that the Assessing Officer had failed to incorporate the material and his satisfaction for reopening the assessment and, therefore, the Issuance of notice under s. 148 of the Act for reassessment proceedings was not valid.”

12. He further submitted that all the invoices of purchases and sales now alleged as bogus were already recorded in regular books , and examined in course of regular assessment u/s 143(3) and accepted and there is nothing new which has been brought on record except a statement of Mr. Gupta , recorded in survey u/s 133A , of the Act 61 , and he relied on the decision of the coordinate bench in the case of *Supertech forgings (India) Pvt. Ltd vs DCIT (ITA 563 / ASR/ 2018)* , to submit that firstly the reassessment has been made *on borrowed satisfaction* of investigation wing, secondly proceedings initiated on the basis of *reasons to suspect* and thirdly without allowing any *opportunity of cross examination* of Mr Ashok Kumar Gupta.

13. On the merits of the case the Ld. AR submitted that complete set of books of accounts produced supported by documentary evidences, of purchase, sales, evidenced by bank transactions, complete day to day stock register evidencing inward and outward movement of goods supported by documentary evidences, and nothing has been doubted and there is no adverse findings in respect of any one of such documents produced and examined and various queries raised in notice u/s 142(1) has been fully explained with supporting documents and pointed out specifically referring to the ledger A/c of the disputed three parties that at the year under all balances were cleared up leaving no balance to be reflected under *the head sundry debtors or creditors* and there are no adverse findings against such entries in regular books and the books of accounts are accepted , without a noise , and entire addition is based on a statement of

a third party , recorded behind the back of the assessee, and utilized for this assessment, without allowing any opportunity of rebuttal , and he relied on the decision of the *Hon'ble Supreme Court in the case of " Odeon Builders Pvt Ltd [2019] 110 taxmann.com 64 (SC)* where the Hon'ble court has observed in a similar circumstances as follows:

"3. However, on going through the judgments of the CIT, Tribunal and the High Court, we find that on merits a disallowance of Rs. 19,39,60,866 was based solely on third party information, which was not subjected to any further scrutiny. Thus, the CIT(A) allowed the appeal of the assessee stating:

"Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross-examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, and VAT registration of the sellers and their IT return. In view of the above discussion in totality. the purchases made by the appellant from Mis Padmesh Realtors (P) Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for Rs. 19,39.60,866, is directed to be deleted."

14. He further submitted on merits, drawing reference to the trading profit and loss a/c (contained in PB page -24 to 25) that the total sales of RICE for the year under appeal is disclosed at Rs. 12.26 crores against a purchase of 11.72 crores, and the

allegation of *bogus purchase of Rs. 97.69 lakhs* and *bogus sales Rs. One Crore*, levelled against the assessee is a very meagre amount when compared to the whole, and also serves no purpose to the assessee considering the *net effect of alleged bogus sales with alleged bogus purchase (1.00 minus 97.69)*, because for all practical purpose bogus purchase will reduce the purchase and bogus sales will reduce the sales,(*in the trading results*) without much difference in the instant case and monetary transactions of *inflow and outflow* of funds will also result to the same effect.

15. Before concluding the Ld. AR argued on *the additional ground* drawing reference to the SCN dated 27th March, 2022, he submitted that in the instant case the assessment has been framed without any opportunity u/s 144B to respond to mandatory show cause seeking objections to proposed variations. He submitted that the ground goes to the root of the matter and are flowing from the SCN notice issued by the AO and facts are already on record and directly violates the “*principles of natural justice*”, which has been given a go by in this case.

16. He submitted that in the instant case the *SCN dated 27th March, 2022*, has been issued by *email digitally signed at 18.12 hours* calling for response by *28th March by 23.59 hours, (within 24 hours)* and eventually *assessment order was passed on 29th March, 2022*, which for all practical purpose means no opportunity of raising any objections in response to SCN has been allowed , where time for responding has been

limited to *less than twenty four working hours*, which is not even seven days (*as per standard SOP prescribed by the Board*) , and cannot be termed as reasonable opportunity and clearly violates *natural justice* .

17. On this issue he relied upon the following decisions for support:

“(1) *Umanath Pandey v. State of UP* (2009) 12 SCC 40-43

(ii) *CCE v. ITC Ltd* (1995) 2 SCC 38(SC)

(iii) *CIT v. Panna Devi Saraogi* (1970) 78 ITR 728 (Cal)

(iv) *Smt. Ritu Devi v. CIT* (2004) 141 Taxman 559 (Mad)

(v) *M. Mohd. Ishaq v. CIT* (1995) 27 ITR 510, 513 (Punj)

(vi) *Ponkunnam Traders v. Addl. ITO* (1972) 83 ITR 508 (Ker)

(vii) *Addl. ITO Ponkunnam Traders* (1976) 102 ITR 366 (Ker)

(viii) *State of Kerala v. Shaduli Grocery Dealer (K.T.)* AIR 1977 SC 1627

18. The Ld. AR rested his arguments praying for deletion of the additions both on facts and law.

19. The Ld. DR, relied on the order of *the Ld. CIT (A)*, and referring to the jurisdictional High court in the case of “*Rajat Bansal vs CIT [2011] 11taxmann.com 357 (P & H)*’, he submitted that the burden was on the assessee to examine the said party with whom he had made transactions to prove genuineness thereof.

20. He further relied on *PCIT vs Ganesh Developers (Bombay High Court) dated 5/03.2025* to submit that provisions of section 69C is attracted in this case because there has been unexplained expenditure by way of bogus purchase and the section bars the allowability of unexplained expenditure.

21. On the same issue he further relied on the decision of the *Hon'ble Bombay High court in the case of PCIT vs Drisha Impex Pvt Ltd dated 7th April, 2025 (ITA No 1240 with ITA No 2087 of 2018)*, and submitted that the entire purchase being bogus needs to be disallowed u/s 69C as unexplained expenditure and has prayed for sustaining the order of the Ld. first appellate authority.

22. We have heard the rival submissions and considered the materials on record. We are of the opinion that the decisions relied upon by the Ld. DR are distinguishable on facts.

23. In the case of *Drisha Impex Pvt ltd (supra)* there is a specific finding that suppliers of goods are not traceable and address are also not known, the *respondent assessee* has expressed inability to even produce its own books of accounts, summons to suppliers u/s 133(6) has returned unserved, ledger A/c of suppliers from whom goods purchased was not produced on the ground that the data is lost, no stock register maintained , total non-cooperation of the *assessee* and all vital information, documents and paper works were missing, but in the instant case before us the assessee has

produced evidences of purchase and sales in course of original proceedings where no defects were found on enquiry and verification and they were again produced in reassessment proceedings along with regular books, bank entries, purchase and sales invoices and day to day STOCK REGISTER , which records *inward and outward flow of traded goods* fully reconciled with TAR , and has cooperated fully with the department in all respects at all times and no discrepancy was found by AO in such books of accounts regularly maintained *vis a vis* audited financials and no adverse findings in respect of books produced and no adverse observation in respect of movement of stock has been pointed out . Further, in the instant case the identity of the sellers are proved beyond doubt and both the sellers are very much traceable and notice u/s 133(6) were duly served (*but the fact that they have ignored the summons and has not cared to respond is altogether a different matter*) , but for all practical purpose the assessee in the instant case has discharged his primary burden of proof which is fundamental , unshifting duty placed on the assessee to prove the genuineness of the claim and also its subsequent sales (*utilization*) and all are recorded in regular books .

24. In the instant case *the onus of proof* which is tactical shifting responsibility, has now shifted, on to the department to present evidence to the contrary, as the case progresses, and in this case the only evidence which the revenue has been able to

produced , is a statement recorded in the year 2018 , by *Mr Ashok Gupta u/s 133A, the seller* , in course of survey of his business premises .

25. Naturally, when all subsequent actions like recording of reasons to believe and reopening of proceedings and completion of reassessment , *has been based on this single statement of the seller* , without any other documentary evidences being brought on record, to disprove the voluminous documentary evidences placed on record by the assessee, natural justice demands that the *assessee be allowed an opportunity of cross examination of the said witness* , which has not been allowed in this case, and it was the duty of the AO to enforce the presence of the seller , considering the fact that he is *departments prime witness*.

26. On this issue we rely upon the *Hon'ble Bombay High Court in the case of CIT vs Ashish International, order dated 22nd February, 2011, (ORDINARY ORIGINAL CIVIL JURISDICTION INCOME TAX APPEAL NO.4299 OF 2009)*, where in an almost identical situation the Hon'ble court observed as follows:

“The question raised in this appeal is, whether the Tribunal was justified in deleting the addition on account of bogus purchases allegedly made by the assessee from M/s. Thakkar Agro Industrial Chem Supplies P. Ltd.

According to the revenue, the Director of M/s. Thakkar Agro Industrial Chem Supplies P. Ltd. in his statement had stated that there were no sales / purchases but the transactions were only accommodation bills not involving any transactions.

The Tribunal has recorded a finding of fact that the assessee had disputed the correctness of the above statement and admittedly the assessee was not given any opportunity to cross examine the concerned Director of M/s. Thakkar Agro Industrial Chem Supplies P. Ltd. who had made the above statement. The appellate authority had sought remand report and even at that stage the genuineness of the statement has not been established by allowing cross examination of the person whose statement was relied upon by the revenue. In these circumstances, the decision of the Tribunal being based on the fact, no substantial question of law can be said to arise from the order of the Tribunal.

The appeal is dismissed with no order as to costs.”

(MRS. MRIDULA BHATKAR, J.) (J.P. DEVADHAR, J.) Bombay HC

27. We are also in agreement with the decision of the Hon'ble court, that the assessee has not been allowed the opportunity to examine the witness, to establish the genuineness of the statement, considering the fact that the entire case revolves on the statement recorded by the DDIT (*Inv wing*), which cannot be accepted as sacrosanct. On this issue we are also supported by the decision of this *Bench in the case of Supertech forgings (India) Pvt. Ltd. (supra)*.

28. Regarding the issue of SCN u/s 144B of the Act, which has been served via email on 27th March, 22 at 18.12 hours, calling for response on 28th March 2022 (*within one day*), we are of the opinion that in this case the opportunity of submitting response was not real, reasonable and effective and was simply a *name sake opportunity* and violates the principles of natural justice.

29. At this stage it would be appropriate to refer to the *Hon'ble Apex court decision in the case of "State of Kerala V Shaduli Grocery Dealer"* (KT) AIR 1977 (SC) 1627, where the Hon'ble Court has observed as follows:

"The Hon'ble SC observed that the tax authorities entrusted with the power to make assessment of tax discharge quasi-judicial functions and they are bound to observe the principles of natural justice in reaching at their conclusions. The Court held that although the Officer is not fettered by technical rules of evidence and pleadings, and he is entitled to act on material which may not be accepted as evidence in a court of law but that cannot deviate him from the Principles of Natural Justice"

30. On the merits also, we are of the opinion that allegation of bogus purchase and bogus sales are simply based on a recorded statement, without disproving the materials placed by the assessee, by way of books of accounts, supported by purchase and sales invoices, audit report, bank statement, stock register, and all other particulars discussed above and there is no adverse findings in respect of the books and stock register examined.

31. Moreover, without prejudice to the above , even on *preponderance of probabilities* , we find that in the instant case the *alleged bogus purchase and bogus sales* , figures are almost same , and even if both are considered as bogus , the *net - effect* of monetary rotation in between the *seller and the buyer* will almost come to the

same and the assessee could not have derived any huge financial benefits out of the said transactions.

32. As such considering all aspect of the matter, we arrive at a logical conclusion on merits and also considering all legal aspect discussed above, that the addition of Rs. 1.98 crores made by the AO u/s 68 of the Act and sustained by the Ld. first appellate authority cannot be upheld and the same is hereby deleted.

33. In the result, the appeal filed by the assessee is allowed.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 26.09.2025.

Sd/-
(Manoj Kumar Aggarwal)
Accountant Member

Sd/-
(Udayan Dasgupta)
Judicial Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

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By Order