

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VP &
MS PADMAVATHY S, AM**

**I.T.A. No. 1299/Mum/2025
(Assessment Year: 2008-09)**

Income Tax Officer-19(3)(1), 405, 4 th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400012.	Vs.	Salem Steel Industries, 33, Sindhi Lane, Near Alankar Cinema, Maharashtra-400004. PAN: AAOFS8839D
Appellant)	:	Respondent)

Revenue / Appellant by : Shri Swapnil Choudhary, CIT-DR

Assessee / Respondent by : None

Date of Hearing : 11.09.2025

Date of Pronouncement : 22.09.2025

ORDER

Per Padmavathy S, AM:

This appeal by the Revenue is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 06.12.2024 for Assessment Years (AY) 2008-09. The grounds raised by the Revenue are as under:

“1.” Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the bogus purchases @ 25% as against 100% addition of Rs. 37,35,984/- made by the AO u/s 69C of the Income-Tax Act, 1961, on account of bogus purchases from M/s. Shree Sundha Steels Pvt. Ltd

and M/s. Metalex Tube Industries, both are found to be fictitious concerns, involved in providing on bogus bills for the alleged purchases purportedly made by the assessee ?"

2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the bogus purchases @ 25% as against 100% addition of Rs. 37,35,984/- made by the AO, on account of bogus purchases from M/s. Shree Sundha Steels Pvt. Ltd and M/s. Metalex Tube Industries, without appreciating the fact that action of AO was based on the information received from the DGIT (Inv.), Mumbai, subsequently through Sales Tax Deptt. Maharashtra, that Mr. Bhawarlal Jain & Syndicates, were providing accommodation entries in the form of issuing bogus Sales/Purchase Bills /Unsecured loans without supplying any goods and the assessee was found to be one of the beneficiaries who have obtained accommodation entries to inflate it's expenses and thereby suppress it's true profit ?"

3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition to the extent @25% as against 100% addition made by AO, by ignoring the fact that during the Re-assessment Proceedings, the assessee could neither produce the quantity tally of day to day purchases/Sales/Stocks and corresponding values, Delivery Challans, lorry receipts etc. nor could prove the genuineness of alleged transactions and creditworthiness of parties for verification, in spite of ample opportunities provided by the Assessing Officer?"

4. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the bogus purchases @ 25% as against addition of 100% made by the AO of bogus purchases Rs. 37,35,984/-, by not justified in estimating the income of bogus purchases on the basis of comparing of the bogus purchases with the purchases in the regular books of accounts, ignoring that the fact of procuring bogus invoices leads to the unverified inflation of purchase price by the assessee which cannot be compared with the regular GP of the books of accounts?"

5. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the bogus purchases @ 25% as against addition of 100% of total purchases of Rs. 37,35,984/-, by ignoring the element of reasons for procuring of bogus invoices, when it is observed that the GP on these bogus invoices are almost matching with the GP as per genuine invoices and therefore such estimation of income out of bogus purchases with the GP as per regular books of accounts is not justified ?"

6. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the bogus purchases @ 25% as against 100% addition of total purchases of Rs. 37,35,984/-, though there was no dispute that the bogus purchases were made and so act of infraction of law was committed in violation of section 74(1A) of the Maharashtra Value Added Tax Act, 2022 and therefore such expenses is not allowed as per express provisions u/s. 37 of the Act ?"

7." Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition @ 25% as against 100% addition of total purchases of Rs. 37,35,984/- made by AO on account of bogus purchases, without appreciating the decision of the Hon'ble Supreme Court in the case of M/s. N. K. Proteins Ltd. Vs. Dy. CIT (2016) 292 CTR (Guj) 354, Dated. 16.01.2017, wherein Hon'ble Supreme Court has held that, once a findings of act has been given that entire purchases shown on the basis of fictitious invoices and debited in the P & L account are established as bogus, then restricting the addition to a curtailed percentage goes against the principles of section 68 and 69C of the Income-Tax Act, 1961 and when the purchases mode are from bogus suppliers or concerns, the entire purchases are liable to disallowed ?"

8. " Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is perverse in not considering that the order of Hon'ble Supreme Court in the case of M/s. N. K. Proteins Ltd. Vs. Dy. CIT (2016) 292 CTR (Guj.) 354, SLP(CC) of 963/2017, Dated. 16.01.2017, which is on the similar issue of bogus purchases has been confirmed and was already the law of the land, when the Ld. CIT(A) has pronounced it's order on 06.12.2024?"

9."Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in erred restricting the bogus purchases @ 25% as against addition of 100% of total purchases of Rs. 37,35,984/- made by AO, without appreciating the fact that in the case of M/s. Swetamber Steels Ltd. (Supra), the Hon'ble ITAT, Ahmadabad had conformed the disallowance of the bogus the purchase, decision by stating that the purchases shown from respective parties were found non- genuine and the decision of the ITAT was upheld by Hon'ble Gujrat High Court and also by the Hon'ble Supreme Court ?"

10. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred while section deciding the issue on bogus purchases, without considering that after invocation of provisions of 145(3) of the Act, the Assessing Officer acquired the mandate even to add the whole amount of purchases found as bogus to the total income of the assessee and not considered the decision in **Shri Ganesh Rice Mills Vs. CIT 294 ITR 316**

(All), wherein the entire amount of bogus purchases, from hawala parties, was disallowed and same decision was also upheld ?"

*11. The appeal u/s. 253 of the Income-Tax Act, 1961 before the Hon'ble ITAT, is being filed, in view of **Tax Effect involved in the instant case is Rs. 83,400/-**, which is above the prescribed limit prescribed in the CBDT's Circular F.No.279/Misc. 142/2007-ITJ(Pt) amended vide No. 09/2024 dated.17.09.2024 and this case also falls under one of the exceptions specified in paragraph 3.1(c) of the CBDT's Circular No. Circular No .05/2024 Dated. 15.03.2024,"*

2. The assessee filed the return of income for AY 2008-09 on 30.09.2009 declaring a total income of Rs.9,88,520/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) has received information that assessee is one of the beneficiary for accommodation entries towards purchases provided by hawala parties. The AO called on the assessee to furnish the details pertaining to the purchases made from two parties to the tune of Rs. 37,35,984/- in this regard. The AO recorded a detailed findings based on the report of the Investigation Wing with regard to the purchases made from these two parties who are paper companies floated by Shri Bhanwarlal Jain. Accordingly, the AO treated the entire purchases as non-genuine and made addition. The AO also made an addition of Rs. 43,43,875/- towards non-genuine unsecured loans. Aggrieved the assessee filed further appeal before the CIT(A). Before the CIT(A) the assessee submitted that the purchases made by the assessee are genuine and the additions made by the AO should not be sustained. The CIT(A) restricted the addition made towards bogus purchases to the tune of 25%. Regarding addition made towards unsecured loans, the CIT(A) confirmed the addition. The revenue is in appeal before the Tribunal against the order of the CIT(A) for restricting the addition towards bogus purchase to 25%.

3. None appeared on behalf of the assessee and we heard the ld. DR. We notice that the CIT(A) has restricted the addition to 25% based on the finding that the receipt of materials by the assessee are not disputed by the AO and that the sales has also not been rejected. The relevant findings of the CIT(A) in this regard are extracted below:

“7. I have considered the facts of the case, assessment order and grounds of appeal. The AO treated the purchases of Rs. 37,35,984/- made from two parties, as bogus on the basis of information received from the Investigation Wing of the Department which stated that these concerns were paper concerns and managed and controlled by Bhanwarlal Group for providing bogus accommodation entries on commission basis and the assessee was one of the beneficiaries. In response to notice issued u/s. 250 of the Act, the appellant failed to furnish any written submissions. In absence of any documentary evidences to support the appellant’s claim, its claim remains unsubstantiated. In the instant case, there was specific information that these concerns were paper concerns and managed and controlled by Bhanwarlal Jain Group for providing bogus accommodation entries. In the instant case, the appellant failed to establish the genuineness of purchases of Rs. 37,35,984/-, however, the question which arises is as to whether the entire amount of the said bogus purchases should be disallowed or the appellant should be eligible for grant of deduction of a reasonable amount of purchase price in question in view of the fact that receipt of the material in question by the appellant is supported by various registers and books of account maintained by the appellant and the AO has not disputed the fact relating to receipt of material in question. Thus, the receipt of material in question is not in doubt but the material has been received from sources best known to the appellant and these goods in question have not been received from the said parties. The issue to be considered now is as to how much deduction should be allowed to the appellant in respect of cost of purchase of goods said to have been really received by him but the bills produced in support thereof were not genuine bills. The goods were not received from these parties from whom they were shown to have been purchased but such material was received from a different source which is exclusively within the knowledge of the appellant and none else.

It is well known that if purchases are made from open market without insisting for the genuine bills, the suppliers may be willing to sell those products at a much lower rate as compared to the rate which they may charge in case the dealer has to give a genuine sale invoice in respect of that sale and supply the goods. There may be various factors due to which there is bound to

be a substantial difference between the purchase price of unaccounted material and rate of purchase of accounted for goods. There may be a saving on account of sales-tax and other taxes and duties which may be leviable in respect of manufacture or sale of goods in question. The suppliers or the manufacturers make a substantial saving in the income-tax in respect of income from sale of unaccounted goods produced and sold by them. This may also be one of the factors due to which the seller may be willing to charge lower rates for unaccounted goods as compared to accounted for goods. Keeping all these factors in mind, the Hon'ble ITAT Ahmedabad in the case of Vijay Proteins Ltd. Vs. ACIT (supra) held that 25% of the purchase price accounted for in the books of accounts through such bogus purchases should be disallowed out of the amount of total bogus purchases. This judgment of the Hon'ble ITAT Ahmedabad was challenged before the Hon'ble Gujarat High Court in TAX APPEAL NO. 243 of 2002 by the assessee. The Hon'ble Gujarat High Court vide judgment dated 09-12-2014, case reported in [2015] 58 taxmann.com 44 (Gujarat)[09-12-2014], affirmed the view of the Hon'ble ITAT by observing as under:-

“12. We have heard learned counsel for both the sides. Having appreciated the material on record, the Tribunal recorded a finding that the transactions in respect of oil cakes shown as purchases by the assessee from 33 parties were not genuine transactions and that all those 33 parties were bogus parties. The Sale Invoices claimed to have been issued by them were also found to be fictitious and the bank account in the name of M/s. Pooja Traders was found to have been opened and operated mainly with a view to accommodate these fictitious transactions carried out by the assessee in respect of oil cakes shown as purchases from such bogus suppliers. The above findings were recorded on the basis of the material on record of the Tribunal.

13. The question which then arises for consideration is as to whether the entire amount of the said bogus purchases and freight payments made in relation thereto should have been disallowed or the assessee should have been held to be eligible for grant of deduction of a reasonable amount of purchase price of the oil cakes in question in view of the fact that receipts of the materials in question by the assessee were supported by various registers and books of account maintained by the assessee, which the Revenue has not disputed. The Revenue has also not disputed the genuineness of said documents.

14. On the basis of the entries recorded in the books of account of the assessee, the provisions of Section 40A(3) of the Act would not be applicable as such payments were shown to have been made by "crossed

cheques". If these entries are ignored, the books of account stand rejected u/s.145(2) and then the income will have to be estimated on the basis of best judgment.

15. It is by now well settled that in order to decide as to whether a particular payment for expenditure would be covered under the exceptions provided in Rule 6DD(j) or not will depend on the peculiar facts and circumstances of each case. In the present case, for reasons recorded herein above, the provisions of Section 40A(3) would not be applicable and even if they are held to be applicable, the expenditure would be covered by the exceptions provided in Rule 6DD(j) of the Rules.

16. It is a matter of fact that the goods were not received from the parties from whom it is shown to have been purchased but, such material was received from a different source which is exclusively within the knowledge of the assessee and none else. Therefore, it is evident that the assessee had inflated the expenditure in question by showing higher amount of purchase price through the fictitious invoices in the names of 33 bogus suppliers. Considering the overall factual scenario, the Tribunal was justified in disallowing 25% of the purchase price."

Keeping in view the facts and circumstances of the case and various judicial precedents on the issue involved, the AO is directed to restrict the disallowance to 25% of bogus purchases of Rs. 37,35,984/-. The addition made at Rs. 37,35,984/- is restricted to Rs. 9,33,996/-. The appellant gets partial relief. The grounds raised by the appellant regarding this issue are partly allowed."

4. From the perusal of the AO's order we notice that though the AO has extracted the findings of the Investigation Wing in details he has not recorded any adverse findings with regard to the documentary evidences submitted by the assessee in connection with the impugned transactions. We further noticed that the AO has not questioned the sales of the assessee and it is relevant to notice here that the accounts of the assessee are audited. In view of the peculiar facts of the assessee, we are of the considered view that there is no infirmity in the order of the CIT(A) in restricting the addition to 25% of the alleged bogus purchases.

5. In result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 22-09-2025.

Sd/-
(SAKTIJIT DEY)
Vice President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai