

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

**BEFORE JUSTICE (RETD.) C V BHADANG, PRESIDENT &  
MS PADMAVATHY S, AM**

**I.T.A. No. 733/Mum/2025  
(Assessment Year: 2012)**

<b>ITO, Ward-22(1)(1), Room No. 319, 3<sup>rd</sup> Floor, Piramal Chamber, Parel, Mumbai-400012.</b>	Vs.	<b>Gopal Ramchand Kanjani, 402, Pacific Enclave, Plot No. 429, ISTH Road (West), Mumbai-400052. PAN: AAEPK2554M</b>
<b>Appellant)</b>	<b>:</b>	<b>Respondent)</b>

**C.O. No. 52/Mum/2025  
(Assessment Year: 2012)**

<b>Gopal Ramchand Kanjani, 402, Pacific Enclave, Plot No. 429, ISTH Road (West), Mumbai-400052. PAN: AAEPK2554M</b>	Vs.	<b>ITO, Ward-22(1)(1), Room No. 319, 3<sup>rd</sup> Floor, Piramal Chamber, Parel, Mumbai-400012.</b>
<b>Appellant)</b>	<b>:</b>	<b>Respondent)</b>

**Revenue / Appellant by : Shri Swapnil Choudhary, Sr. DR**

**Assessee / Respondent by : Shri M. Subramaniam, AR**

**Date of Hearing : 04.09.2025**

**Date of Pronouncement : 30.09.2025**

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the revenue and the cross objection of the assessee are 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 16.12.2024 for Assessment Years (AY) 2012-13. The grounds raised by the revenue and the cross objections of the assessee are as under:

*“Ground 1. "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 of 10% i.e. Rs. 2,82,185 of the total bogus transaction of Rs.28,21,851/- with the accommodation entry provider M/s. Kingstar.*

*Ground 2. "Whether on the facts and circumstances of the case and in law, the ld CIT (A) has erred in deleting the addition of Rs.25,39,666/-made by the assessing officer without considering the decision of Hon'ble Apex Court in the case of CIT-vs-Durgaprasasd 82 ITR 540 and in the case of N K Proteins Ltd Vs DCIT SLP CC No 769 of 2017 even when the assessee failed to prove the genuineness of transaction or produce the purchase parties."*

*Ground 3. It is prayed that this appeal is filed even if the tax effect is below the monetary limit since the case falls under exception specified in para 3.1(h) of the CBDT Circular 05/2024 dated 15.03.2024."*

*Ground4. The appellant craves leave to amend or alter any ground or submit additional ground which may be necessary. ”*

**Grounds of C.O.**

*1. On the facts and in the circumstance of the case and in law, the proceedings initiated u/s 147 of the Act is invalid and bad in law.*

*2. On the facts and in the circumstance of the case and in law, the assessment order passed us 143(3) r.w.s. 147 of the Act is invalid and bad in law.*

*3. On the facts and in the circumstance of the and in law, the learned CIT(A) erred in sustaining addition made u/s 69C of the Act to extent of Rs.2,82,185/'*

2. The assessee is an individual and engaged in the business of trading in Diamonds. The assessee filed the return of income for AY 2012-13 on 29.09.2012 declaring a total income of Rs. 7,43,360/-. The return was processed under section 143(1) of the Act. Subsequently the AO received information from DDIT (Inv.) as per which a search was carried out at the business premises of Shri Gautam Jain where it is found that Shri Gautam Jain and Ors were involved in giving accommodation entries to various concerns who are involved in trading of Diamonds. Since the assessee has purchased from one M/s Kingstar which was found to be a bogus entity, the AO reopened the assessment by issue of notice under section 148 of the Act. In response the assessee filed the return of income declaring the same income as was declared while filing the original return of income. The assessee submitted before the AO that the purchases made from M/s Kingstar is genuine and required some time to furnish the supporting documents. The AO however did not accept the claim of the assessee and treated the amount of Rs. 28,21,851/- towards purchases made from M/s Kingstar as unexplained to make an addition under section 69C of the Act. On further appeal, the CIT(A) gave partial relief to the assessee by restricting the addition to 10% of the total amount being Rs. 2,82,185/- by holding that

*“4. Adjudication of the relevant grounds of appeal are as under:-*

*4(a). In the grounds, the assessee mainly contested the addition of Rs. 28,21,851/- made by the AO on account of bogus purchase.*

*4(b). I have considered the facts & circumstances of the case. I have also considered the assessee's submissions. As per facts of the case and as per information received from Investigation Wing, the assessee indulged in taking bogus entries from one of the party by name Kingstar of Rs. 28,21,851/-. This information was unearthed when searches were carried on*

*at similar diamond traders like Gautam Jain and others. During the course of reassessment proceedings, the assessee could not file the invoice bills before the AO. For this, the assessee submits that his regular business building known as Bhagwan Dham was demolished as per Mumbai High Court order and because of which he had shifted his business to new address and accordingly submits that because of these exigencies, he could not file purchase bills before the AO. Now, the assessee submitted the invoices taken from Kingstar along with bank statements. The assessee also filed concerned VAT returns reflecting the turnover shown by him.*

*4(c). I have gone through the details filed by the assessee. I am convinced that the assessee's purchase are substantiated by proper supportings. The assessee showed corresponding sales, therefore, there was no scope of non-genuine purchases. Unless there was genuine purchases, it is not possible to make sales. There is one more possibility that both the purchases and sales might have been done out of the books, in such circumstances, many courts held that only GP is to be considered for addition. Therefore, considering these circumstances, in the interests of revenue and to meet to ends of justice, I hereby treat 10 % of GP as additional income on alleged bogus purchases of Rs. 28,21,851/- which comes to Rs. 2,82,185/-. Accordingly, the assessee's grounds are hereby partly allowed."*

3. The ld. DR submitted that in the findings of the search proceedings it is clearly established that M/s Kingstar is a bogus entity and therefore the purchases made by the assessee from the said party cannot be held as genuine. The ld. DR further submitted that the AO has made the addition for the reason that the assessee could not substantiate the purchases by supporting bills or transportation, etc. The ld. DR also submitted that the CIT(A) has given relief to the assessee without calling for any remand report from the AO when the assessee is claimed to have submitted additional evidences in support of the purchases. The ld. DR argued that the VAT registration or VAT returns cannot be a conclusive evidence to prove the genuineness of the purchases without corroborative evidence. The ld. DR further argued that the GP ratio can be applied only when the purchases unverifiable and not when the purchases is found to be bogus. Accordingly, the ld. DR supported the order of the AO.

4. The ld. AR on the other hand submitted that the assessee has discharged the onus of proving the genuineness of the purchases and that the CIT(A) after considering the issue on merits has given relief to the assessee. The ld. AR further submitted that the AO did not reject the books of account and has not disturbed the sales declared by the assessee and therefore the CIT(A) has correctly considered to restrict the disallowance to the GP ratio to the gross profit on the alleged bogus purchases.

5. With regard to the legal contention raised in the cross objections, the ld. AR submitted that in assessee's case the reopening is beyond four years and since there is no failure on the part of the assessee to disclose fully and truly all material facts the reopening is not valid. The ld. AR in this connection drew our attention to the reasons recorded (page 21 to 23 of PB) to submit that the AO in the reasons recorded has not indicated any failure on the part of the assessee. Accordingly, the ld. AR submitted that the assessment is beyond jurisdiction and cannot be sustained.

6. We heard the parties and perused the material on record. In assessee's case the AO reopened the assessment based on the information received from the Investigation Wing that the assessee is a beneficiary of accommodation entries towards purchases from M/s Kingstar. In this regards we notice that the AO has treated the purchases made by the assessee based on the investigation report and that the AO has not recorded any independent finding to this effect. We further notice that before the CIT(A) the assessee has submitted bank statements, purchase bills, VAT returns, etc. in support of the purchases from M/s Kingstar. We also notice that the ground on which the CIT(A) has given relief is that the AO has not rejected the books of accounts and that the AO has not questioned the sales.

Therefore there is merit in the contention that there cannot be an addition of the entire purchases which is alleged to be bogus, unless it is established that it is to inflate the expenses and that the same is not part of the sales. Accordingly in our considered view, since the CIT(A) has considered the details on merits as elaborated herein above, we see no infirmity in CIT(A)'s decision in sustaining the addition towards bogus purchase to the extent of 10%.

7. In the cross objection, the assessee has raised legal contention with regard to the validity of the proceedings initiated under section 147. The Id AR during the course of hearing submitted that since the reopening in assessee's case is beyond four years the 1<sup>st</sup> proviso to section 147 is applicable. The Id. AR further submitted that as per said proviso unless there is failure on the part of the assessee to disclose fully and truly all material facts the reopening cannot be done. In this regard it is relevant to look at the proviso to section 147 which reads as under –

*Provided that where an assessment under sub-section (3) of [section 143](#) or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under [section 139](#) or in response to a notice issued under sub-section (1) of [section 142](#) or [section 148](#) or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:*

8. In assessee's case it is an admitted position that the return of the assessee was processed under section 143(1) and assessment has not been carried out under section 143(3). Further it is also an admitted fact that the impugned purchases are accounted in the books of accounts and are part of the return of income filed by the assessee. Therefore the issue to be considered is whether the assessee can claim to have made a true and full disclosure of material facts necessary for his assessment

where the return has been processed under section 143(1). The provisions of section 143(1) as applicable to the year under consideration provide that return would be processed under the said section to make adjustments towards any arithmetical error in the return and an incorrect claim, if such incorrect claim is apparent from any information in the return. Section 147 confers jurisdiction to reassess the income of the assessee if the AO has a reason to believe that the income has escaped assessment i.e. at the stage of issue of notice, the only question is whether there are relevant materials on which a reasonable person could have formed a requisite belief. However in case where the assessment is completed under section 143(3), the AO in order to assume jurisdiction beyond four years for reassessment, need to fulfil one more condition that, reason to believe of escapement has occurred by reason of omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Accordingly in our considered view mere disclosure of the impugned transactions in the return of income cannot be considered as disclosure of true and full disclosure of material facts necessary for assessment since processing of return under section 143(1) considers only the arithmetical errors and incorrect claims which are apparent. Be that as may be, in assessee's case the reason to believe is stemming from the findings of the investigation wing where the parties from whom the assessee has made purchases are entry providers. In other words the reopening is based on the belief that the purchases are non-genuine due to which the income has escaped assessment. Therefore the assessee's claim of applicability of the proviso cannot be accepted unless it is established that the impugned transactions have been examined from the angle of genuineness and accepted that the assessee has discharged the onus in that respect. During the course of hearing before us nothing has been brought on record on that count by the assessee. Further the case law relied on by the ld AR of the Hon'ble Bombay High Court in

the case of PCIT vs Shodiman Investments (P) Ltd [(2018 ITR 176 DTR (Bom) 290] is factually distinguishable as in that case, the reasons recorded did not mention the nature of transaction giving rise to the reason to believe, where as in assessee's case, the AO has reopened the assessment based on the findings of the investigation wing about accommodation entry providers from whom the assessee has made purchases. In view of these discussions in our considered view, the contention that the reopening is invalid as per the 1<sup>st</sup> proviso to section 147 in assessee's case cannot be accepted since mere disclosure in the books of accounts and processing under section 143(1) as it existed in the relevant AY cannot be considered as disclosure of fully or truly all material facts necessary for assessment. Accordingly we dismiss the C.O. of the assessee.

9. In result, the appeal of the revenue and the cross objections of the assessee are dismissed.

*Order pronounced in the open court on 30-09-2025.*

**Sd/-**  
**(JUSTICE (RETD.) C.V. BHADANG)**  
**President**

*\*SK, Sr. PS*

**Copy of the Order forwarded to :**

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

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**