

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

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**I.T.A. No. 1896/Mum/2025
Assessment Year: 2022-23**

ITO – 5(2)(1) Room No. 567, 5 th Floor, Aaykar Bhavan, MK Road, Mumbai – 400020.	Vs	Motiwala and Sons Gold and Diamonds Pvt Ltd., No.3/4/5, Fortune Tower, 337, Sir JJ Road
(Appellant)		(Respondent)

Assessee by	Shri Bharat Kumar, Adv
Revenue by	Shir Annavarani Kosuri, Sr. AR

Date of Hearing	21.07.2025
Date of Pronouncement	11.08.2025

ORDER

Per: SHRI. SANDEEP GOSAIN, J.M.:

The present appeal has been filed by the revenue challenging the impugned order dt. 21.01.2025 passed under section 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment year 2022-23.

2. We have heard the counsels for both the parties perused the material placed on record, judgments cited before us and also the orders passed by the revenue authorities. The assessee is engaged in the jewellery business and in order to verify the genuineness of the expenses related to the purchases made by the assessee from suppliers, necessary notices under

the Act were issued by the AO during the assessment proceedings. However, no proof to substantiate the genuineness and creditworthiness of the supplier M/s. Bankim Rasiklal Shah was filed. Likewise, the assessee also failed to prove the genuineness of creditors appearing in its books. Therefore, AO proposed variations on the basis of inference drawn by holding, as under:

4.2.4(1) The assessee have not proved the genuineness and creditworthiness of the suppliers from whom the purchases were made, which were called for vide notice issued u/s.142(1). They were required to submit details of substantial purchases made from such suppliers who are non-filers or have not filed non-business ITR and don't have the creditworthiness or supply the materials running in substantial amount. They were also required to produce the copies of any agreement entered with such suppliers along with ledger folios and furnish confirmation letters from such suppliers, proving their genuineness and creditworthiness. In connection to this, this Unit had issued notice u/s.133(6) to some random suppliers of the assessee requiring them to furnish details of the nature of business done by them with the assessee, copy of the ledger A/c in their books of accounts and copies of their ITR for A.Y 2022-23 to verify their creditworthiness. But there was no response from the below mentioned supplier to the notice issued.

<i>Sr. No.</i>	<i>Name of the supplier</i>	<i>Amount as per Purchase register</i>
<i>1</i>	<i>Bankim Rasiklal Shah</i>	<i>1,97,53,367/-</i>

Since, there is no confirmation from the above Supplier to the notice issued u/s.133(6) with sufficient proof, of the above huge transaction appearing in the Trading A/c of the assessee, it is presumed that they are not genuine and hence unsubstantiated. And hence a show cause was Issued to the assessee on 15/03/2024 proposing to bring to tax, the amount appearing in the name of above Supplier, whose genuineness is not substantiated. The assessee vide letter dated 16/03/2024 did not object to the addition, but merely stated that there is an error in filing the GSTR by the supplier.

4.2.4(2) *The onus is on the assessee to prove the genuineness of purchases made by it, merely producing a purchaser list cannot be considered as proof. The assessee did not produce any substantive evidence to prove the creditworthiness of the supplier and genuineness of the transaction. Owing to the failure of the assessee in this regard, it became necessary to gather further evidence about the transactions of the the assessee. Accordingly, notice u/s 133(6) of the IT Act was issued to the suppliers, and the above supplier did not comply with the notice issued. Since, there is no direct confirmation from the supplier of the amount appearing in assessee's trading A/c, it is presumed that the supplier is not genuine and the claim of the assessee with regard to the purchase made stands unsubstantiated*

4.2.4(3) *In view of the above, and in the absence of any confirmation from Shri Bankim Rasiklal Shah, the genuineness of above transactions amounting to Rs. 1,97,53,367/- could not be proved by the assessee or were found to be bogus, the expenses/transactions remain unexplained in his hands and hence, the same is brought to tax as unexplained expenditure in the hands of the assessee u/s.69C r.w.s 115BBE of the Act.*

Addition: Rs.1,97,53,367/-

4.2.4(4) *The assessee have also not proved the genuineness of the claim regarding sundry creditors, called for vide notice issued u/s.142(1). They were required to submit details of Creditors and liabilities recorded in the balance sheet, ledger copies of all items in the liabilities and furnish confirmation letters from such creditors, proving their genuineness and creditworthiness. In connection to this, this Unit had issued notice u/s.133(6) to the most of the Creditors of the assessee requiring them to furnish details of the nature of business done by them with them, copy of the ledger A/c in their books of accounts for the AY 2022-23. But there was no response from the below mentioned Creditor to the notice issued:*

<i>Sr. No.</i>	<i>Name of the supplier</i>	<i>Amount appearing in balance sheet</i>
<i>1</i>	<i>Shri virendrakumar S. Maskara</i>	<i>3,81,327</i>

Since, there is no confirmation from the above Creditor to the notice issued u/s.133(6) with sufficient proof, of the amount appearing in assessee's financials, it is presumed that they are not genuine and hence unsubstantiated. And hence a show cause was issued to the assessee on 15/03/2024 proposing to bring to tax the Creditors

whose genuineness is not substantiated. The assessee vide letter dated 16/03/2024 submitted a copy of the ledger claiming it as proof.

4.2.4(5) The reply filed by the assessee was considered, but not acceptable. The onus is on the assessee to prove the genuineness of credits appearing in its books of accounts, merely producing a ledger cannot be considered as proof. The assessee did not produce any substantive evidence to prove the creditworthiness of the Creditor and genuineness of the transaction. Owing to the failure of the assessee in this regard, it became necessary to gather further evidence about the transactions of the assessee. Accordingly, notice u/s 133(6) of the IT Act was issued to the Creditors, and the above Creditor did not comply with the notice issued.

4.2.4(6) In view of the above, and in the absence of any confirmation from Shri Virendrakumar S Maskara, to the notice issued u/s. 133(6), it is clear that assessee has no valid proof to offer towards the genuineness of the credits appearing in its books of accounts. And since the genuineness of above Creditor amounting to Rs.3,81,327/-, found credited in the books of the assessee during the financial year 2021-22 could not be proved by the assessee or were found to be bogus, thus remain unexplained and hence, the same is brought to tax as unexplained cash credits in the hands of the assessee u/s.68 r.w.s 115BBE of the Act.

3. Aggrieved, assessee filed appeal and also additional evidence. Since the AO could not file remand report therefore appeal of the assessee was partly allowed. The operative portion is contained at para No. 8.1 to 8.6 which is reproduced herein below:

8.1 These ground of appeal are against the addition made by the AO of Rs. 1,97,53,367/- on account of purchase from Kruti Jewels proprietary of Bankim Rasiklal Shah & Rs. 3,81,327/- on closing of balance of creditor named Rashika Exports proprietary of Shri Virendrakumar S Maskara. The appellant had claimed that the AO made the additions stating that the third parties failed to submit response against the notice issued u/s. 133(6) of the IT Act during the assessment proceeding.

8.2 During the course of the appellate proceeding, the appellant has submitted clarification towards the reasons as to why the third

parties failed to submit response and the same is reproduced as under:

Clarification regarding addition of Rs. 1,97,53,367/- on account of purchase from Kruti Jewels proprietary of Bankim Rasiklal Shah

"8. We would like to submit the affidavit of Sh. Bankim Rasiklal Shah dated 28.03. 2024 in this regard. He has clarified as to why the reply to the notice issued 133(6) of the Act could not be sent to the Id.AO, NAFC and was sent to the JAO on 11.03.2024. Notice was received by him on 08.03.2024(Friday) giving him time up to 11.03.2024. His CA Jogin Raval tried to upload the confirmation on 11.03.2024 but the window for the 133(6) was not open. So, he sent the confirmation to the JAO. The Affidavit of Sh.Bankim Rasiklal Shah and the certified copy of the ledger for the period under consideration.

9. Both these documents undisputedly prove that our transactions with Bankim Rasiklal Shah are genuine.

10. We would also like to submit an Affidavit of Sh. Jogin Raval, CA of Sh.Bankim Rasiklal Shah, dated 28/03/2024. In his affidavit he has specifically mentioned as to how he was compelled to file the reply with the JAO, that there was technical glitch on the income tax portal.

11. Affidavits of Bankim Rasiklal Shah and his CA Jogin Raval prove beyond doubt that the transaction in question was genuine. These documents also throw light on as to why the Id.AO did not get the reply from Bankim R.Shah.

12. But,as stated earlier, we have filed the ledger of the Bankim R Shan along with his return of income and GST return.

13. In these circumstances, addition made by the Id.AO to the tune of Rs.1,97,53,367 is totally illegal."

Clarification regarding addition of Rs. 3,81,327/- on closing balance creditor named Rashika Exports proprietary of Shri Virendrakumar S Maskara

14. With regard to the addition made by the Id.AO of Rs.3,81,327/- we would like to submit that we had submitted we had submitted confirmation ledger of Rashika Export Proprietor Virendrakumar S Maskara. Vide his affidavit, dated 28.03.2024 he has stated that he could not file reply of the notice issued u/s. 133(6) of the Act as the said communication went to spam. He has also filed confirmation letter about the transactions carried out with us.

15. Therefore there was sufficient cause to not filing reply before National faceless Assessment centre as reason mentioned above. Documents produced before your Honour are very vital to decide the issues raised by me and go the root of the case. Above referred documents could not be produced during assessment proceedings due to circumstances that were not in our control. If the additional evidences are not taken or record, it will cause great hardship me.

8.3 As the additional evidences were submitted, the Appellant requested to accept the same u/s. 46A of the IT Act. Accordingly, Remand Report was called from the AO to submit the clarification over the acceptability of the additional evidence as well as comments on the merits of the case after considering the additional evidence submitted on 05.12.2024 followed by reminder dated 18.12.2024 & 08.01.2025.

Relevant portion of the same is re-produced as under:

Name of the supplier / creditor	Amount	Ld.AO Remarks
Bankim Rasiklal Shah	Rs. 1,97,53,367	No response received against the notice u//s. 133(6) from the party. Further the assessee vide letter dated 16/03/2024 did not object to the addition, but merely stated that there is an error in filing the GSTR by the supplier
Shri Virendrakumar S Maskara	Rs. 3,81,237/-	No response received against the notice u//s. 133(6) from the party. Further the assessee vide letter dated 16/03/2024 only submitted a copy of the ledger claiming it as proof. However merely producing a ledger cannot be considered as proof for genuineness of credits appearing in its books of accounts.

This office is in receipt of the Appellate Proceeding in the case of Mr. MOTIWALA AND SONS GOLD AND DIAMONDS PRIVATE LIMITED

(PAN: AAICM6152A) (AY 2022-23) against the order u/s. 143(3) read with section 144B of the Income tax Act dated 23.03.2024 with the following grounds of appeal:

- 1. On the facts and circumstances of the case in law the Id AO erred in not considering documents submitted before him.*
- 2. On the facts and circumstances of the case in law the Id AO erred in making addition of Rs. 1,97,53,367/- on account of purchase from Kruti Jewels proprietary of Bankim Rasiklal Shah.*
- 3. On the facts and circumstances of the case in law the Id AO erred in making addition of Rs. 3,81,327/- on closing of balance of creditor named Rashika Exports proprietary of Shri Virendrakumar S Maskara*
- 4 On the facts and circumstances of the case in law the Id AO erred in invoking section 115BBE of the income tax Act.*
- 5. On the facts and circumstances of the case in law the Id. AO erred in initiating penalty proceedings u/s 271AAC(1) of the Income Tax Act.*
- 6. appeal. The Assessee has right reserve to Amend modify delete and make any additional grounds of*

As noticed from the assessment order, the addition was made by the AO in the absence of the confirmation from the third parties for the following case:

However, during the course of the Appellate proceeding, the appellant has submitted the detailed clarification over the failure part from the third parties along with the affidavit and the confirmation.

In this regard you are directed herewith to submit detailed Remand report after considering the appellant's submissions and allowing opportunities to submit further clarification (if required) on or before 12.12.2024 without fail.

8.4 Even after requesting multiple times and even communicating that the case has been flagged as Priority Communication, the JAO/AO has not provided any comment towards the Remand Report called. Considering the facts of the case and the constraint of the case been flagged in Priority Communication (subsequent to the order passed by Hon'ble High Court), I no longer find any point in keeping the case pending any further. Accordingly, the additional evidence submitted by the Appellant 1 are accepted and the case is decided as under:

8.5 As noticed from the assessment order, the prime reason towards the addition made by the AO was "non-submission of the replies against the notices issued u/s. 133(6) of the IT Act to the third parties". However the appellant has submitted detailed clarification along with the affidavits from the concerned parties stating the reason for non-submission during the assessment proceeding along with the confirmation and ledger copies. The same has been taken on record and following observation are made:

8.5.1 In regard to the claim of the purchases made from Bankim Rasiklal Shah (AAFPS4260H) (Supplier) of Rs. 1,97,53,367/-, the third party has confirmed of purchases made by the Appellant of the tune of Rs. 1,94,37,800/- only. For the balance amount, the appellant/third party had not submitted any satisfactory clarification.

8.5.2 In regard to the addition made of Rs. 3,81,327/-, Shri Virendrakumar S Maskara has confirmed the outstanding balance and submitted the ledger copy reflecting the payment of the same in subsequent time.

8.6 From the above observation, it is clear that the appellant claim was reflecting in the third party's books of accounts and mere non-submission of the confirmation doesn't warrant the addition during the assessment proceeding. After considering the facts of the case as well as confirmation submitted from the third parties, the addition made by the AO is not accepted and the AO is directed to allow the relief to the quantum confirmed by the third parties (which is discussed in the Para 8.5). Accordingly, these grounds of appeal are hereby partly allowed.

4. We noticed from the above that, although, Ld. CIT(A) sought remand report from the AO but the AO did not submitted the same within 'reasonable time'. Therefore, Ld. CIT(A) accepted the additional evidence and deleted the additions on the basis of affidavit of CA and Bankim Rasiklal Shah.

5. After having gone through the entire facts discussed by us above, the fact still remains that the additional evidence filed by the assessee needs factual verification more particularly

when in the face of overwhelming material on record to negate the claim of genuineness of the transaction and to doubt the veracity of the transactions, the affidavit alone need not be accepted as reliable as has been held by Hon'ble Delhi High Court in the case of ***Nova Promotors and finlease Pvt Ltd., [2012] 342 ITR 169 (Delhi).***

6. Admittedly no documentary evidences were filed by the assessee before the AO during the assessment proceedings to justify the genuineness and creditworthiness of the suppliers / creditors appearing in its books and balance sheet.

7. Be that as it may, without going into the merits of the issues raised by the parties and considering the fact that it was the assessee's onus to prove the genuineness and creditworthiness of the suppliers / creditors appearing in its books and balance sheet before AO, which he fails to discharge and Ld. CIT(A) accepted the additional evidence in the absence of factual verification, only on account of the fact that the AO could not file remand report within a *reasonable time*. Therefore, in our view the impugned order passed by Ld. CIT(A) needs to be set aside and therefore considering the overall circumstances of the present case, we deem it proper to restore the matter back to the file of AO for deciding the matter afresh on merits after factually verifying the additional evidence produced by the assessee by providing opportunity of hearing to the parties.

8. Before parting, we make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the AO independently in accordance with law.

9. In the result, the appeal filed by the revenue is allowed for statistical purposes.

Order pronounced in the open court on 11/08/2025

Sd/-

**(GIRISH AGRAWAL)
(ACCOUNTANT MEMBER)**

Sd/-

**(SANDEEP GOSAIN)
(JUDICIAL MEMBER)**

Mumbai:

Dated: 11/08/2025

KRK, Sr. PS.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai