

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**ITA No.1094/Del/2024
(Assessment Year: 2012-13)**

M/s KDP Infrastructure Private Limited C-78, Sector 63, Noida Uttar Pradesh – 201301	Vs.	DCIT, CC Room No. 229, 2 nd Floor, CGO Complex-I, Kamala Nehru Nagar, Hapur Chungi, Ghaziabad Uttar Pradesh- 201002
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAACS1691J		
Appellant	..	Respondent

Appellant by :	Sh. Ajay Wadhwa, Adv. Sh. Shivam Garg, Adv.
Respondent by :	Sh. Om Prakash, Sr. DR

Date of Hearing	09.12.2025
Date of Pronouncement	12.12.2025

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 23.01.2024 of the Ld. Commissioner of Income Tax(A)-3 Noida (hereinafter

referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. CIT(A), Kanpur-4/11054/2019-20 arising out of the appeal before it against the order dated 01.12.2023 u/s 154 r.w.s. 254 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by the ACIT/DCIT/ACIT, Central Circle, Ghaziabad for Assessment Year 2012-13.

2. Heard and perused the records the Ld. Counsel has primarily question the assumption of jurisdiction alleging that the addition made u/s 69 of the Act is not sustainable for the reason that without rejecting the books of the assessee the bogus purchases for which payment were made from the books addition u/s 69 could not have been made. Reliance was placed by Ld. Counsel on the decision of Hon'ble Allahabad High Court in Sarika Jain and other decisions supported the case are as under:

- i. PCIT (Central)-2 Vs. Param Diary Ltd. [2022] 139 taxmann.com 546 (Delhi)
- ii. CIT-V Vs. M/s Radhika Creation ITA No. 692/2009
- iii. Mandeep Singh Anand V. ACIT [2024] 161 taxmann.co 1225 (Delhi – Tribu.)

3. It was also contended even about provision of section 69C of the Act would not be maintainable reliance was placed on the decision.

3.1 The Id. DR countered the same by submitting that merely quoting on wrong section is not fatal and otherwise the transactions of purchases were found to be bogus.

4. As we appreciate material on record the submissions it comes up that a search and seizure operation was conducted on 29.09.2014 in the premises of assessee comprising KBP/MGI Group of cases and the cases were centralized. Assessment was initiated u/s 153A/143(3) of the Act and addition of Rs.22,88,50,000/- was made on 30.12.2016. Subsequently, information being received in respect of bogus purchases/expenses from the investigation wing, New Delhi on 26.03.2019. The case of the assessee was reopened u/s 147 r.w.s 148 of the Act and assessment was completed by impugned order at a total income of Rs.30.32,32,560/- after making addition on account of bogus purchase of Rs.4,55,50,000/- u/s 69 of the Act.

5. At the out set with regard to the contention of Id. DR that wrong section has been quoted we find that during the proceedings before this Tribunal on 18.09.2025 the letter was written by the AO in regard to some report sought by Id. DR wherein the AO has not mentioned of invoking a wrong section but

has again asserted that addition was on account of bogus purchases of Rs.4,55,50,000/- u/s 69 of the Act.

6. Then on merits of this issue, we find on perusal of the proforma for obtaining approval u/s 151 of the Act shows that approval was granted for reopening by reliance the reasons for believe as per the annexure attached and annexure attached containing the reasons to believe gives details of the information received and mentions that assessee has given an amount of Rs.4,45,50,000/- through RTGS from Yes Bank during the Financial Year 2011-12, M/s Bhawani Enterprises proprietorship Virender Singh which establishes that the assessee has been made bogus purchases/expenses.

7. At the time of recording of the reasons itself the AO was aware the issue involves alleged bogus purchases for which payment were made by banking transaction and accordingly when the assessment was completed the AO in the para 5 of the assessment order observed that order sheet entry dated 10.09.2019 the assessee was required to submit confirmation of transaction made with M/s Bhawani Enterprises along with supporting evidences and no documentary evidences are submitted that the actual transaction was made with M/s Bhiwani Enterprises. The AO observed that

since no business activity had ever been done by M/s Bhiwani Enterprises it is clear that M/s Bhiwani Enterprises is an entry provider and thereupon concluded in a para 6 that the expenditure made is against bogus purchases/expenses and '*that assessee company failed to explain genuineness of purchases*' that were debited to profit and loss account. Therefore, the purchases amounting to Rs.4,55,50,000/- are treated as bogus and disallowed as expenditure us/ 69 of the Income Tax Act, 1961 and added to the income of the assessee.

8. Aforesaid conclusion of the Id. AO in para 5 & 6 leave no doubt in the mind of this Bench that purchases for which payments were made from the books and expenses were debited to profit and loss account were being disallowed as same were found to be not genuine purchases. However, assessee's books of accounts with regard to its business of real estate, project development and multi storied construction of houses giving rise to revenue from operations has not been doubted. The impugned order of Id. CIT(A) shows that primarily the investigation wing report of M/s Bhiwani Enterprises, bank account transactions and failure of the proprietor to respond became basis to consider the purchases to be bogus. Nothing

independently was examined and found from books of account of the assessee to allege that purchases were bogus.

9. Now when the Id. AO specifically invokes unexplained deemed income provision forming part of Section 68 to Section 69C of the Act then for every provision so invoked casts a different sort of onus on the assessee and for the purpose of Section 69 of the Act what is material is that explanation sought rests on the fact that in the preceding financial year the assessee had made 'investments' which were not recorded in the books of accounts, however, in the case of alleged bogus purchases there is no case of investments being found held by the assessee but not recorded in books of account. If inventory is considered to be an 'investment' then for that there should be some examination of stock to allege and establish discrepancy in stock or inventory, which is not the case here.

10. Then, further onus u/s 69 of the Act on the assessee would be to explain nature and source of investment which in the case in hand admittedly are in the form of purchases made from the books itself. There is no allegation of the source of purchases being outside the books or that books maintained by the assessee lacked veracity to show that the purchases could not have been

made out of the known sources reflected in the books. Thus section 69 of the Act if invoked needed specific rebuttal and on basis of assertion that merely quoting wrong section does not prejudice the assessee does not help the department. Then ld. AO at some stage should come forward to claim as to how other deeming income provision was attracted. Same is also not the case here.

11. We are inclined to allow ground no. 10 and 11. The appeal is allowed and impugned addition is directed to be deleted.

Order pronounced in the open court on 12.12.2025

Sd/-
(Amitabh Shukla)
ACCOUNTANT MEMBER

Sd/-
(Anubhav Sharma)
JUDICIAL MEMBER

Dated 12.12.2025
Rohit, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI