

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.1452/Del/2025
Assessment Year: 2012-13

Sh. Rajesh Kapoor, 4067, Naya Bazar, Delhi-06	Vs.	ACIT, Circle-47(1), New Delhi
PAN: AAMPK0063B		
(Appellant)		(Respondent)

Assessee by	Sh. Ramesh Goel, CA Sh. Ratan Lal Goel, Adv.
Department by	Ms. Amisha S. Gupta, CIT(DR)

Date of hearing	01.12.2025
Date of pronouncement	01.12.2025

ORDER

PER SATBEER SINGH GODARA, JM

This assessee's appeal for assessment year 2012-13, arises against the Commissioner of Income Tax (Appeals)-24 [in short, the "CIT(A)"], New Delhi's order dated 18.11.2024 passed in case no. CIT(A), Delhi-16/10011/2020-21, involving proceedings under section 147 r.w.s. 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

Heard both the parties. Case file perused.

2. This assessee's appeal raises the following substantive grounds:

1. *Order of the Ld. CIT(A) is bad in law and against the facts of the case and in upholding the order of L.d. AO passed u/s 144/147 on 10-12-2019.*
2. *The Ld. CIT(A) is totally unjustified in upholding the order of Ld. AO who has assessed the income at Rs. 2,03,63,006/- in place of returned income 43,41,010/-.*
3. *The assessee has made purchases to the tune of Rs. 1,58,73,026/- from M/s Gayatri Maa Enterprises which were treated as bogus purchases by the Ld. AO without giving cross examination opportunity to the assessee.*
4. *That the action of Ld. AO in disallowing the entire purchase thereby making an addition to the tune of Rs. 1,58,73,026/- is totally unjustified as these purchases were duly accepted by the Ld. AO while passing the order u/s 143(3) of the Income Tax Act and is liable to be deleted without giving an opportunity for cross-examination.*
5. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

3. Learned counsel submits at the outset that the assessee does not wish to press for his first, second and fifth substantive grounds. Rejected accordingly.

4. Next comes the sole substantive issue of correctness of both the learned lower authorities' action disallowing the assessee's alleged bogus purchases of Rs.1,58,73,026/- sourced from M/s. Gayatri Maa Enterprises in assessment order dated 10.12.2019 as upheld in the CIT(A)'s lower appellate discussion, reading as under:

"5.2 I have considered the material on record, including the written submission of the appellant filed in the course of appellate proceedings. I have also perused the assessment order passed u/s 144 of the Income Tax Act, the remand report of the

Assessing Officer and the rejoinder of the appellant thereon. In the present appeal, the appellant has raised eight grounds of appeal, which have been reproduced in para 2.1 above. All the grounds are interlinked and dealt together in the following paragraphs.

5.23 During the course of appellate proceedings, the appellant submitted that he had made purchases from M/s Gayatri Maa Enterprises, and these purchases cannot be termed as bogus. The assessee received the goods in actuality, and all payments were duly made by account payee cheques. Further, if the Assessing Officer accepted the sales made by the assessee, then the addition on a/c of purchases is totally unjustified. Otherwise, when the sales are accepted, further additions can only be made on account of the gross profit/net profit ratio. The appellant filed a copy of M/s Gayatri Maa Enterprises' account along with purchase bills and the bank statements of M/s Deepak Enterprises with HDFC Bank, A/c No.02172790001543. The appellant stated that this statement clearly shows that the payment has been made by cheques/RTGS to M/s Gayatri Maa Enterprises. The gross profit and Net profit of the firm for the last 2 years are as under:

AY	Turnover (Rs.)	GP(Rs.)	NP (Rs.)	GP Ratio	NP Ratio
2011-12	1137308240	26333113	3942298	2.32%	0.35%
2012-13	1425872792	38438901	4323224	2.70%	0.30%

5.4 The appellant also relied upon various judgements of the Hon'ble courts in support of his contention. The appellant also filed an application for additional evidence, which was accepted, and a remand report was called from the Assessing Officer. In response, the Assessing Officer submitted the remand report.

5.5 The salient features/facts noticed in this case are as follows:

1. The handwriting on all the bills of M/s Gayayti Maa Enterprises appears the same.
2. All the bills have been prepared in the time span of 5 days only i.e. on 10th, 12th, 13th, 20th and 21st March.
3. None of the bills have the details of the Transportation (i.e. truck No. etc. is blank)
4. Prima Facie, it appears that these have been prepared on the same day.
5. M/s Gayatri Maa Enterprises is the proprietary concerns of Shri Ashok Kumar Gupta; in a statement recorded on oath u/s 131 (1A) of the Income Tax Act on 13.12.2018, Sh. Ashok Kumar Gupta admitted that M/s Gayatri Maa Enterprises is engaged in the business of providing bogus entries.
6. Sh. Ashok Kumar Gupta clearly stated that no actual physical sales and purchases took place with its concern.
7. Assessee was provided the opportunity to prove that transaction with M/s Gayatri Maa Enterprises as genuine but the assessee did not respond to the notices issued and did not gave his submission.
8. The Assessing Officer made great efforts to trace the assessee's whereabouts by all possible means, but the assessee chose to avoid the enquiries.

5.6 It is noted from the assessment order that the appellant had received a bogus purchase of Rs. 1,58,73,026/- in the shape of accommodation entry from the entity during the year under consideration. The concerned person has already submitted that he has provided an accommodation entry to the assessee. In view of this, the said purchase transaction made by the appellant was, accordingly, disallowed by the AO. Nothing more remains when the concerned party clearly denies that there was any genuine transaction, and then the cross-examination request is of no help to the appellant. Reliance is placed on rationale in the following case laws:-

"The Hon'ble Supreme Court in the case of Roshan Di Hatti Vs. CIT [1992] 2 SCC 378 has held that if the assessee fails to discharge its onus by producing cogent evidence and explanation, the AO would be justified in making the additions back into the income of the assessee."

5.7 *The submissions made by the assessee were duly considered by the Assessing Officer as well as by the undersigned. As far as the purchase is concerned, the onus was on the assessee to prove the genuineness of the transaction. It is not the case that the assessee was not given the opportunity to produce the party for verification. Such an opportunity had been given to the assessee, however the assessee failed to produce the party for verification. The result was that the assessee failed to discharge the onus cast upon him. The assessee claimed that the purchase was genuine as the payments were made through banking channels. However, considering the very nature of hawala transactions, mere production of purchase invoices, etc. and claiming payments have been made through banking channels are not conclusive proof to establish the genuineness of the purchases. Hence, the assessee has failed to furnish any cogent evidence to substantiate the delivery of goods. Rather the assessee attempted to create a fiction that physical delivery of goods was affected. Moreover, the assessee has not produced the said party for verification of such transaction. It is a settled law that the onus is on the assessee to establish the genuineness of the purchase of goods by it. The assessee failed to produce the said party for verification. It is, thus, obvious that the assessee did not purchase the goods from the party.*

5.8 *The Assessing Officer observed that the assessee had obtained purchase bills from the aforesaid party, who is "hawala operator". However, the assessee was not able to furnish any evidence to establish the delivery of so-called goods purchased from this party. In view of the above, the factual inference was made that such purchase claimed to have been made by the assessee from the above party is bogus. This is a glaring statement that gives sufficient reasons to disbelieve the book results declared by the assessee. During the appellate proceedings, appellant submitted ledger account and bills to substantiate his claim for genuine purchase. However, assessee could not produce the party along with documentary evidence and books of account as asked for verification.*

5.9 *From the above discussion, it is noted that nothing has been brought on record to show that the above party actually provided goods to the appellant. In the view of the above facts, it is noted that creditworthiness and genuineness of the above entities is not established.*

5.10 *Merely showing the transactions through the banking channel by account payee cheques is not enough to prove the genuineness and creditworthiness of the purchases. So the argument of assessee that the conclusion that the alleged supplier did not supply any physical goods is pre-mature, is not correct. If all the evidence points to the fact that no actual goods were supplied by the above party, then the assessee's argument that it purchased goods in good faith is not tenable. In view of the facts and findings in the paragraph mentioned above, it is clear that the assessee did not purchase any goods from the above-mentioned party. In view of the above facts, the reliance of the AR on the case laws referred with due respect does not help its case, as the facts of this case are entirely different from the referred cases, and estimating GP in such a clear case of hawala transaction is not warranted.*

5.11 *The following judicial decisions support the action of the Assessing Officer:*

It has been held by Hon'ble Delhi High Court in the case of Navodaya Castle Pvt. Ltd. in Income Tax Act No. 320/2012 that certificate of incorporation, PAN etc. are relevant for the purpose of identification but have their limitation when there is evidence and material to show that the subscriber was a paper company and not a genuine investor. The SLP against the ruling of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court (2015) 230 Taxman 268.

Further, it has been held by the Hon'ble Delhi High Court in the case of Youth Construction Pvt. Ltd. 357 ITR 197 (Delhi) that mere proof of identity without genuineness and creditworthiness is not enough for share application.

Further, it has been held by the Hon'ble Delhi High Court in the case of N.R. Portfolio Pvt. Ltd. 87 DTR 0162 (Del) that the onus to prove the three factum is on the assessee as the facts are within his knowledge. Mere furnishing names, addresses, and PAN particulars or relying on entries on the ROC website are not enough. If upon verification or during the proceedings, Assessing Officer cannot contact the share applicant or information becomes unverifiable or there are further doubts in pursuit of such details, onus shifts back to the assessee to explain the same. Sh. Rajesh Kapoor, Appeal No: CIT (A), Delhi- 16/10011/2020-21

Further, reliance is put on the decisions of the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron & Street Pvt. Ltd. 2019, 103 Taxmann.com 48(SC), the Hon'ble Delhi High Court in the case of PCIT vs. NDR Promoters Pvt. Ltd. in ITA No. 49/2018 dated 17.01.2019 and the Hon'ble ITAT Delhi 'G' Bench in the case of ITO (Exemption) vs. M/s Synergy Finlease Pvt. Ltd. in ITA No. 4779/Del/2013 dated 08.03.2019. The case laws relied by the appellant are not found applicable to the facts of the present case.

5.12 After going through the ratio of decisions as referred above, it is noted that appellant has failed to prove the creditworthiness and genuineness of the transaction in respect of the purchase. Nothing has been brought on record to justify this transaction.

5.13 Reliance is put on the decision of the Hon'ble Apex Court in the case of A. Govindarajulu Mudaliar v. CIT (1958) 34 ITR 807, Commissioner of Income Tax V. Independent Media (P) Ltd. 210 TAXMANN 14(Delhi)(2012.)

5.14 The Income Tax Department has conducted detailed enquiries, made analysis of the documents and made a list of beneficiaries. The reports prepared details of complete modus operandi, list of conduits entities, list of TIN number, etc., in the name of conduits. The appellant is one of such beneficiaries through such conduit. It has been held by hon'ble Bombay High Court in the case of GTC Industries Ltd. v. ACIT ITAT Mumbai 1995 (1998) 65 ITD 380 (Bom) where statement of witness were only secondary and subordinates material used to buttress main matter connecting with amount of additions, it had to be held that there was no denial of principles of natural justice if witness were not allowed to be cross examined by the assessee. The relevant part of the order of the Hon'ble Bombay High Court is reproduced as under:

“.....

105. In our opinion right to cross-examine the witness who made adverse report, is not an invariable attribute of the requirement of the dictum, 'audi alteram partem'. The principles of natural justice do not require formal cross-examination. Formal cross-examination is a part of procedural justice. It is governed by the rules of evidence and is the creation of Court.

It is part of legal and statutory justice and not a part of natural justice, therefore, it cannot be laid down as a general proposition of law that the revenue cannot rely on any evidence which has not been subjected to cross-examination.

However, if a witness has given directly incriminating statement and the addition in the assessment is based solely or mainly on the basis of such statement, in that eventuality it is incumbent on the Assessing Officer to allow cross-examination.

*Adverse evidence and material, relied upon in the order, to reach the finality, should be disclosed to the assessee. But this rule is not applicable where the material or evidence used is of Collateral Nature.
.....”*

5.15 Further, reliance is placed upon the decision of Hon'ble Supreme Court in the case of *State Bank of India vs. S.K. Sharma AIR 1996 C 364*-where the Hon'ble Apex Court observed:

Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end.

5.16 Further, reliance is placed upon the decision of Hon'ble Madras High Court in the case of *T. Devasahaya Nadar v. CIT [1964] 51 Income Tax Return 20 (Mad.)*, it was held:

*“.....
it cannot be said as a general proposition of law that any evidence upon which the department might rely should have been subjected to cross-examination. The procedure for assessment is indicated in section 23 (3) of the Act. The Income-tax Officer is not a court. Having regard to the nature of the proceedings, he occupies the position of a quasi-judicial tribunal. He is not bound by the rules of evidence in the Indian Evidence Act. The limit of the enquiry and the kind of materials or evidence which he can act upon cannot be specified and the statute has not attempted it. Wide though his powers be, he must act in consonance with rules of natural justice. One such rule is that he shall not use any material against the assessee without giving him an opportunity to meet it *Dhakeswari Cotton Mills Ltd., v. Commissioner of Income-tax*. The source of information for the material against the assessee need not be divulged. In fairness to the assessee he should be told what is against him, so that he may, if he can, displace it. It is no denial of natural justice if the Income-tax Officer refuses to produce an informant for being cross-examined by the assessee. If any witness is examined in the presence of the assessee, he must of course have a right of cross-examination. Several decisions have considered the scope of the Income-tax Officers powers and the rights of the assessee as regards the procedure of assessment and we do not think we need cover the field over again *Seth Gurmukh Singh v. Commissioner of Income-tax; Ganeshdas Kaluram v. Commissioner of Income-tax; Seth Nathuram Munnalal v. Commissioner of Income-tax; Nagulakonda Venkata Subba Rao v. Commissioner of Income-tax*. The range of natural justice is wide and whether or not there has been violation of natural justice would depend on the facts and circumstances of the case.
....”*

5.17 Further reliance is placed upon the decision of the Hon'ble Supreme Court in the case of *CIT vs Durga Prasad More* 82 ITR 540, where it has been held that the apparent must be considered as real until it is shown that there are reasons to believe that apparent is not real. In this case, enough material has been brought on record to show that the apparent is not real.

5.18 Further reliance is placed upon the decision of Hon'ble Supreme Court in the case of *Sumati Dayal vs. CIT* (1995) 214 ITR 802 (SC). After going through the ratio of decisions as referred above, facts of the case, element of human probability and surrounding circumstances, it is noted that the appellant has failed to prove creditworthiness and genuineness of the transaction in respect of bogus purchases. The onus was upon the appellant to explain the source and nature of purchase transactions in a satisfactory way. However, the appellant has not furnished any explanation and did not furnish any supporting evidence.

5.19 The magnitude of the benefit from indulging in the practice of, obtaining bogus bills depends on facts of each case. In case, actual purchases in there but from grey market, the such benefit could be quantified for example as held in the case of *Vijay Proteins Ltd., Hon'ble ITAT* (55 TTJ 76 (Ahd.) restricted the disallowance to be 25% of the bogus purchases. If suspicious purchases are there, some Courts have considered disallowance to be restricted to 12.5% as the profit element embedded in it. Where a cut finding is there for dealing in bogus billing for a party who accepted before the Department, then there cannot be any scope for restricting the profit element, as the issue here is inflating the expenditure by introducing unexplained bogus purchases against corresponding regular sales from regular purchases, thereby decreasing the profit.

5.20 In the case of *Shoreline Hotel (P) Ltd. vs. CIT, Central-1*, the Jurisdictional High Court of Bombay vide its order dated 11.09.2018 dealt with a similar issue. In this case, information was also received from the Sales Tax Department in relation to certain parties who were engaged in providing bogus purchase bills, and the assessee was also one of the beneficiaries of hawala bilis. The AO held 15% of such purchases to be assessed as the assessee's income. The Commissioner invoked section 263 on the ground that since assessee had not disputed that parties from whom purchases were made were those whose names appeared on website of Sales Tax Department accommodation entry providers, entire purchases was to be treated as non-genuine - It was noted that assessee was not able to produce any material purchased by it nor it could ensure presence of supplier from whom it purchased goods. There was no reason for the Assessing Officer to accommodate the assessee in the manner done. The Tribunal upheld this view of the Commissioner. The Tribunal also referred to all the relevant judicial decisions in the field. It also referred to the records produced by the assessee in the form of certain details with regard to the purchases, the bills and copies of the invoices. The assessee is not correct in submitting what Sales Tax Department only said. It is VAT non-compliance, as the Assessing Officer has mentioned that Sales Tax Department has clearly informed that information was also made available on official website of Government of Maharashtra regarding suspicious parties, who are only providing accommodation entries, without doing any actual business. The Sales Tax Department conducted independent enquiries in each of the hawala parties and conclusively proved that these parties are engaged in the business of providing accommodation entries only. The copies of the affidavit of the parties and the visit report of the officer were provided to the appellant. The TIN No. of party was also cancelled. Further, the appellant was also given opportunity to produce the parties and the notice u/s 133(6) did not yield any result and the appellant also failed to produce the parties for verification and since the appellant failed to discharge the onus cart upon him, the issue of cross-examination also does not arise and thus,

full opportunity was provided as against the contention made in Ground No. 6. These was no actual delivery of goods and only bills were issued and further, the payments received by these parties were returned to the appellant in cash after deducting small commission.

5.21 The Hon'ble Bombay High Court in the case of Shoreline Hotels (P) Ltd. vs. CIT 98 Taxmann.com 234 for Asstt. Year 2011-12 had held that very reliable and genuine information was received from the VAT and sales tax authorities with regard to the operations with these dealers stated as 'hawala traders' and in this case relied upon, the appellant could not produce proof of any material purchased by it, nor it could ensure the presence of supplier from who it allegedly purchased goods.

5.22 Under the facts, it is held that the AO was justified in making additions of Rs. 1,58,73,026/-on account of non-genuine purchases from M/s Gayatri Maa Enterprises. The same is hereby confirmed. Accordingly, Ground Nos. 1 to 7 are dismissed.”

5. Both the learned representatives reiterate their respective stands against and in support of the impugned bogus purchases disallowance. We make it clear that there is no dispute between the parties in principle that the assessee/appellant herein is engaged in trading of food grains, pulses etc. And that various recent judicial precedents (2025) 173 taxmann.com 592 (Guj.) Ravjibhai Becharbhai Dhamelia vs. ACIT; (2024) 160 taxmann.com 110 (Bom) PCIT Vs. Hitesh Mody (HUF), (2024) 160 taxmann.com 93 (Del) PCIT Vs. Forum Sales (P) Ltd.; (2025) 172 taxmann.com 283 (Bom) PCIT Vs. Kanak Impex (India) Ltd; (2025) 178 taxmann.com 424 (Del. – Trib.) DCIT Vs. Kohinoor Foods Ltd.; and (2025) 177 taxmann.com 836 (Delhi-trib.) DCIT Vs. Tirupati Matsup (P.) Ltd. have recently decided the instant issue of bogus purchases with

divergent views as well disallowing the entire claim, in part as well as accepting it in full, as the case may be.

6. That being the case, we are of the considered view that instead of disallowing the assessee's entire bogus purchases; and, more particularly, in light of the fact that the corresponding sales have not be doubted by the learned lower authorities, a *lumpsum* disallowance @ 3% thereof would be just and proper with a rider that the same shall not be treated as a precedent. We further clarify that we are very much conscious of the fact that the assessee's NP ratio in the preceding assessment year AY: 2011-12 was 0.35% with GP @ 2.32 %; respectively. We accordingly direct the learned Assessing Officer to finalized his consequential computation as per law.

No other ground or argument has been pressed.

7. This assessee's appeal is partly allowed.

Order pronounced in the open court on 1st December, 2025

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 16th December, 2025.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)

5. DR

Asst. Registrar, ITAT, New Delhi