आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL**
**'A' BENCH: CHENNAI**

**श्री एबी टी. वर्की, न्यायिक सदस्य एवं**
श्री **एस. आर. रघुनाथा,** लेखा सदस्य **के समक्ष**

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**
**SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./**ITA No.1554/Chny/2025**
निर्धारण वर्ष**/Assessment Year: 2018-19**

| | | |
|---|---|---|
| The ACIT,<br>Corporate Circle-1(1),<br>Chennai. | **v.** | M/s. EI Instrumentation – Pvt. Ltd.,<br>No.93,<br>Govindappa Naicken Street,<br>GPO-Parrys,<br>Chennai-600 001.<br>[**PAN: AACCE 7209 A**] |
| **(**अपीलार्थी**/Appellant)** | | **(**प्रत्यर्थी**/Respondent)** |
| | | |
| प्रत्यर्थी की ओर से /Department by | : | Ms.Kavitha, Addl.CIT |
| पीलार्थी की ओर से/ Assessee by | : | Ms.Janani, Advocate |
| सुनवाईकीतारीख/Date of Hearing | : | 05.12.2025 |
| घोषणाकीतारीख /Date of Pronouncement | : | 07.01.2026 |

## आदेश **/ O R D E R**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter referred to as "the Ld.CIT(A)"), Delhi, dated 21.01.2025 for the Assessment Year (hereinafter referred to as "AY") 2018-19.

**2.** At the outset, it is noted that the **Revenue's appeal** is delayed by '29' days, for which, the DCIT has filed an affidavit explaining the reason for delay and has filed application for condoning the delay, to which, the Ld.Counsel of the assessee didn't raise any serious objection, consequently, the delay of '29' days in filing of the appeal stands condoned; and the appeal filed by the Revenue is taken up for hearing on merits.

**3.** The main grievance of the Revenue is against the action of the Ld.CIT(A) restricting the addition made on alleged bogus purchases to the extent of 8.87% of the gross profit (GP).

**4.** The brief facts are that the assessee is noted to be a Private Limited Company and claims to be engaged in the business of trading electrical parts, instrumentation and equipments. The assessee is noted to have filed its Return of Income (RoI) u/s.139 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for relevant AY 2018-19 declaring an income of ₹46,01,420/-, which RoI was reopened by the AO by issuing notice u/s.148 of the Act, on the basis of information from the Income Tax Investigation Directorate of Kolkata that one M/s. Barbrik Consultancy Pvt. Ltd., (in short "M/s. Barbrik") had indulged in issuing fraudulent invoices of huge amounts to other entities, in order to facilitate the beneficiaries of such accommodation bills to suppress their profits.

And the AO noted in this regard that the assessee had shown to have claimed expenditure for purchases from M/s. Barbrik in the relevant year to the tune of ₹1,20,99,998/-. So according to the AO, assessee was a beneficiary of such fraudulent transaction with M/s.Barbrik. In order to verify the veracity of the transaction with M/s.Barbrik, the AO issued show cause notice calling for various details/explanation from assessee. Pursuant to the notice, the assessee replied vide letter dated 02.02.2023 enclosing payment proof via proper banking channels, ledger with the respective invoices for transactions done with M/s.Barbrik. Further, filed copy of the Purchase Register, Statement of Sales, copy of bank account, etc. However, the AO disbelieved the reply filed by the assessee and was of the view that the transaction shown by the assessee with M/s.Barbrik which is a paper entity is nothing but accommodation entry and held it to be in-genuine in the light of the investigation conducted by the Investigation Directorate, and also noted that the said company has been "struck off". Hence, the AO treated the transaction/purchases shown from M/s.Barbrik to the tune of ₹1,20,99,998/- as bogus and added it u/s.69C of the Act i.e. unexplained expenditure.

**5.** Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who didn't countenance the action of the AO disallowing the entire purchase consideration of ₹1,20,99,998/- from M/s.Barbrik, and gave partial relief to the assessee by restricting the addition to profit-element

from the transaction with M/s.Barbrik i.e. @8.87% of the gross profit to the tune of ₹10,73,269/- [₹1,20,99,998/- **x** 8.87%], by taking note that (i) the AO accepted the entire sales appearing in the financials/books and (ii) the assessee had filed the relevant documents like Purchase Register, bank statement reflecting payments made sales bill, GST returns, etc. So according to the Ld.CIT(A), the impugned action of the AO making the entire addition of the alleged transaction of ₹1,20,99,998/- was not justified and relied on the decision of the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Sheth reported in [2013] 38 taxmann.com 385 (Gujarat), wherein , it was held as under:

> In the present case, the Commissioner of Income-tax (Appeals) believed that when as a trader in steel the assessee sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence, therefore, the Commissioner (Appeals) believed the assessee's theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of account.
>
> That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. So much is clear by the decision of this court. In particular, the court has also taken a similar view in the case of CIT v. Vijay M. Mistry Construction Ltd. [2013] 355 ITR 498 (Gu)) and in the case of CIT v. Bholanath Poly Fab (P.)Ltd. [2013] 355 ITR 290 (Guj). The view taken by the Tribunal in the case of Vijay Proteins Ltd. v. Asstt. CIT [1996] 58 ITD 428 (Ahd.) came to be approved.
>
> If the entire purchases were wholly bogus and there was a finding of fact on record that no purchases were made at all, counsel for the Revenue would be justified in arguing that the entire amount of such bogus purchases should be added back to the income of the assessee. Such were the facts in the case of Pawanraj B. Bokadia (supra).

This being the position, the only question that survives is what should be the fair profit rate out of the bogus purchases which should be added back to the income of the assessee. The Commissioner adopted the ratio of 30 per cent of such total sales. The Tribunal, however, scaled down to 12.5 per cent. We may notice that in the immediately preceding year to the assessment year under consideration the assessee had declared the gross profit at 3.56 per cent of the total turnover. If the yardstick of 30 per cent, as adopted by the Commissioner (Appeals), is accepted the gross profit rate will be much higher. In essence, the Tribunal only estimated the possible profit out of purchases made through non-genuine parties. No question of law in such estimation would arise. The estimation of rate of profit return must necessarily vary with the nature of business and no uniform yardstick can be adopted.

&

- Nickunj Eximp Enterprises Pvt. Ltd v. CIT [ Bombay HC WRIT PETITION NO.2860 OF 2012]
- Hon'ble Bombay High Court in the case of PCIT vs. Pinaki D. Panani vide order dated January 18, 2020
- Hon'ble Bombay High Court in the case of Usha Exports v. ACIT vide order dated December 21, 2019
- PCIT v. Jakharia Fabric (P) Ltd. (2020) 429 ITR 323 (Bom-HC) dated 10/02/2020

**6.** Aggrieved by the aforesaid action of the Ld.CIT(A) restricting the addition @ 8.87% of the gross profit (supra), the Revenue is before us.

**7.** We have heard both the parties and perused the material available on record. We find that the assessee company had filed its return u/s.139 of the Act offering an income of ₹46,01,420/-, which return was reopened u/s.147 of the Act based on the information from the Investigation Wing, (Kolkata) that M/s.Barbrik had indulged in providing fraudulent invoices for facilitating accommodation entry for entities [like assessee], so that beneficiary entity could suppress its profits; and since the assessee had

shown to have booked expenditure using invoices/bills of M/s.Barbrik to the tune of ₹1,20,99,998/-, the AO recorded his satisfacton that there is escapement of income, and issued notice u/s.148 of the Act. Pursuant to the notice of reopening, the assessee is noted to have contested the allegation and asserted that they had carried out genuine transaction with M/s.Barbrik; and in order to prove that transaction was genuine had filed (i) Purchase Register (ii) bank statement evidencing payments through banking channels (iii) Sales Bill (iv) GST returns (v) ledger with respect to invoices, etc. However, the AO is noted to have ignored the relevant documents without alleging any infirmity and had taken adverse view against the transaction in the light of the report of the Investigation Wing that (i) M/s.Barbrik was a paper-company and (ii) has been struck-off from the rolls of Ministry of Corporate Affairs. Consequently, the AO disbelieved the assertion of the assessee that transaction with M/s.Barbrik was genuine and disallowed the entire sale consideration given to M/s.Barbrik and made an addition u/s.69C (unexplained expenditure) of the entire amount of ₹1,20,99,998/-. On appeal, the Ld.CIT(A) has restricted the addition to 8.87% of the gross-profit i.e. ₹10,73,269/- [₹1,20,99,998/- x 8.87%] by inter-alia relying on the decision cited supra and other decisions. The Revenue has challenged the impugned action of the Ld.CIT(A) before us and in this regard, it is noted that the Ld.CIT(A) has restricted the addition [@ 8.87% of the gross profit] since the sales

shown by the assessee in the profit & loss account has been accepted in its entirety by the AO, so according to the Ld.CIT(A), the purchases couldn't have been entirely disallowed. According to us, the Ld.CIT(A) in the given facts and circumstances of the case as discussed (supra) erred by misdirecting himself (i) to presume that without purchases, no sales could have taken place; and (ii) when the AO has accepted the sales only the profit element could have been added. The proposition of the Ld.CIT(A) that when the sales have been accepted by the AO, the purchases can't be disallowed, is applicable, when quantity of goods purchased is not disputed and in such cases, the element of inflation of cost of purchases is only considered to be added by addition of the extra profit derived from such transaction [refer the ratio of the decision of the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Sheth supra]. But in the present case, the question is whether the expenses claimed by the assessee to the tune of ₹1,20,99,998/- is genuine or not and whether it is allowable as a deduction being expenditure incurred for the purpose of business. Hence the Ld CIT(A) erred in relying on the ratio of the decision in CIT v. Simit P. Sheth supra. Having held so, we agree with the impugned action of Ld CIT(A) giving relief to assessee, since we don't countenance the action of AO making the addition despite assessee filing relevant documents (supra) to prove the genuineness of the transaction with M/s.Barbrik. The AO is noted to have taken adverse view against the

assessee and disallowed the entire transaction amounting to ₹1,20,99,998/-, on the basis of information received from the Investigation Wing that M/s.Barbrik was involved in facilitating accommodation entries and that M/s.Barbrik has been "struck off" from the rolls of the Ministry of Corporate Affairs (MCA). First of all the AO is found to have discarded the relevant documents filed by the assessee [to prove the genuineness of the transaction] without assigning any reason can't stand the scrutiny of law. Secondly, the AO is noted to have disbelieved the relevant documents filed by the assessee only on the basis of information, he received from the Investigation Wing which piece of evidence has not been confronted with the assessee. So the AO's reliance on any adverse material without furnishing a copy of the same to assessee strikes at the root of the addition made by the AO. Further, it is brought to our notice that there is no proof that the said company (M/s.Barbrik) has been "struck-off" from the rolls of MCA in the relevant AY 2018-19, but the only proof is that GST registration of M/s.Barbrik has been cancelled w.e.f. 13.05.2019 [i.e. AY 2020-21] which means impliedly that M/s.Barbrik was enjoying GST registration in the relevant year i.e. AY 2018-19, and it was not struck off in the relevant year. Therefore, the basis for making addition u/s.69C of the Act is arbitrary, which can't stand the scrutiny of law and therefore, the addition made by AO is untenable for the reasons stated (supra) and therefore, the AO

erred in making the addition u/s.69C of the Act; and since the assessee is not in appeal against the action of the Ld.CIT(A), we uphold the action of the Ld.CIT(A) restricting the addition to Gross-Profit @ 8.87% is ₹10,73,269/- and dismiss the Revenue Appeal.

**8.** In the result, appeal filed by the Revenue is dismissed.

Order pronounced on the 07th day of January, 2026, in Chennai.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(एस. आर. रघुनाथा)** | **(एबी टी. वर्की)** |
| **(S.R.RAGHUNATHA)** | **(ABY T. VARKEY)** |
| लेखा सदस्य**/ACCOUNTANT MEMBER** | न्यायिक सदस्य**/JUDICIAL MEMBER** |

चेन्नई/Chennai,
दिनांक/Dated: 07th January, 2026.
***TLN***

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**
1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF