

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**  
**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND**  
**SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**  
**ITA No. 6131/MUM/2025 (AY: 2019-20)**

*(Physical hearing)*

Income Tax Officer-19(1)(1), 501, 5 <sup>th</sup> Floor, Piramal Chamber, Lalbaug, Mumbai	Vs	Babulal Mishrimalji Mehta 7 Marker Building, Office No.91 <sup>ST</sup> Panjarapole Lane, Mumbai [PAN:AFBPM0921N]
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Ritesh Upadhyay, & Parul Pandya Advocates
Revenue by	Shri Harshad M. Karnik- SR. DR
Date of Institution	29.09.2025
Date of hearing	07.01.2026
Date of pronouncement	07.01.2026

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by Revenue is directed against the order of Id. CIT (A) dated 01.07.2025 for assessment year 2019-20. The Revenue has raised following grounds of appeal:-

*"1. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 33,70,713/-made by the AO under section 69C of the Income tax Act, 1961, without appreciating that the assessee failed to explain the source and genuineness of the expenditure incurred purchases from non-existent parties"*

*2. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred by disregarding the credible and verifiable information available on the department's portal, which conclusively established that the suppliers of the alleged purchases were non-existent, and the transaction were not genuine,"*

*3. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding that if the purchases were to be treated as non-existent, the corresponding sales would also have to be considered non-existent. This is contrary to established legal principles, as the addition was made under section 69C for unexplained expenditure, and the assessee failed*

*to provide a plausible explanation for the same. The addition of unexplained expenditure is distinct from the treatment of sales."*

4. *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred by substituting its own opinion for the well-reasoned findings of the AO without any corroborative tangible concrete material evidence."*

5. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), has erred in restricting the restricting the GP rate to the extent of 8%, without appreciating the decision of the Hon'ble Supreme Court in the case of M/s. N. K. Proteins Ltd. Va. Dy. CIT (2016) 292 CTR (Guj.) 354, Dated. 16.01.2017. wherein the Hon'ble Court has held that once a findings of act has been given that entire purchases shown on the basis of fictitious invoices and debited in the P & L account are established as bogus, then restricting the addition to a curtailed percentage goes against the principles of section 68 and 69C of the Income Tax Act, 1961."*

6. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), has erred in restricting the addition without appreciating the fact that in the case of M/s. Swetamber Steels Ltd. (Supra), the Hon'ble ITAT, Ahmadabad had conformed the disallowance of the bogus purchase, by stating that the purchases shown from respective parties were found non genuine and the decision of the ITAT was upheld by Hon'ble Gujarat High Court and also by the Hon'ble Supreme Court."*

7. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), has ignored the fact that, the Hon'ble ITAT is perverse in not considering the order of Hon'ble Gujarat High Court in case of N.K. Proteins Ltd (2016) 72 Taxman.co 289 (Guj.) relating on similar issue of bogus purchase, which have been confirmed by the Hon'ble Supreme Court big dismissing SLP in SLPICC) of 963/2017 dated 01 07 2025"*

8. *"Whether on the facts and circumstances of the case and in law, the decision of the Ld. CIT(A) was right in view of the decision of the Hon'ble High Court Mumbai, in the case of Pr. Commissioner of Income-Tax-5, Mumbai Vs. Kanak Impex (India) Ltd (2025)172 Taxmann.com 283 (Bombay) Dated. 03.03.2025, wherein the decision of 100% addition made by AO has been allowed, by rejecting the ITAT's decision of estimating the profit rate @12.5% on bogus purchases and thereby impliedly grant deduction of such unexplained expenditure incurred u/s. 69C of the Act, even though the assessee failed to discharge its onus to prove the genuineness of alleged purchases and has offered no explanation of the sources of expenditure incurred on account of such purchases."*

9. *The tax effect involved in this case is Rs. 26,31,757/-, which is above the prescribed limit mentioned in the CBDT's Circular F.No.279/Misc. 142/2007-ITJ(Pt) amended vide No. 09/2024 dated, 17.09.2024. However, the appeal is being filed before the Hon'ble ITAT, as this case also falls under one of the*

*exceptions specified in paragraph 3.1(h) of the of the CBDT's Circular No .05/2024 Dated. 15.03.2024, wherein it is stated that in cases involving" Organized Tax Evasion" including cases of accommodation entry of bogus purchases," in such cases the decision to file appeal/SLP shall be taken on merit without regard to the tax effect and the monetary limit.*

*10. "The appellant craves leave to amend or alter or add a new ground which may be necessary."*

2. The rival submissions of both the parties have been heard and record perused. The Id. Senior Departmental Representative (SR. DR) for the revenue submits that case of assessee was reopened on the basis of information available with the Department in their Insight Portal. As per information, the assessee is beneficiary of bogus purchases shown from Shell companies, which were indulging in providing bogus bills without actual delivery of goods. The assessee has shown purchases from NSG Metal Trading and Octogen Trading Co. aggregating of Rs.33,70,713/-. During assessment the Assessing Officer provided sufficient opportunity to the assessee to substantiate genuineness of purchases. The assessee failed to prove such genuineness of purchases. The Investigation Wing of GST Department conducted full-fledge investigation wherein such bogus entities were identified, on the basis of such information, Investigation Wing of Income Tax Department also made an investigation. There was sufficient material before Assessing Officer to treat the purchases from both the entity as unexplained. The Ld. CIT (A) deleted the entire addition by relying upon the submission of assessee by holding that no independent investigation was carried out by Assessing Officer against the evidences furnished by the assessee though the Assessing Officer was having sufficient material to treat such purchases as

unexplained. The Id. Senior DR for the revenue prayed for setting aside the order of Id. CIT (A) and to restore the order of Assessing Officer.

3. On the other hand, the Id. Authorised Representative (AR) of the assessee submits that before the Assessing Officer the assessee furnished complete details to substantiate the purchases. The assessee discharged his primary onus to prove the genuineness of purchases. The assessee furnished invoices of purchases and delivery challan. The consideration was paid through banking channel. The sales of assessee was not disputed by Assessing Officer. The sale is not possible in absence of purchase. The books of accounts of assessee was not rejected. The Id. CIT (A) thus, rightly appreciated the fact in concluding that once the assessee discharged his onus, the onus was on Assessing Officer to make further independent inquiry. The Assessing Officer simply relied on the information available in Insight Portal which is not sufficient to disprove the genuineness of purchases. The Id. AR for the assessee prayed that appeal may be dismissed.
4. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that the revenue has raised multiple grounds of appeal, however, in our considered view, the substantial grounds of appeal relate to deleting the disallowance of purchases by treating the same as bogus. Even otherwise no specific grounds wise submissions were made by both the Id representative, thus, we are considering the reframed substantial ground of appeal. We find that during assessment proceeding, the Assessing Officer issued show cause notice to substantiate the purchases shown from NSG Metal Trading and Octagen

Trading Company. The assessee in response to such show cause notice furnished the ledger copy of both the traders, details of bank account, purchase invoices and corresponding bills. The assessee also submitted that material was delivered and the goods purchased were sold to the customers. Such facts are recorded on page No.3 of assessment order. The reply of assessee was not accepted by Assessing Officer by taking view that NSG Metal Trading and Octagen Trading Company have been identified as the parties involved in fraud input tax credit, which were not engaged in any genuine business activities and merely provided accommodation entries for the purpose of booking bogus expenses for reducing taxable income. During post search investigation the key person of such entities in their statement accepted that they were paper entities so the transaction with entry provider cannot be accepted. The Assessing Officer recorded that evidence furnished by assessee cannot be accepted as it has already been proved by Investigation Wing that such seller parties are paper entity. Transaction routed through banking channel does not prove the transaction as genuine. The Assessing Officer on the basis of information in Insight Portal treated both the entities as accommodation entry provider and disallowed the expenses incurred for purchases of Rs.33,70,713/- and added under Section 69C in the assessment order dated 13.03.2025. On appeal before Id. CIT (A) the assessee reiterated his submission and contended that evidence furnished by assessee was not considered. Mere non-responsive to the notice under Section 133(6), it does not automatically imply that transaction is not genuine, specifically when assessee provided complete corroborative

documentary evidence to demonstrate the genuineness of purchases including the sale of such goods.

5. We find that Id. CIT (A) upon considering the submission of assessee held that the Assessing Officer has not conducted any further inquiry. There is no tangible material to corroborate the investigation contained in the Insight Portal. The assessee furnished ledger copies, bank statement and reconciled the goods purchases against the sales. The evidence furnished by assessee is not controverted by Assessing Officer; rather he relied on information in the Insight Portal. The Id. CIT (A) also relied upon decision of Delhi High Court in case of Devat and Ram Company Private Limited. Vs. ITO & others in WP (C) 14258/2024 & CM APPL 59722/2024 dated 22.05.2025, wherein it was held that when the assessee made direct sale in respect of purchases made and shown profit in respect of the same. In such case, if the purchases are considered non-existent, sales would have to be considered non-existent.
6. On our independent consideration of fact, we find that sales of assessee were not disputed. Books result of assessee was not disturbed. Sales of assessee are not possible in absence of purchases. Though, we find that the Assessing Officer carried out investigation through verification unit, not only by sending notices under section 133(6), but through physical verification. One party namely NSG Metal was not traceable at the given address. The postal article of notice to other party namely Octagen Trading was reportedly directed to Borivali Head Post office, due to insufficient address. Thus, the Assessing Officer tried to investigate the matter further, thus, the finding of Id CIT(A) to the extent that Assessing Officer has not investigated matter further is not

justified. However, considering the facts that there are allegation of bogus purchases against the assessee and the assessee, except filing purchases invoices and payment through banking channel has not proved such purchases to the satisfaction of assessing officer. Therefore, in our considered view a reasonable disallowance of impugned purchases would be sufficient to avoid the possibilities of revenue leakage. Hence, the Assessing Officer is directed to restrict the disallowances to the extent of 10% of impugned purchases. In the result, the grounds of appeal raised by the revenue are partly allowed.

7. In the result, appeal of the revenue is partly allowed.

Sd/-

**ARUN KHODPIA**  
**ACCOUNTANT MEMBER**

Sd/-

**PAWAN SINGH**  
**JUDICIAL MEMBER**

MUMBAI, Dated: 07/01/2026  
Ashwani Rao  
Sr. Private Secretary

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar  
ITAT, Mumbai