

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.111/Ind/2025**  
**Assessment Year:2019-20**

Deputy Commissioner of Income-tax	<b><u>बनाम/</u></b> Vs.	Ferro Concrete Con India Pvt. Ltd., 3/5/7B, Bhagirathpura Indore
(Assessee/Appellant)		(Revenue/Respondent)
<b>PAN: AAACF2726K</b>		
Revenue by	Shri Ashish Porwal, Sr. DR	
Assessee by	Shri Venus Rawka, AR	
Date of Hearing	17.12.2025	
Date of Pronouncement	13.01.2026	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by order of first appeal dated 25.11.2024 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 22.02.2024 passed by learned Assessment Unit of Income-tax Department ["AO"] u/s 147 r.w.s. 144B of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2019-20, the revenue has filed this appeal on following grounds:

*"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.84,76,000/- without appreciating the facts and evidences mentioned in the assessment order by the AO.*

*2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 84,76,000/- made by AO on account of bogus purchases as there is no delivery of goods and the same disallowed as unexplained investment u/s 69 and brought to tax.*

*3. The appellant craves leave to add to or deduct from or otherwise amend the above grounds of appeal."*

2. The background facts leading to present appeal are such that the assessee is a company engaged mainly in the business of executing construction contracts of dams, bridges, etc. For AY 2019-20 under consideration, the assessee filed its return of income u/s 139 declaring a total income of Rs. 12,20,48,700/- which was assessed. Subsequently, based on information received from ITO-1(3)(1), Mathura revealing tax evasion being done through issuance of bogus sales/purchase bills by a channel of persons, the AO re-opened assessee's case u/s 147 through a notice dated 29.03.2023 u/s 148. In response to notice, the assessee re-filed return of income repeating the original income of Rs. 12,20,48,700/-. Thereafter, the AO issued notices u/s 143(2)/142(1) and the assessee made compliances. Finally, the AO completed assessment after making an addition of Rs. 84,76,000/- u/s 69 treating the full amount of purchase made by assessee from one M/s Raj Rani Traders (a proprietary concern owned by Mr. Narendra Singh) as bogus. Aggrieved, the assessee carried matter in first-appeal whereupon the CIT(A) reversed AO's order and deleted addition fully. Now, aggrieved by order of CIT(A), the revenue has come in present appeal.

3. The grievance of revenue/appellant is such that the CIT(A) has wrongly deleted the impugned addition made by AO on account of bogus purchase u/s 69.

4. We have heard learned Representatives of both sides and carefully perused the case record including the orders of lower authorities.

5. At first, we re-produce the relevant part of impugned order of CIT(A):

*"6.2. Grounds No. 3 to 7 are against the disallowance of Rs. 84,76,000/- under Section 69 of the Income Tax Act, 1961 on account of bogus purchases. The Appellant in his written submission has primarily objected to reopening of assessment submitting that the AO has not made any independent enquiry for reopening of assessment.*

*6.2.1 Insofar as impugned disallowance of Rs. 84,76,000/- as unexplained investment u/s 69 of the Income Tax Act 1961 is concerned, it is clear that reopening of assessment of Appellant was done merely on the basis of information received from the Investigation Wing after carrying out the search and seizure operation in the case of Bansal Group. It is observed that A.O has concluded the re-assessment proceedings by making a disallowance of Rs. 84,76,000/- as unexplained investment u/s 69 of the Income Tax Act 1961 and brought to tax u/s 115BBE of the Act.*

*It is a matter of fact that the appellant had furnished the following documentary evidences to prove the genuineness of the purchases made by the appellant from M/s Rajrani Traders:*

- 1. Copies of purchases invoice issued by vendors towards supply and delivery of goods.*
- 2. Copy of E-way Bills.*
- 3. Copies of GST returns filed for relevant financial year.*
- 4. Copy of ledger of M/s Rajrani Traders in the books of the appellant*
- 5. Supporting Bank statements of assessee for relevant financial year, along with bank ledger towards source and proof of payments made to alleged vendors through banking channel.*
- 6. Audited balance sheet of the Appellant, in which subject purchases were consumed for sale made. Copy of ITR of Appellant and computation for relevant financial year.*

6.2.2 It is observed from the perusal of the documents submitted by the appellant that he has submitted the requisite documents to prove the genuineness of the purchases viz complete details of the party, its PAN, GSTIN, description of the items, GST returns, purchase invoices. **It is further noticed that the quantitative details of the goods traded by the assessee have duly been given in the tax audit report and the tax auditor has not given any adverse observation in the tax audit report with regard to purchase, sale or quantitative details of the goods.** It is further seen that the sales and purchases shown by the assessee in his GST returns for the relevant year have been accepted by the GST Department after scrutiny. It is seen from the perusal of the bank statements, bank books and ledger accounts submitted by appellant that all payments towards purchases were made through banking channels. The case of the assessee finds favour from the decision of Hon'ble Apex Court in case of PCIT Vs. Tejua Rohit Kumar Kapadia (2018) 94 taxmann.com 325 (Supreme Court).

6.2.3 The assessee has also requested for opportunity to cross examine the third party on the basis of whose statement the, the reopening has been done. However, neither the statement of such person/s was provided in time nor the opportunity to cross examine such person/s was provided. The assessee has placed reliance upon the decision Hon'ble Supreme Court of India in cases of Andaman Timber Industries v. Commissioner of Central Excise, Civil Appeal No. 4228/2006 (SC). Thus, the action of the AO in relying upon the statement/complaint of the third party without providing opportunity to cross examine is not as per spirit of law.

6.2.4 Further it is noticed from written submission made by appellant that the AO has carried out verification of books of accounts of the appellant by calling details and explanations with respect to sales, purchases, debtors, creditors, bank statements, GST returns etc. However, AO has not pointed out even a single error/discrepancy in the detail and documentary evidences submitted by the appellant. **Accordingly, AO has not doubted the trading results declared by the appellant.**

6.2.5 **It is also observed that the appellant has strongly objected the application of Section 69 to the impugned matter. The assessee has submitted that Section 69 has no applicability to the issue of bogus purchases as purchases cannot be termed as 'investments' and the purchases are duly recorded in the books of accounts. The submissions of the assessee have merit and substance.**

6.2.6 Based on above findings and views taken by various Tribunals and High Court on the similar issue, I am of the considered opinion that AO was not correct in making disallowance of Rs. 84,76,000/- u/s 69 of the I.T. Act as unexplained investments. Accordingly, the disallowance of Rs. 84,76,000/- is hereby deleted. **The Ground of appeal no 3 to 6 are allowed."**

[emphasis supplied]

6. On the basis of deliberations made by learned Representatives of both sides during hearing, we find that the adjudication made by CIT(A) in above order suffers from following shortcomings:

- (i) In Para 6.2.2 of impugned order, the Ld. CIT(A) has made an observation: *"the quantitative details of the goods traded by the assessee have duly been given in the tax audit report and the tax auditor has not given any adverse observation in the tax audit report with regard to purchase, sale or quantitative details of the goods."* This observation is either incorrect or it is given in the context of trading activity of assessee which is irrelevant to the impugned purchases made by assessee which was utilized for execution of contracts.
- (ii) In Para 6.2.4 of impugned order, Ld. CIT(A) has observed that the AO has not doubted the trading results declared by the appellant (i.e. assessee). This observation is irrelevant when the issue before CIT(A) was not of "trading result" but of "bogus purchases" made by assessee. In ***Principal Commissioner of Income-tax Vs. Kanak Impex (India) Ltd. (2025) 172 taxmann.com 283 (Bombay)*** recently approved by ***Hon'ble Supreme Court in (2025) 180 taxmann.com 790 (SC) in Judgement & Order dated 21.11.2025***, the AO disallowed 100% of bogus purchases but in first-appeal, the CIT(A) upheld addition to the extent of only 12.50% equal to estimated "trading profit". In appellate proceedings, although the ITAT confirmed CIT(A)'s order but thereafter

in next appeal, the Hon'ble Bombay Higher Court reversed CIT(A) as well as ITAT's orders while observing thus:

*"18. The CIT(A) has also given a finding against the respondent-assessee in paragraph 5.2.1, stating that the respondent-assessee failed to prove the genuineness and source of the purchases and confirmed its involvement in the modus operandi. **In our view, CIT(A) was not justified after giving such a finding that the additions should be restricted only to 12.5% of such purchases and not entire purchases. The issue before the CIT(A) was not whether the profit disclosed by the respondent-assessee was low so as to justify the estimation of the profit of 12.5%. The issue before CIT(A) was whether the purchases had been proved and the CIT(A), having observed against the respondent-assessee on this issue, ought to have confirmed the additions of the entire purchases. In our view, the CIT(A) misdirected himself by estimating a profit of 12.5%.***

*19. It was nobody's case that both the sales and purchases are unaccounted. If that be so and the purchases have been recorded in books of account by accommodation entry, then same gets automatically reflected in the books of account. In the instant case, since the purchases are recorded by accommodation entry in the books of account and sales have not been disputed, the CIT(A) was not justified in estimating the profit, when the basis of addition was not low profit.*

*20. **The Tribunal also misdirected itself by approaching the issue with the erroneous belief that it was estimating profit. In fact, the issue before the Tribunal was whether the CIT(A) was justified in not confirming entire purchase additions. Therefore, to that extent, the Tribunal too misdirected itself by approaching the issue solely based on estimating profit.***

*21. In our view, both the Appellate Authorities ought to have appreciated that the issue before them was whether the respondent-assessee had proved the purchases of which the claim for deduction was made. The respondent-assessee, having failed to discharge its onus on this issue before all three authorities, in our view, the additions made in the assessment order by the AO was justified."*

*[emphasis supplied]*

- (iii) In Para 6.2.5 of impugned order, the CIT(A) has given benefit to assessee by observing that section 69 as applied by AO has no applicability to the issue of "bogus purchases" as the purchases cannot be termed as 'investment' and the purchases are duly recorded

in books of account. However, this observation/conclusion made by CIT(A) is also meritless because as per settled judicial rulings, even if a wrong section has been quoted/applied by AO in assessment-order, it cannot be a basis to delete the addition/disallowance properly made by AO with cogent analysis.

7. Therefore, in the first instance, we agree with Ld. DR's submission that the impugned order passed by CIT(A) giving relief to assessee cannot be allowed to survive.

8. However, at the same time, we also find that in making impugned addition of bogus purchase, the AO has taken into account the statements of Mr. Narendra Kumar, proprietor of M/s Raj Rani Traders and rejected various evidences of purchases adduced by assessee. The relevant portion of AO's order is re-produced below:

*"One of such person and concern was Mr. Narendra Singh bearing PAN IPZPS9906H and is the prop. of the concern M/s. Raj Rani Traders. The details available therein reveal that M/s. Ferro Concrete Con India Private Limited the assessee company had made purchases to the extent of Rs. 84,76,800/- during the financial year 2018-19 relevant to A.Y. 2019-20. Mr. Elesh Agrawal under oath in reply to q.no. 17 to 19 of his stated dated 01-03-2023 has confirmed the list of proprietary concerns which were involved in providing bills without actual movement of goods. **Further Mr. Narendra Kumar the Prop. Of M/s. Raj Rani Traders, from whom the assessee company has made purchases, has confirmed the following under oath vide his statement dated 02-01-2023:***

1. *His source of income is from agricultural activities and wages from doing labour work.*
2. *He is not associated with any company or firm and does not own any proprietary concern.*

3. *Mr. Narender Singh with regard to specific enquiry about his proprietary concern has stated that he does not own any such concern and does not have any such profession or business. He has also confirmed that he is not related to the concern M/s. Raj rani Traders.*
4. *Mr. Narender Singh has also narrated how his PAN card and Aadhar had been misused by one Mr. Pankaj Agarwal with the assistance of his neighbour Mr. Jasmat Singh who had taken him to Mathura in the guise of getting the employment. The PAN card and Aadhar was under the possession of Mr. Pankaj Agarwal for amount 6 months. Later after about lapse of 6 month I was again called up by Mr. Pankaj Agarwal and he directed me to sign the cheque books, for which I refused. He held back my cheque book and after threatening me they asked me to leave. Thus without my knowledge they had used my credentials to operate the said concerns which I am not associated with.*
5. *In response to the audit report of M/s. Raj Rani trader prepared by the Chartered Accountant Mr. Sachin Agarwal & Co as on 31-03-2018, he confirmed that the signature available in the report does not belong to him and he has not filed any document with the Income tax Department till date.*
6. *Mr. Narender Singh also confirmed that the email id rajranitraders@gmail.com or agrawal.sachin1990@gmail.com and the mobile nos. 9105333392 or 7902097614 does not belong to him*
7. *The statement of Mr. Narendra Singh is enclosed herewith as annexure-1 for kind and easy reference.*

*The findings of the search in the case of Mr. Elesh Agrawal and the findings in the case Mr. Narendra Singh clearly proves that the prop. Concern M/s. Rajrani Traders were involved in providing bill (bogus purchases) without actual transfer of goods. Thus, any purchases made from Mr. Narendra Singh or Mr. Elesh agrawal is required to be disallowed."*

9. Ld. AR for assessee carried us to Pages 79-81 of Paper-Book and demonstrated successfully that in reply-letter dated 29.01.2024 filed by assessee to AO in response to show-cause notice dated 23.01.2024 making proposal of impugned addition/disallowance, the assessee filed following reply:

*"7. At last para of page – 8 and 9, a statement of summary of it was provided 1<sup>st</sup> time to the assessee company and the statement relied upon by you has no value unless it is confronted to the assessee or allow him for cross-examination.*

8. *As such the statement of one Narendra Singh proposed to be used is against the principal of legal position."*

Therefore, Ld. AR contends strongly, the impugned addition made by AO without giving opportunity of cross-examination to assessee is against the well-established principles of jurisprudence "Audi Alteram Partem" and "natural justice". We find a strong merit in this contention raised by Ld. AR. Therefore, in the present situation, it would be most appropriate to remand this matter back to the file of AO for adjudication afresh after giving opportunity of cross-examination of Mr. Narendra Singh to assessee. The AO shall give such opportunity to assessee and shall consider entire submission of assessee with a fresh mind and take an appropriate decision in accordance with law. We also direct assessee to avail the opportunity of cross-examination as well as making full representation before AO without seeking unnecessary adjournments failing which the AO shall be entitled to pass an appropriate order in accordance with law. Ordered accordingly.

**10. Resultantly, this appeal is allowed for statistical purpose.**

Order pronounced by putting up on notice board as per Rule 34 of ITAT Rules, 1963 on 13/01/2026
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Sd/-

(SIDDHARTHA NAUTIYAL)  
JUDICIAL MEMBER

**Indore**

दिनांक /Dated : 13/01/2026

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Ferro Concrete Co. India Pvt. Ltd.**  
**ITA No. 111/Ind/2025 - AY 2019-20**

Patel/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order  
Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore