

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'A': NEW DELHI.**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.5861/Del/2024
(Assessment Year: 2021-22)**

**ITA No.5836/Del/2024
(Assessment Year: 2022-23)**

Income Tax Officer,
Hisar.

vs.

Ajay Kumar,
1st Floor, 04, Matropolis Mall,
Santro Enclave, Delhi Road,
Hisar – 125 001 (Haryana).

(PAN : DTKPS7297R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
Ms. Uma Upadhyay, CA
REVENUE BY : Shri Ajay Kumar Arora, Sr. DR

Date of Hearing : 30.10.2025
Date of Order : 16.01.2026

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The Revenue has filed appeals against the order of the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi [“Ld. CIT (A)”, for short] dated 30.09.2024 for the Assessment Years 2021-22 & 2022-23.
2. Since the issues are common and the appeals are connected, hence the

same are heard together and being disposed off by this common order.

We take up the revenue's appeal being ITA No.5836/Del/2024 for AY 2022-23 as lead case to adjudicate the issues under consideration.

3. The revenue has raised the following grounds of appeal in AY 2022-23 :-

“1. That the deletion done by the Id. CIT (A) vide order u/s 250 of the Income tax Act, 1961 DIN & Order No.ITBA/NFAC/S/250/2024-25/1069258422(1)(1) dated 30.09.2024 is against the law and facts of the case.

2. The Ld. CIT (A) has not appreciated the facts that the genuineness of the purchases made by the assessee have not been established of Rs.15,17,83,873/-.

3. The Id. CIT (A) has not appreciated the facts that the genuineness of non-deduction of tax at source from amount paid to contractors for freight by the assessee have not been established of Rs.97,49,289/-.”

4. Ground No.1 is general in nature, hence not adjudicated.

5. Brief facts with regard to ground no.2 are, AO made the addition of Rs.15,17,83,873/- on account of purchases made by the assessee treating the same as bogus invoking provision of section 69C of the Income-tax Act, 1961 (for short 'the Act'). Aggrieved, assessee preferred an appeal before CIT(A) whereby CIT(A) deleted the addition considering the submission made by the assessee. The relevant findings of the Ld. CIT(A) are as under:

“1. The appellant on merits has taken the plea that the purchases of Rs. 83,32,61,134/- undertaken from different parties, which have been not allowed as genuine purchases by the Ld. Assessing Officer for the

reasons stated in the order reproduced above. Main reason to reject the purchases u/s 37 of the Income Tax Act, 1961 as non-genuine, was not receiving reply to notices u/s 133(6) to selective suppliers. However, the appellant has contended that the Learned A.O. has not appreciated that as per section 37 of the Income Tax Act rejection is applicable only if assessee has claimed any sum books of accounts for which he has not given any explanation about the nature and source thereof or the explanation offered by him is not satisfactory in the opinion of the AO. Whereas in the present case the appellant has duly submitted the details, Ld. Assessing Officer completely ignored the fact that the Appellant had already submitted copy of confirmations of accounts received from all these suppliers, except for "Priya Aggarwal", which is sufficient to prove the Genuineness of Purchases, but the same were not perused by the learned A.O. In case he had some other query the Appellant should have been asked to submit the same. No where in the order he has explained as to why the reply filled by appellant during the course of assessment was not satisfactory and acceptable to the learned A.O. That the appellant has duly explained above citing references of judgements passed by various appellate authorities that non-receipt of response U/s 133(6) is not a criteria to decide whether the transactions are genuine or not. That Appellant is having confirmation of accounts of dealers from whom purchases were made by the appellant. Copy of the confirmation received from above mentioned dealers are attached in Paper Book. It is submitted that the Appellant got its books audited from a Chartered Accountant and submitted his audited financials in compliance to Income Tax Act. The AO had neither rejected his books of accounts nor showed any doubt on the same. When the AO had accepted the books of accounts and is satisfied about the same how he termed purchases done by assessee as Non Genuine or bogus is neither documented nor understandable. That it has been held by various higher courts, that when the AO has not challenged the sales and accepted the sales declared by the assessee/appellant he cannot reject the assessee's claim for purchase. As without there being any purchases, there could not be any sales. It is further submitted that the Ld. A.O. erred not to provide a reasonable and sufficient opportunity of being heard to the Appellant. If the Ld A.O. was not satisfied with the reply of Assessee regarding Genuineness of purchases, Appellant should have been given sufficient opportunity of being heard, to explain the same further and Ld. AO has failed to appreciate the fact that no response received for Notice u/s 133(6) of Income Tax Act is no ground to treat the purchases as non-genuine and liabilities as unexplained credits. That most humbly will like to mention that all the above said dealers are duly registered dealers under Goods

and Service Tax Act. All the purchases claimed by the Appellant are duly reflecting on the Goods and Services Tax Portal under the Form named "GSTR 2-A". The Goods and Service Tax Department which is also office of Central Government of India has duly an accepted all the invoices and have never raised any objections the authenticity, which clearly shows that the said purchases are bona-fide and the seller has even paid the due taxes thereon. Copy of the GSTR 2A is attached in the Paper Book. That the Appellant was not having any control over the filling of responses by these vendors. Further there is no mechanism by which the Appellant could have checked that before purchasing goods. Further, the purchases were done during the period 1st April 2021 to 31st March 2022 whereas the notices under section 133(6) were issued during the financial year 2023-2024, thus the filling of responses to notices issued is a post-facto event which cannot be used to determine if the transaction is genuine. It is further submitted that there is no limitation/bar/criteria mentioned under Income Tax Act, for purchasing goods from dealers. The Ld. AO chose to send the notices u/s 133(6) of the Income Tax Act to only 6 dealers out of the total 23 dealers from whom purchases were made by the appellant during the relevant AY. Further, out of the 6 dealers, 2 dealers (At Serial No. 4 and 5) have duly responded and their balances matched with the books of the appellant. This shows that the Ld AO was satisfied with the genuineness of the rest of 17 dealers. The AO never verified the addresses to which the notices were sent and the fact that whether notices issued u/s 133(6) were ever delivered or not is also not documented by the AO. Without valid service of notices issued u/s 133(6) the validity of such notices is highly questionable and the same cannot relied upon.

1. That as held by various higher courts, non-service of Notices sent U/s 133(6) or no reply received for the notice or non-traceable dealer, does not proves that the transactions with the said dealers is non genuine. Reliance is placed on following:

"1) Case Law 1 - CIT-I vs. Nagalia Fabrics (P) Ltd. – High Court of Gujarat reported at [2013] 40 taxmann.com 206 (Gujarat).

2) Case Law 2 - CIT-1, Mumbai-1 vs. Mumbai vs. Nikunj Eximp Enterprises (P) Ltd. – High Court of Bombay reported at [2013] 35 taxmann.com 384 (Bombay)

3) Case Law 3 – ACIT, Mumbai vs. Sonicwall Technology System India Pvt. Ltd. – ITAT Mumbai passed in ITANo. 3860/Mum/2019

- 4) *Case Law 4 – PCIT v Jagdish Thakkar [2022] 145 taxmann.com 414 (Bombay) – High Court of Bombay*
- 5) *Case Law 5 – PCIT-13, Mumbai vs. Vaman International Pvt. Ltd. 2020, Near Law (Bombay HC) Online 1122.*
- 6) *Case Law 6 - M/s Singhal Exim Pvt. Ltd. vs. ITO, Ward 23(4), Delhi – ITA No. 6520/Del/2018.”*

6. Aggrieved, Revenue is in appeal before us.
7. At the time of hearing, ld. DR of the Revenue brought to our notice detailed findings of the Assessing Officer and submitted that most of the dealers has not responded to the show-cause notices issued under section 133(6) of the Income-tax Act, 1961 (for short ‘the Act’) and further submitted that most of the dealers have not filed their return of income and also relevant GST were also got cancelled. He objected to the relief granted to the assessee by the ld. CIT (A) and heavily relied on the findings of the Assessing Officer. He submitted that the facts in AY 2021-22 are similar.
8. On the other hand, ld. AR of the assessee submitted as under :-

“A. Non-Compliance with Notices under Section 133(6):- Notices issued under section 133(6) to 5 suppliers did not yield any response implied that the purchases were not verifiable –

The Assessing Officer has drawn an adverse inference on the genuineness of purchases solely based on the non-response of suppliers to notices issued under Section 133(6) of the Income-tax Act, 1961. It is respectfully submitted that such an inference is both legally unsustainable and factually flawed, for the following reasons:

- i. Non-response by Third Parties Cannot Lead to any Disallowance*

Section 133(6) empowers the AO to obtain information from third parties, but the mere non-receipt of replies does not invalidate the transactions between the assessee and such parties.

Further, the assessing officer as issued notice under section 133(6) and each of the notice had been duly served as there is no allegation that any of the notice has come back unanswered or supplier was not available at the given address.

ii. Onus Discharged by the Assessee

The assessee, in response to the show cause notice and statutory requisitions, provided extensive and credible documentation in support of the purchases.

In support of the above facts and contentions, assessee placed reliance on the judgement of Hon'ble Supreme Court passed in the case of Orissa Corporation Pvt. Ltd. v. CIT (1986) 159 ITR 78 (SC) wherein Hon'ble Apex Court held that when the assessee furnishes complete particulars of the transactions and makes payments through proper banking channels, the failure of the recipients to respond to departmental notices cannot be a valid ground to treat the transaction as bogus.

Further reliance has been placed on the following judgments of various courts:-

THE COMMISSIONER OF INCOME TAX-I VERSUS M/S NIKUNJ EXIMP ENTERPRISES PVT LTD, 2013 (1) TMI 88, BOMBAY HIGH COURT

CONTINENTAL CARBON INDIA LTD VERSUS ITO DELHI, 2011, ITAT DELHI

ASSTT COMMISSIONER OF INCOME TAX VERSUS VS M_S SWASTIK ROADLINES PVT LTD, 2013 (8) TMI 108, ITAT AGRA

OFFICE OF THE ITO- 31 (1) (5) MUMBAI VERSUS M_S GOLD FINGER, 2018 (5) TMI 1319, ITAT MUMBAI

Accordingly, in line with the above ruling, the mere non-availability or non-verification of suppliers in the instant case does not, by itself, establish that the purchases were bogus, especially when supported by uncontroverted documentary evidence.

B. The addition cannot be sustained when the corresponding sales and books of account have been duly accepted by the Assessing Officer. It is a settled principle that sales cannot be effected without corresponding purchases.

In the instant case, the Assessing Officer (AO) made an arbitrary addition without either rejecting the books of account under Section 145(3) or identifying any specific defect in the accounting records. Notably, the sales declared by the assessee were accepted in full, and there was no adverse comment on stock, purchases, or the method of accounting employed.

Furthermore, complete quantitative details of the principal items traded can be verified from Clause 35(a) of the Tax Audit Report. The item-wise details of opening stock, purchases, and closing stock have been duly audited, and no adverse inference has been drawn in this regard.

It is a well-established principle of tax jurisprudence that even where books are rejected, the AO must base any estimation of income on a reasonable and justifiable foundation, such as past results, comparable cases, or prevailing industry trends. An addition based merely on conjecture or a fixed percentage—without any objective basis—is unsustainable in law.

Further, where the books of account are regularly maintained, duly audited, and supported by proper documentation, the burden is on the AO to establish concrete inconsistencies before drawing adverse inferences. Mere suspicion, non-responses from third parties, or general observations do not justify additions, particularly when the sales are undisputed. This view is supported by the following binding precedents:

ITAT LUCKNOW-DY. C.I.T. -6, KANPUR. VERSUS M/S KUSHAL FOODS PVT. LTD., KANPUR AND VICE-VERSA-2016 (7) TMI 1506 - ITA No.840/Lkw/2014, C.O.48/Lkw/2015 (in ITA No.840/Lkw/2014) Assessment year:2009-2010-Dated: - 27-7-2016

ALLAHABAD HIGH COURT-PR. COMMISSIONER OF INCOME TAX-I KANPUR VERSUS M/S KUSHAL FOODS PVT. LTD. KANPUR-2019 (3) TMI 913 - Income Tax Appeal No. - 58 of 2017-Dated: - 18-2-2019

ITAT KOLKATA - DHAR & COMPANY PVT. LTD. VERSUS AAYKAR BHAVAN, P-7, CHOWRINGHEE SQUARE, 4TH FLOOR, 2025 (5) TMI 1852 - ITA No. 1113/KOL/2024 - Dated: - 17-3-2025

THE PRINCIPAL COMMISSIONER OF INCOME TAX-17 VERSUS M_S MOHOMMAD HAJI, BOMBAY HIGH COURT, 2019 (2) TMI 1632 – DATED 11.02.2019

PR COMMISSIONER OF INCOME TAX SURAT-I Versus TEJUA ROHITKUMAR KAPADIA, GUJARAT HIGH COURT, 2017 (10) TMI 729

C. Provision of section 69C cannot be invoked where expenditure incurred and duly recorded in the books of accounts

Applicability of Section 69C

Section 69C of the Act applies only where the source of expenditure remains unexplained. In the present case, the purchases have been duly recorded in the regular books of accounts, supported by invoices, e-way bills, transport documents, and verifiable bank payments. Hence, the source stands explained, and invoking Section 69C is not justified.

No Discrepancy in Books of Account

The AO has not rejected the books of account nor pointed out any discrepancy or defect in the maintenance thereof. In the absence of any finding that the books are not reliable, addition under Section 69C cannot be made, especially when sales corresponding to purchases have been accepted.

Interdependence of Purchase and Sale

It is a well-settled principle of law that sales cannot exist in isolation without corresponding purchases. Since the sales declared have been accepted, the purchases cannot be disallowed merely on suspicion, particularly when the transactions are reflected in the books and supported by documentation.

Reliance is being placed on the following judicial pronouncements:-

IN THE ITAT DELHI BENCH 'B' IN THE CASE OF FEATHER INFOTECH (P.) LTD. V. DEPUTY COMMISSIONER OF INCOME-TAX- [2024] 161 TAXMANN.COM 441 (DELHI - TRIB.)- FEBRUARY 13,2024*

IN THE ITAT DELHI BENCH 'E'-MANDEEP SINGH ANAND V. ACIT- JANUARY 12,2024- [2024] 159 TAXMANN.COM 1225 (DELHI - TRIB.)*

In light of the above, and given that there is no defect in the assessee's books and the sales have been accepted, the addition made by the AO lacks legal justification and is liable to be deleted.”

9. Considered the rival submissions and material placed on record. We observed that the Assessing Officer has made addition on account of bogus purchases as well as on account of outstanding listed under sundry creditors. We observed that the Assessing Officer proceeded to make the addition for the simple reason that several parties to whom notices u/s 133(6) were issued but most of them are not responded, however we observed that two of the major parties who had responded and filed the relevant information, they are M/s. Salasar Trading Company and Shri Kishan Lal. However, the Assessing Officer proceeded to treat the purchases as bogus and proceeded to disallow the whole purchases from the parties who had not responded to the notice issued u/s. 133(6) of the Act. In this regard, we find force from the decision of ITAT Mumbai in the case of ACIT vs. Sonicwall Technology System Ltd. – ITA No. 3860/Mum/2019, has held as under:-

“In order to substantiate the genuineness of the payment to these 2 entities, the assessee furnished the bank account statement which reflected the payment made to these parties, invoices raised by these entities to the assessee, details of tax deducted on payment made to these parties, PAN No. and completed address. It is no doubt true that payment through the bank channel is not conclusive proof of the transaction. However, at the same time, when the assessee has provided all the information available with it regarding the transaction, merely on the basis that the entity has not responded to notice issued under section 133(6) of the Act the

transaction cannot be doubted and be treated as non-genuine, particularly when the same has been entered into with entities which are well know Hotel chain in India. It is also not the claim of the Revenue that these entities are not in existence or the documents furnished by the assessee are bogus. Thus, in the peculiar facts of the case, we find no basis in upholding the addition by the AO merely on the basis that only 2 out of 17 parties failed to respond to the notice issued under section 133(6) of the Act. Accordingly, we direct the AO to delete the addition of Rs. 22,43,401/-. As a result, grounds no. 2-6 raised in assessee's appeal are allowed."

It was held that non-responding to the notice u/s. 133(6) is not conclusive to come to conclusion that it is not un-genuine purchases. Further, the Hon'ble Bombay High Court held in the case of PCIT vs. Vaman Intl. P. Ltd. (Supra) that the burden is on the revenue to demonstrate that it is the income of the assessee when the assessee had provided relevant evidences at its disposal. The AO had to investigate further and allow the assessee to examine or cross examine the relevant parties, if there are doubts about the authenticity of the transaction. Therefore, we are inclined not to disturb the findings of the Ld. CIT(A). In the result, ground raised by the revenue is dismissed.

10. Respectfully following the aforesaid decisions, we are inclined to dismiss ground no.2 of Revenue's appeal.
11. With regard to ground no.3 of Revenue's appeal, brief facts are, during assessment proceedings, Assessing Officer observed that assessee has reported sundry debtors to the extent of Rs. 17,66,06,832/- and he has

analysed the information contained in 26AS and asked the Assessee to furnish the details of TDS/TCS. After analyzing the details, AO had specifically recorded the reasons to accept the explanation offered by the Assessee at page no. 9 of the assessment order. Therefore, the ground raised by the revenue is misleading. Hence, this ground also dismissed.

12. In the result, the appeal filed by the Revenue for AY 2022-23 is dismissed.
13. Since the facts in AYs 2022-23 are exactly similar to Assessment Year 2021-22, our above findings in AY 2022-23 are applicable *mutatis mutandis* in Assessment Year 2021-22. Accordingly, the appeal filed by the Revenue for AY 2021-22 is dismissed.
14. To sum up : both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on this 16th day of January, 2026.

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 16.01.2026

TS/

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**