

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI  
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**I.T.A. No. 2965/Mum/2025  
Assessment Year: 2009-10**

Santosh Laujari Gupta A-801, Raj Heights, MK Road, Near Vora Colony, Kandivali West, Mumbai PAN – ADUPG8487C	Vs	ITO – 33(3)(3) BKC Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Vimal Punmiya, CA
Respondent by	Shri Pravin Salunkhe, Sr.DR

Date of Hearing	14.10.2025
Date of Pronouncement	05.01.2026

**ORDER**

**Per: SHRI. SANDEEP GOSAIN, J.M.:**

The present appeal has been filed by the assessee challenging the impugned order dt. 19.12.2023 passed under section 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment year 2009-10. The assessee has raised the following grounds of appeal:

*1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming rejection of books of accounts of the appellant and estimating rate of gross profit to 8% by the learned Assessing Officer and thereby confirming addition of Rs. 2040380/- to the total income of the appellant.*

*2. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in*

*confirming rejection of books of accounts of the appellant by invoking provisions of section 145(3) of the Act by the learned Assessing Officer.*

*3. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) ought to have appreciated that proceeding initiated under section 147 of the Act and issuance of notice under section 148 of the Act is not in conformity with and is contrary to the provisions of the Act and liable to be cancelled / annulled*

*4. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) ought to have appreciated that notice issued under section 148 of the Act is without jurisdiction and not in conformity with provisions of the Act in as much as the learned Assessing Officer failed to obtain requisite sanction of prescribed authority as provide in section 151(2) of the Act prior to issuance of notice under section 148 of the Act and therefore order made under section 143(3) rws 147 is liable to be annulled.*

*5. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) ought to have appreciated that the impugned assessment order is illegal and void ab-initio as the learned Assessing Officer failed to issue notice under section 143(2) of the Act within the time limit stipulated under section 143(2) of the Act.*

*6. The learned Commissioner of Income Tax (Appeals) ought to have appreciated that order made under section 143(3) rws 147 of the Act by the learned Assessing Officer is illegal, bad-in-law, ultra virus, without allowing reasonable opportunity of the hearing, without appreciating facts, submission and evidences in their proper perspective, without providing copies of material relied upon without providing copy of reasons so recorded and without providing cross examination, is liable to be annulled.*

*7. The learned Commissioner of Income Tax (Appeals) erred in confirming charging of interest under section 234A, 234B and 234C and 234D of the Act*

*8. The appellant crave leave to add, amend, alter and / or vary any of the grounds of appeal before or at the time of hearing.*

2. All the grounds raised by the assessee are interrelated and interconnected and relates to challenging the order of Ld. CIT(A) in sustaining the additions made by the AO of ₹20,40,380 on account of estimating the rate of Gross Profit @ 8%, therefore, I have decided to adjudicate these grounds through the present consolidated order.

3. I have heard the councils for both the parties, perused the material placed and record, judgments cited before us and also the order passed by the revenue authorities. From the records, I noticed that assessee is running proprietorship concern in the name of M/s. Meltstar Metals trading in iron and steel. During the year under consideration, AO received information from DGIT investigation wing Mumbai to the effect that assessee was involved in taking accommodation entries from Hawala dealers identified by Maharashtra sales tax department.

4. Since the assessee was involved in bogus / non-genuine purchases from five parties namely...

1. *Paras Steel India* Rs. 7,76,362/-
2. *Coral Trading Co.* Rs. 22,14,822/-
3. *Chirag Corporation* Rs. 19,12,100/-
4. *Shree Yamuna Impex* Rs. 54,03,248/-
5. *BR Corporation* Rs. 33,04,157/-

to the extent of Rs. 1,36,10,689/- therefore AO issued notice u/s 133(6) of the Act for securing the presence and

recording statement of the respective parties, but all the notices issued under section 133(6) of the Act were received unserved. It was also notice that the TINs of those parties were also cancelled and the assessee had also failed to produce the said parties. It was also noticed from the records that the sales tax department had also listed these parties as “*bogus and non-genuine*” as they were providing the accommodation entries without doing any actual business.

5. During the course of assessment, the assessee could not produce the required copies of bills and could not substantiate that he had in fact entered into genuine transactions, therefore, AO while invoking the provisions of section 145(3) of the Act, rejected the books of accounts and estimated the GP @ of 8% instead of 4% as shown by the assessee.

6. At the outset Ld. AR submitted that similar additions on the identical grounds were also made in A.Y 2010-11 wherein the AO himself had made addition of gross profit @ 6.5% thus for the year under consideration, the AO cannot take different stand and estimated the GP @ 8%.

7. After having meticulously gone through the documents placed on record, judgements cited before us and also the facts of the present case, I am also of the view that AO while passing the order of assessment under the similar set of facts for the A.Y 2010-11 in assessee's own

case had estimated gross profit @ 6.5. Therefore, in order to maintain the consistency, I am also of the view that the estimation of gross profit under the present set of facts can also be assessed @ of 6.5% which is just and reasonable instead of 8% as upheld by Ld. CIT(A). Therefore, with these modification modifications, I upheld the other findings of Ld. CIT(A). Thus Ld.AO is directed to apply GP @ 6.5% on purchases amounting to Rs. 1,36,10,689/- consequently, the grounds raised by the assessee stands partly allowed.

8. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 05/01/2026.

Sd/-  
**(SANDEEP GOSAIN)**  
**(JUDICIAL MEMBER)**

Mumbai:

Dated: 05/01/2026

*KRK, Sr. PS.*

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)  
**ITAT, Mumbai**