

आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

BEFORE SHRI PAWAN SINGH, JM &
SHRI ARUN KHODPIA, AM

I.T.A. No. 6987/Mum/2025
(Assessment Year: 2011-12)

ITO-19(1)(1), 501, 5 th Floor, Piramal Chambers, Lalbaug, Mumbai-400012	Vs.	Chogaram Hiramji Dewasai, Office No. 501, 1 st Floor, 39/41, Parankuti Building, 4 th Kumbharwada, Mumbai - 400004 PAN: AAHPD0123E
Revenue -अपीलार्थी / Appellant	:	Assessee - प्रत्यर्थी / Respondent

Revenue by : Shri Harshad M. Karnik, Sr. DR
Assessee by : Ms. Neha Paranjpe, AR
Date of Hearing : 06.12.2025
Date of Pronouncement : 14.01.2026

ORDER

Per Arun Khodpia, AM:

The aforesaid appeal is preferred by the revenue to challenge the order of Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [for short “Id. CIT(A)”] dated 11.08.2025 for the AY 2011-12, which in turn arises from the order passed under section 144 r.w.s. 147 of the

Income Tax Act, 1961 (the Act) dated 29.02.2016 passed by the ITO-19(1)(3).

The grounds of appeal raised by the assessee are as under:

"1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 17,29,179/-made by the AO u/s 144 r.w.s. 147 of the Income Tax Act, 1961, without appreciating that the assessee failed to discharge the onus of proving the genuineness of purchases from nine suspicious dealers flagged by the Sales Tax Department and DGIT (Inv.), despite repeated opportunities and absence of delivery evidence, third-party confirmations, or independent inquiries."

2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in accepting post-facto submissions and reconciliation statements without verifying the physical movement of goods, transportation records, or delivery challans, and failed to appreciate that the assessee did not produce any of the alleged suppliers for cross-examination or provide their current whereabouts."

3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in rejecting the application of Section 145(3) invoked by the AO, despite clear findings that the books of accounts were incomplete and unverifiable in respect of purchases amounting to Rs. 69,16,717/-, and failed to consider that the GP ratio of 32.56% was justified in light of unverifiable transactions."

4. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying on judicial precedents without distinguishing the facts of the present case, which involved systemic concerns flagged by investigative agencies, and failed to appreciate that the AO's estimation was based on best judgment principles supported by third-party intelligence and audit trail deficiencies."

5. The Ld. CIT (A) has not appreciated 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."

6. *The appellant craves leave to add, alter, amend or withdraw any of the above grounds of appeal.*

The Tax- Effect involved in the instant case is Rs. 5,93,685/- which is below the prescribed limit for filing a further appeal before the Hon'ble ITAT. However, the case falls under one of the exceptions laid down in CBDT Circular No. 5/2024 involving "Organised Tax Evasion, such as bogus purchases and fictitious transactions through entities declared as non-genuine by state authorities. In the present case, the purchases were made from parties listed as hawala operators by the Sales Tax Department of Maharashtra, indicating a case of organised and intentional tax evasion. Hence, filing a further appeal before the Hon'ble ITAT in this case is recommended."

2. Concisely stated, the assessee has filed his return of income for the relevant year on 30.09.2011, declaring a total income of Rs. 7,16,250/-. The return of assessee was processed under section 143(1) of the Act. Further the case was reopened under section 147, thereby a notice under section 148 was issued on 08.10.2014. The revenue for reopening has formed the belief based on information with the AO that the assessee was one of the beneficiaries of bogus bills in the form of accommodation entries received from various parties amounting to Rs. 69,16,717/-, thus, certain income has escaped assessment. Queries were raised in the reassessment proceedings; however, the assessee did not make any submission before the AO, accordingly, an estimated 25% of the alleged non-genuine purchases was treated as income of the assessee and added to his income.

3. To challenge the aforesaid addition by the AO assessee preferred an appeal before the Id. CIT(A) who deleted the entire addition with the following observations:

“6. Decision

6.1 In Ground No. 1 to 3, the appellant has raised the issue of addition of Rs. 17,29,179/- (ie. 25% of bogus purchase for Rs.69, 16,717/-).

6.1.1 The appellant submitted that information was received by the Learned Assessing Officer (AO) from the Maharashtra Sales Tax Department, indicating that the appellant's name appeared on the list of "suspicious dealers" published on the department's website. These dealers were alleged to have issued purchase bills without actual delivery of goods. Further inquiries conducted by the Sales Tax Department revealed that either these parties were untraceable or, where traced, they denied having conducted any business and admitted to merely issuing accommodation bills.

Relying solely on this information, the Assessing Officer initiated independent proceedings and issued a notice under Section 142(1) of the Income Tax Act, calling for various details including: return of income, computation of income, profit and loss account, capital account, bank statements, list of sales and purchase parties with addresses and PANs, gross profit ratio, mode of payment, tax audit report, and balance sheet.

Despite the appellant furnishing these documents, the AO proceeded to pass an ex-parte assessment order under Section 144 read with Section 147 of the Act, without affording the appellant reasonable opportunity of being heard. The AO estimated 25% of the purchases made from nine alleged suspicious parties as non-genuine and added Rs: 17,29,179/- to the appellant's income. The addition was based on the presumption that the appellant had adopted a modus operandi to suppress profits by inflating expenses through accommodation entries. However, the AO did not dispute the corresponding sales or bring any cogent evidence on record to substantiate the allegation of bogus purchases or price inflation.

The appellant highlighted that the gross profit (GP) ratio for Assessment Year 2011-12 was 7.56%, which is higher than that of the preceding two financial years. Moreover, no effort was made by the AO to rebut the findings recorded by the DGIT (Investigation), nor were any seller parties produced or offered for cross-examination. It was further emphasized that the AO had not carried out any

independent verification or placed on record any documentary evidence to establish the alleged bogus nature of the purchases, especially when there was no relationship between the appellant and the suppliers, and the GP ratio remained consistently high.

To substantiate the genuineness of the transactions, the appellant submitted a paper book containing the audited balance sheet and profit & loss account as on 31.03.2011, copies of purchase bills and corresponding delivery challans, ledger accounts, and bank statements evidencing payment through account payee cheques. A reconciliation statement was also provided, demonstrating that goods purchased from these parties were sold at a price higher than the purchase price and above the average annual GP rate. Comparative purchase rates for each item from other suppliers further confirmed that the appellant made purchases at prevailing market rates and earned profits exceeding the declared GP rate of 7.56% on these transactions.

In light of the above facts, evidence, and legal position, the appellant respectfully prayed for deletion of the addition of Rs. 17,29,179/- made by the Assessing Officer.

6.1.2 The appellant's argument has been thoroughly examined and is considered to be valid. After considering the material placed on record, the written submissions, and the documents filed by the appellant, it is evident that the addition of Rs. 17,29,179/- made by the Assessing Officer is based solely on third-party information received from the Maharashtra Sales Tax Department, without any independent verification or inquiry. The Assessing Officer failed to bring on record any concrete evidence to substantiate that the purchases made by the appellant from the said nine parties were bogus in nature. Further, it is noteworthy that the corresponding sales have not been disputed and that the appellant has maintained a consistent and improving Gross Profit ratio of 7.56% during the year under review. which is higher than that of the preceding two years.

Further the appellant during the course appellate proceeding have submitted a paper book containing the audited balance sheet and profit & loss account as on 31.03.2011, copies of purchase bills and corresponding delivery challans, ledger

accounts, and bank statements evidencing payment through account payee cheques as addition evidence u/s 46A of the Act. The same were forwarded to AO for remand report. The AO vide remand report dated 17.07.2025 has submitted as follows:

"ii. As per additional evidence submitted during appellate proceeding and details submitted during Remand proceeding, assessee submitted details regarding the bogus purchases and explained/replied.

In support of his claim, he has submitted purchase bills for alleged bogus purchases along with other purchases bill for comparisons of rate for alleged bogus purchase, purchase register, sales register, ledger copy of all alleged bogus purchase parties, delivery challan, all Bank statements proving payment made through banking channel, Tax audit report along with the Audited Balance Sheet & profit & loss A/c, item wise Gross profit ratio with comparative purchase price from another supplier as well as gross profit on the alleged bogus purchases stock item-wise sale bill attached on sample basic, Comparative G.P. rate of last 3 years from which it can be seen that G.P. rate was higher than current year for Assessment yr 11-12. G.P. Rate was 7.56% which is higher than G.P. rate for A.Y 2010-11, it was 7.00% and in A.Y. 2009-2010 G.P. rate was 7.02%, hence current year G.P. is higher than previous two years. G.P. for the A.Y. 2011-12 is 7.56% while average G.P. of last three years 7.19%, (i.e. $7.56\% + 7\% + 7.02\%$)/3, which is higher.

iii. On perusal of additional evidence submitted during appellate proceeding and details submitted during Remand proceeding, it is found that assessee has submitted the details such as purchase invoices/bills, ledger copy of all alleged bogus purchase parties, purchase register, sales register, delivery challan, all Bank statements showing payment made through banking channel, Tax audit report along with the Audited Balance Sheet & profit & loss A/c. Further, assessee has submitted the reconciliation statement of all bogus purchase parties, individual item wise purchase accessing amount of Rs. 25,000/- with the comparative rate of genuine purchases parties along with the bills and made the reconciliation statement for which the higher amount is paid to the bogus parties of Rs. 1,25,026/- against which lower rate paid to the bogus parties to the tune of Rs. 2,50,373/- and making net of Rs. 1,25,347/-, which is lower amount aid to the bogus purchase parties and

this shows lower purchases from bogus parties and the same is offered in the profit & loss A/c. Assessee is retailer dealing in small items and purchase exceeding Rs. 25,000/- per item is taken as a basis on sample basis. Assessee has contended that GP rate for the assessment year 2011-12 is 7.56%, which is higher than the previous two assessment years. In assessment year 2010-11 GP is 7% and in the assessment year 2009-10 GP was 7.02%. Assessee has also claimed that the GP for the current year under review is 7.56%, which is higher than the average of 3 years GP, which comes to 7.19% (i.e. $7.56\% + 7\% + 7.02\%$)/3. Further, assessee has claimed that tax audit report is also not having any negative remark regarding the quantity details which is on record now and on test checking all these bogus purchase parties, it is found that the overall purchase price is on lower side hence no addition is recommended.

On perusal of above details and on the basis of explanation offered, it is found that contention of the assessee is tenable. In support of his claim, assessee has submitted requisite details as mentioned above, which is found to be tenable."

Bare perusal of remand report state that the Gross Profit rate for the year under review was 7.56%, which is higher than the average of the preceding three years, and that purchases from the disputed parties were made at comparatively lower rates. The reconciliation statements and supporting documents provided by the appellant substantiate the genuineness of the transactions. In view of the detailed submissions and evidence, no adverse inference is drawn, and no addition is recommended. The matter may be adjudicated by the appellate authority on the merits of the case.

In light of the detailed examination carried out during the remand proceedings. it is evident that the appellant has satisfactorily explained and substantiated the purchases in question by furnishing relevant documentary evidence, including purchase invoices, delivery challans, ledger accounts, bank statements reflecting payments through proper banking channels, and reconciliation statements. The remand report clearly acknowledges that the Gross Profit ratio of 7.56% for the assessment year under consideration is higher than the previous two years, and that purchases from the impugned parties were made at comparable or lower rates. Moreover, the Assessing Officer has neither disputed the sales nor

brought on record any independent or corroborative evidence to conclusively establish that the purchases were bogus or that the prices were inflated. The appellant's submissions, supported by audited financial statements and comparative analysis, further reinforce the genuineness of the transactions.

Therefore, considering both the findings in the remand report and the comprehensive submissions made by the appellant, **the addition made by the Assessing Officer for Rs.17,29,179/- appears to be unsubstantiated and liable to be deleted.**

These grounds of the appellant Allowed.”

4. Since the entire addition was deleted by the Id. CIT(A), aggrieved thereby the revenue is in appeal with the contentions as per grounds of appeal in present matter.

5. At the outset, the Id. AR drew our attention to the order of Id. CIT(A) stating that the assessee was unable to produce necessary evidence before the AO, however all such evidence, explanation and submissions were made before the Ld. CIT(A), who had forwarded such details to the Ld. AO for his comments through a remand report and as per remand report, which is culled out in the order of Id. CIT(A), Id. AO has categorically noted that *“On perusal of additional evidence submitted during the appellate proceedings and details submitted during remand proceedings it is found that the overall purchase price is on lower side, hence no addition is recommended”*. It is further submitted by Id. AR that on the recommendation of AO himself, the Id. CIT(A) has decided the issue, stating that the assessee has

furnished all the necessary explanations and details necessary, therefore the contention of assessee is tenable. Accordingly, the addition made by Ld. AO was treated as unsubstantiated and liable to be deleted. The ld. AR further submitted that in view of aforesaid decision of ld. CIT(A), which was very much in line with the observations of the Ld. AO in the remand report, so the appeal of revenue against their own admission is not only vague, but unsustainable.

6. The ld. Sr. DR on the other hand vehemently supported the order of ld. AO.

7. We have considered the rival submissions perused the material available on record and the decision of both the revenue authorities. Admittedly in present case, the assessee was unable to address the issue which was the reason for reopening of assessment, however necessary submission, explanation and evidence were furnished before the Ld. CIT(A), which were duly forwarded to Ld. AO in compliance of Rule 46A of the Income Tax Rules, 1962. The AO thereafter has furnished his remand report before the Ld. CIT(A) and admittedly offered the comment that the addition made can be vacated as the contention raised by the assessee are tenable in the eyes of law. Such admission by the revenue, debars them from raising the issue again, which was admittedly settled as conceded by the Ld. AO in remand report. We, therefore, find that the appeal filed by the Department was just to comply the procedure in mechanical

fashion, leading to unnecessary litigation. We thus hold that such appeal of Department with no substance, being bereft of merit, is liable to be rejected, consequentially, stands dismissed.

8. In result, the appeal of revenue is **dismissed**, in terms of our aforesaid observations.

Order pronounced in the open court on 14-01-2026.

Sd/-
(PAWAN SINGH)
Judicial Member

Mumbai, Dated : 14-01-2026.

**SK, Sr. PS*

Sd/-
(ARUN KHODPIA)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai