

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 4146/Mum/2025
(Assessment Year: 2017-18)**

Maharashtra Corporation Limited 90/908, 9 th floor, Dev Plaza, SV Road, Andheri West, Mumbai-400 058	Vs.	ITO Ward 4(2)(1), Aayakar Bhavan, Mumbai-400 020
PAN/GIR No. AAACM4096R		
(Applicant)		(Respondent)

Assessee by	Shri Kapil Hirani, Ld. AR
Revenue by	Shri Rajesh Kumar Yadav, Ld. DR

Date of Hearing	13.01.2026
Date of Pronouncement	19.01.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

This appeal is filed by the assessee against the order dated 17.10.2024 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “CIT(A)”] for Assessment Year 2017–18, whereby the CIT(A) dismissed the assessee’s appeal and confirmed the

addition made by the Assessing Officer under section 69C of the Income-tax Act, 1961[hereinafter referred to as “the Act”] as per his order dated 29.03.2022 passed under section 147 read with section 144B of the Act.

Condonation of Delay

2. At the outset, we note that there is a delay of 169 days in filing the present appeal before the Tribunal, as pointed out by the Registry. The assessee has filed an affidavit for condonation of delay, duly sworn by the Director of the assessee company, explaining the reasons for the said delay. On perusal of the affidavit, it is stated that the delay occurred on account of the assessee seeking appropriate legal advice and, more importantly, due to the serious ill health of the son of the Director, who was undergoing continuous medical treatment and therapy sessions from 07.02.2025 onwards, which substantially impeded the assessee’s ability to file the appeal within the prescribed period. It is further affirmed that the delay was neither wilful nor deliberate, that the assessee has not derived any benefit from the delayed filing, and that grave prejudice would be caused if the delay is not condoned.

3. Having considered the explanation furnished in the affidavit and keeping in view the settled legal position that substantial justice should prevail over technical considerations, we are satisfied that the assessee has demonstrated reasonable cause for the delay in filing the appeal. The explanation appears to be

bona fide and supported by sworn averments, and there is no material on record to suggest any mala fide intent or negligence. The learned Departmental Representative (DR) raised no objection in condoning the delay. Accordingly, in the interest of justice, the delay of 169 days in filing the appeal is condoned, and the appeal is admitted for adjudication on merits.

Facts of the Case

4. The assessee is a company incorporated under the Companies Act and is engaged in the business of trading in textile goods. The assessee filed its return of income for A.Y. 2017-18 on 14.02.2018, declaring a total income of Rs. 98,130/-. The return was initially processed under section 143(1) of the Act. Subsequently, based on information received by the Assessing Officer that the assessee had entered into transactions involving purchases from M/s Indo Count Industries Limited without taking actual delivery of goods, the Assessing Officer formed a belief that income chargeable to tax had escaped assessment. After obtaining the necessary approval from the competent authority, reassessment proceedings were initiated by issuance of notice under section 148 of the Act dated 31.03.2021. In response to the notice under section 148, the assessee filed its return of income. Thereafter, notices under sections 143(2) and 142(1) were issued and served upon the assessee, calling for details and explanations.

5. During the course of reassessment proceedings, the Assessing Officer sought information from the Jurisdictional Assessing Officer, who, in turn, furnished a copy of the statement of Shri Tilok Chand Kothari, Director of the assessee company, recorded under section 131 of the Act on 20.12.2019 by the Deputy Commissioner of Income-tax, Central Circle-7(4), Mumbai. In the said statement, the Director, in reply to Question No. 12 and Question No. 21, stated that the transactions with M/s Indo Count Industries Limited were effected without taking or giving physical delivery of goods, that the goods were sold in transit, and that the transactions were routed through banking channels, without involvement of cash. The Assessing Officer was of the view that the assessee had shown purchases amounting to Rs. 10,22,92,928/- from M/s Indo Count Industries Limited during the year under consideration, without any actual movement or delivery of goods, and that the transactions were merely accommodation entries supported by invoices and banking channels. The Assessing Officer rejected the assessee's explanation that the transactions were genuine and held that mere payment through account payee cheques and production of purchase invoices and transport documents do not establish the genuineness of purchases, particularly in view of the categorical admission made by the Director in his statement under section 131.

6. Relying upon judicial precedents, including CIT v. Prashant (P) Ltd. [1994] 121 CTR (Cal) 20 and N.K. Industries Ltd. v. DCIT

[2016] 72 taxmann.com 289, the Assessing Officer concluded that the purchases were bogus in nature and that the entire amount debited towards such purchases was liable to be disallowed. Accordingly, the Assessing Officer passed the reassessment order, determining the total income of the assessee at Rs. 10,23,91,060/- after making an addition of Rs. 10,22,92,928/- under section 69C of the Act. Penalty proceedings under section 271AAC were also initiated separately.

7. Aggrieved by the reassessment order, the assessee carried the matter in appeal before the CIT(A). The CIT(A) considered the grounds of appeal, the written submissions filed by the assessee and the assessment order. The CIT(A) upheld the reopening of assessment under section 147, holding that the information regarding bogus purchases and the statement of the Director constituted tangible material sufficient to form a prima facie belief that income had escaped assessment. On merits, the CIT(A) observed that the replies given by the Director to Question Nos. 12 and 21 were clear and categorical admissions that the transactions with M/s Indo Count Industries Limited were effected without actual delivery of goods and were only paper transactions. The CIT(A) held that the documentary evidence produced by the assessee was merely a façade created to give colour of genuineness to sham transactions. Relying upon the decision of the Hon'ble Gujarat High Court in N.K. Industries Ltd. v. DCIT (supra), as affirmed by the Hon'ble Supreme Court [SLP (C) No. 769 OF 2017, and other judicial precedents, the CIT(A)

held that once the purchases are found to be bogus, the entire amount of such purchases is liable to be added under section 69C and there is no scope for restricting the addition to gross profit. Accordingly, the CIT(A), vide order passed by the NFAC, dismissed the assessee's appeal and confirmed the addition of Rs. 10,22,92,928/- made by the Assessing Officer under section 69C of the Act.

8. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising following grounds of appeal:

1. *On the facts and circumstances of the case and in law, the reopening of the assessment and the assessment as completed is illegal, invalid, without jurisdiction, on borrowed satisfaction, without independent application of mind, violative of the principal of natural justice and which deserves to be quashed as per law and in the interest of justice.*
2. *On the facts and circumstances of the case and in law, the AO grossly erred in treating the purchases made by the Appellant amounting to Rs. 10,22,92,928 as non-genuine ignoring the evidence filed and the submissions of the Appellant and the legal proposition on the same and proceeded to make the addition on mere assumptions, presumptions, surmises and conjectures, without giving opportunity of cross examination, which makes the addition illegal, bad in law, violative of the principles of natural justice and liable to be deleted as per law and in the interest of justice.*
3. *On the facts and circumstances of the case and in law, the entire purchases allegedly held to be bogus being duly supported by third party evidences, the addition made by the AO without objectively and subjectively disproving the evidences so filed, and solely on the basis of statements recorded and information shared by officers other than the Assessing Officer, makes the addition grossly illegal and liable to be deleted as per law and in the interest of justice.*

4. *On the facts and circumstances of the case and in law the entire purchases made by the Appellant are genuine and which deserve to be accepted as such.*
 5. *On the facts and circumstances of the case and in law, the books of accounts having been accepted as well as the sales made by the Appellant, the corresponding purchases also ought to have been accepted as per law and in the interest of justice.*
 6. *Without prejudice, in case any purchases made by the Appellant are held to be non-genuine, then the addition deserves to be restricted only to the gross profit on the same as per law and in the interest of justice.*
 7. *The Appellant craves leave to add, amend, alter, vary and / or withdraw the above grounds of appeal with the kind permission of the Hon'ble Tribunal.*
9. The learned Authorized Representative (ar) submitted that the addition made by the Assessing Officer under section 69C of the Act on account of alleged bogus purchases from M/s Indo Count Industries Limited, is wholly unjustified, contrary to facts on record, and based on an erroneous appreciation of evidence. It was submitted that during the year under consideration, the assessee had made purchases aggregating to Rs. 10,22,92,928/- from M/s Indo Count Industries Limited and that the assessee had duly discharged its prima facie onus by proving the nature and source of such purchases. In support thereof, the assessee had furnished before the Assessing Officer the following documents during the assessment proceedings:

- Copy of annual accounts along with relevant annexures for A.Y. 2017-18

- Copies of purchase invoices and consignment notes issued by M/s Indo Count Industries Limited
- Copy of purchase register and sales register
- Copy of ledger account of M/s Indo Count Industries Limited in the books of the assessee
- Bank statements highlighting payments made to M/s Indo Count Industries Limited

10. The learned AR submitted that all payments for the aforesaid purchases were made through banking channels, duly reflected in the books of account, and that the Assessing Officer had examined the said documents. It was contended that no infirmity or discrepancy was pointed out by the Assessing Officer in the documentary evidence furnished by the assessee, nor was any independent material brought on record to substantiate the allegation that the purchases were bogus.

11. It was further contended that the Assessing Officer treated the purchases as non-genuine merely on the basis of a misinterpretation and misunderstanding of the statement of the Director, recorded earlier by the Deputy Commissioner of Income-tax, Central Circle-7(4), Mumbai. According to the learned AR, the statement, when read in entirety, merely indicates that the goods were **sold in transit**, which is a recognised commercial practice in the textile trade, and does not amount to an admission of bogus or sham transactions.

12. The learned AR further submitted that, without prejudice to the above, additional evidences were also filed before the learned CIT(A), including One-to-one reconciliation of purchases and corresponding sales, Copies of bank statements highlighting the transactions with M/s Indo Count Industries Limited and copies of GST Form 2A for the relevant months. It was submitted that these evidences further corroborate the genuineness of the transactions and establish that the purchases were duly accounted for and subjected to indirect tax compliances.

13. Without prejudice to the aforesaid submissions, the learned AR submitted that even assuming, though not admitting, that the purchases made by the assessee from M/s Indo Count Industries Limited are held to be non-genuine, the addition cannot be sustained for the entire purchase amount. It was contended that, in such a situation, the addition, if any, ought to be restricted only to the gross profit element embedded in such purchases, as the corresponding sales have been accepted and the books of account have not been rejected. It was submitted that restricting the addition to the gross profit would meet the ends of justice and would be in consonance with the settled legal position.

14. The learned DR relied upon the orders of the Assessing Officer and the CIT(A) and submitted that the lower authorities have correctly appreciated the facts and the law while confirming the addition of Rs. 10,22,92,928/- under section 69C of the Act. The learned DR placed strong reliance on the recent judgment of

the Hon'ble Bombay High Court in ***Principal Commissioner of Income-tax v. Kanak Impex (India) Ltd. [2025] 172 taxmann.com 283 / 474 ITR 175 (Bom.)***, and submitted that the said decision squarely covers the issue against the assessee. In particular, the learned DR drew our attention to paragraphs 19, 20 and 23 of the said judgment, which directly deal with the impermissibility of restricting additions to gross profit once purchases are held to be bogus and section 69C is attracted. The learned DR submitted that the Hon'ble Bombay High Court has categorically held that once the assessee fails to prove the genuineness of purchases and the source of expenditure, the provisions of section 69C are squarely attracted, and the entire amount of such bogus purchases is liable to be added, without resorting to estimation of gross profit. It was further submitted that the alternative plea of the assessee for restricting the addition to gross profit is expressly negated by the aforesaid judgment, as any such restriction would result in implied allowance of unexplained expenditure, which is impermissible in view of the statutory bar contained in section 69C. The learned DR, therefore, submitted that the orders of the Assessing Officer and the CIT(A) deserve to be upheld and the appeal filed by the assessee is liable to be dismissed.

15. We have carefully considered the rival submissions, perused the orders of the lower authorities, and examined the documentary material placed on record. The core issue before us is whether the addition of Rs. 10,22,92,928/- made under section

69C of the Act, on account of alleged bogus purchases from M/s Indo Count Industries Limited, is sustainable in the facts and circumstances of the case.

16. At the outset, it is an undisputed position that the assessee has furnished complete documentary evidence in support of the impugned purchases, including purchase invoices, consignment notes, purchase and sales registers, ledger accounts, bank statements evidencing payments through banking channels, and audited books of account. It is equally undisputed that neither the Assessing Officer nor the CIT(A) has pointed out any defect, discrepancy, or inconsistency in these documentary evidences.

17. We note that the sole basis for treating the purchases as bogus is the statement of the Director of the assessee company, recorded under section 131 of the Act by another authority. Except for placing reliance on the said statement, no independent enquiry has been conducted by the Assessing Officer to disprove the documentary evidence furnished by the assessee. There is also no material brought on record to establish that the payments made by the assessee had returned to it in any manner, either in cash or otherwise.

18. The contention of the learned AR that the statement of the Director has been misread and misunderstood merits serious consideration. When the statement is read in its entirety, it merely indicates that the goods were sold in transit, without physical delivery being taken by the assessee. Such a practice, as

contended by the learned AR, is a recognised commercial practice in the textile trade, and by itself cannot be equated with an admission of bogus or sham transactions. Importantly, the statement does not contain any admission of receipt of cash, accommodation entries, or circular movement of funds.

19. We further note that the assessee had also filed additional evidences before the learned CIT(A), including one-to-one reconciliation of purchases and corresponding sales, copies of bank statements highlighting transactions with M/s Indo Count Industries Limited, and copies of GST Form 2A for the relevant months. These evidences further corroborate the fact that the purchases were duly recorded, paid through banking channels, matched with corresponding sales, and subjected to indirect tax compliances. However, even these additional evidences have not been controverted or rebutted by the lower authorities through any cogent material or enquiry.

20. The learned DR has placed reliance on the decision of the Hon'ble Bombay High Court in Kanak Impex (India) Ltd. (supra). However, on a careful examination, we find that the facts of that case are clearly distinguishable. In that case, there was a specific investigation by the Sales Tax Department, findings of VAT violations, and material establishing the assessee's active involvement in obtaining bogus bills. Further, the issue arose in the context of established accommodation entry operations. In the present case, no such investigation findings, either by the

Sales Tax Department or any other agency, have been brought on record by the Revenue. There is no evidence of cash withdrawals, no trail of money, and no material to demonstrate that the assessee was a beneficiary of accommodation entries. Even as noted in the Kanak Impex decision itself, the Hon'ble High Court emphasised the presence of material indicating bogus billing and unexplained expenditure. Such foundational facts are conspicuously absent in the present case.

21. Therefore, in the absence of any independent enquiry, corroborative evidence, or material establishing bogus purchases or unexplained expenditure, the addition of the entire purchase amount under section 69C is not sustainable merely on the basis of a statement, particularly when the documentary evidences remain uncontroverted.

22. We have given our anxious consideration to the decision of the Hon'ble Bombay High Court in Principal Commissioner of Income-tax v. Kanak Impex (India) Ltd. [2025] 172 taxmann.com 283, relied upon by the Revenue, and we are also conscious that the Special Leave Petition filed by the assessee therein has been dismissed by the Hon'ble Supreme Court, thereby lending finality to the legal position enunciated therein. The ratio laid down by the Hon'ble High Court, namely that where the assessee fails to prove the genuineness of purchases and the source of expenditure, the provisions of section 69C mandate disallowance of the entire amount, is binding.

23. However, it is equally well settled that the application of a binding precedent is contingent upon the existence of the foundational facts on which such precedent rests. A judgment cannot be mechanically applied divorced from its factual matrix. The Hon'ble Supreme Court has repeatedly held that a decision is an authority for what it actually decides and not for what may logically follow therefrom.

24. In *Kanak Impex*, the Hon'ble High Court upheld full disallowance under section 69C on the basis of specific and corroborative incriminating material, including:

- i. investigation by the Sales Tax Department establishing VAT fraud,
- ii. findings that the assessee was actively involved in obtaining bogus bills,
- iii. material showing that the alleged suppliers were hawala operators, and
- iv. circumstances demonstrating that the purchases were entirely fictitious accommodation entries.

The existence of such material formed the jurisdictional foundation for invoking section 69C to its full rigour.

25. In the present case, however, the Revenue has not brought on record any comparable incriminating material. There is no investigation report of the Sales Tax Department, no finding of VAT violation, no identification of the assessee as a beneficiary of hawala billing, and no material to establish that the suppliers

were mere name-lenders. Most significantly, there is no evidence of any cash withdrawal, circular movement of funds, or money trail to demonstrate that the payments made by the assessee had returned to it in cash or otherwise.

26. We also note that, even in *Kanak Impex*, the Hon'ble High Court emphasised that the assessee therein had failed to discharge the onus of explaining the source of expenditure and that such failure was supported by surrounding incriminating circumstances. In contrast, in the present case, the assessee has furnished complete documentary evidence, including purchase invoices, bank statements evidencing payments through banking channels, quantitative reconciliation of purchases and sales, and GST Form 2A. None of these evidences has been disproved or contradicted by the Assessing Officer or the CIT(A) through independent enquiry.

27. The sole basis for the impugned addition is the statement of the Director, wherein it is stated that goods were sold in transit and physical delivery was not taken. When read in its entirety, the statement does not contain any admission of bogus purchases, accommodation entries, or receipt of cash. Sale of goods in transit, as explained by the assessee, is a recognised commercial practice in the textile trade, and in the absence of corroborative material, such statement by itself cannot be elevated to conclusive proof of unexplained expenditure within the meaning of section 69C.

28. At the same time, we are unable to lose sight of the fact that the nature of transactions, coupled with sale-in-transit mechanism, does introduce an element of opacity, which cannot be entirely ignored. While the evidentiary threshold required to sustain 100% disallowance under section 69C, as upheld in *Kanak Impex*, is not met in the present case, the factual matrix does justify a reasonable inference of possible suppression of profit. The present case, therefore, stands on a distinct factual footing, falling between two extremes:

- i. it is not a case where the purchases are proved to be entirely fictitious so as to warrant full disallowance under section 69C, nor
- ii. is it a case where the transactions are so transparent as to warrant deletion of the addition in toto.

29. In this backdrop, and having regard to the without prejudice plea of the assessee, we are of the considered view that restricting the addition to the profit element embedded in such transactions would best subserve the ends of justice. Such an approach does not dilute the ratio of *Kanak Impex*, but represents a fact-based calibration of its application, consistent with the statutory scheme and principles of judicial discipline.

30. Accordingly, while respectfully following the law laid down in *Kanak Impex*, we hold that on the facts of the present case, the rigour of section 69C cannot be applied in entirety. However, considering the likelihood of profit suppression, an estimated addition at 6% of the impugned purchases, comprising gross

profit and suppression element, is justified and is accordingly sustained.

31. In view of the foregoing discussion, the addition of Rs. 10,22,92,928/- made under section 69C is deleted to the extent of 94% and restricted to 6% of the impugned purchases. The Assessing Officer is directed to recompute the addition accordingly.

32. Although a legal ground challenging the validity of the reassessment proceedings was raised in the memorandum of appeal, no arguments whatsoever were advanced by the learned AR on this issue at the time of hearing. We further note that the learned CIT(A) has already examined and decided the said legal ground against the assessee. In the absence of any submissions or challenge before us on this aspect, we see no reason to interfere with the finding of the CIT(A) and, accordingly, the said legal ground is not adjudicated separately.

33. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 19.01.2026.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 19/01/2026
Dhananjay, Sr.PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai