

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No. 3895/Del/2013 (AY 2009-10)

<b>ACIT Circle-1 Meerut</b>	<b>Vs</b>	<b>Meerut Roller Flour Mills (P) Ltd. 214-A Ganj Bazar Sadar Meerut Cantt Meerut AAACM9399K</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

&

ITA No. 2187/Del/2017 (A.Y.2009-10)

<b>Meerut Roller Flour Mills (P) Ltd. 214-A GanjBazar Sadar Meerut Cantt Meerut AAACM9399K</b>	<b>Vs</b>	<b>ACIT Circle-1 Meerut</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

<b>Appellant by</b>	<b>Shri Sanjiv Sapra, CA</b>
<b>Respondent by</b>	<b>Ms. Harpreet Kaur Hansra, Sr. DR</b>

Date of hearing:	14/1/2026
Date of Pronouncement:	23/1/2026

## **ORDER**

### **PER SUDHIR KUMAR, JM:**

This appeal filed by the Revenue is preferred against the original order dated 28-03-2013 of the Ld. Commissioner of Income –Tax (Appeal) Meerut (in short “the Ld. CIT(A)) relevant to assessment year 2009-10. The Assessee has filed the appeal against the Ld. CIT(A) order dated 8.3.2017.

2. The Revenue has raised the following revised grounds in appeal:

1. Whether in the facts and circumstances of the case, the CIT (A) has erred in law in deleting the addition of Rs. 1747803/- made by the AO u/s 68 of the IT Act, 1961 on account of alleged unexplained sundry credits ignoring that the unexplained cash credits are liable to be added u/s 68 of the T Act, 1961 as the assessee had failed to prove the genuineness of transactions and creditworthiness of the creditors with respect to the amounts allegedly standing in the assessee's account.

2. Whether in the facts and circumstances of the case, the CIT (A) has erred in law in directing the AO to delete the addition of Rs. 33872852/- made by the AO on account of unproved purchases, subject to verification of the PAN, assessment status of the suppliers from the concerned AOs, ignoring that the same were unproved purchases which are liable to be added in the income as

the assessee had failed to prove the genuineness of transactions and even notices sent to the suppliers u/s 133(6) of the IT Act, 1961 were returned back unserved.

3. Whether in the facts and circumstances of the case, the CIT (A) has erred in deleting the addition of Rs. 20585086/- made by the AO without appreciating the fact that addition was made on account of inflated purchases where notices sent to the suppliers were returned back unserved despite which the AO had made a very reasonable addition of mere 10% of total purchases.

4. Whether in the facts and circumstances of the case, the CIT (A) has erred in law in admitting the additional evidences while deleting the addition made by the AO u/s 68 of the IT Act, 1961 in violation of the principles laid down as per Rule 46A of IT Rules, 1962 as none of the conditions of subject clause (a), (b), (c) & (d) of clause 1 of the Rule was satisfied.

5. That the appellant craves leave to add, modify and/or delete any ground(s) of appeal.

6. In the facts and circumstances of the case, the order of the CIT (A) may be set aside and that of the AO restored.

3. The brief facts of the case are that the assessee is engaged in the business of manufacturing and sale of wheat product like maida, sujji, atta, and bread. For the year under consideration, the assessee filed return of income on 25-09-2009 declaring total income of Rs.47,26,344/- in the stats of company. The case of assessee was selected under scrutiny with the

approval of CCIT Ghaziabad and statutory notice u/s 132(2) of the Income Tax Act,1961 (in short “the Act”) dated 23-09-2010 was issued to the assessee. Again notice u/s 142(1) of the Act along with questionnaire was issued to the assessee. During the course of assessment proceedings the assessee was asked to file confirmed copies of account of all Sundry Creditors. Confirmations of three Sundry Creditors were not filed by the assessee. In order to verify the genuineness of purchase declared by the assessee, notices under section 133(6) of the Act were issued to 19 parties, out of which notices upon two parties namely, Mohit Trading Company, A-1/307, Sector -6 Rohini, Delhi -85 and Surana Brothers, C-106 MP Enclave, Pitampura Delhi -34 were return back unserved. The total purchase of the said two parties were declared to the tune of Rs.3,38,72,852/-. The Assessing Officer while framing the assessment order has observed:

*“Since both the addressees were of residential colonies in Delhi, where possibility of existence of any such entity that could supply material worth crores without maintaining and godowns was not there, the field verifications were made. It was found that at both these addresses no such companies existed. Vide order sheet entry dated 28.12.11, this fact of their non existence at the address provided was brought to the knowledge of the assessee. Since the parties have not been found the address provided by the assessee, assessee has also not filed their confirmed copy of account, these purchases of Rs. 3,38,72,852/- are not treated as genuine. Accordingly, they are being added to the income of the assessee as non genuine purchases.”*

3.1 The Assessing Officer also made the addition of Rs.2,06,85,086/- of 10% of the purchases in the total income of the assessee towards inflated purchases as the assessee has not filed the confirmations by disallowing towards purchases.

4. Aggrieved the order of the AO the assessee preferred the appeal before the Ld. CIT(A) who deleted the additions of Rs.17,47,803/- and Rs.2,06,85,086/- on merits. However while deleting the addition of Rs.3,38,72,852/- on account of purchases made from M/s Mohit Trading Co & M/s Surana Brothers on the basis of the evidence filed by the assessee the Ld. CIT(A) has observed as under:-

*“3.5 The facts of the case have been considered. The only ground taken by the AO, both during the assessment and the remand proceedings is that the enquiry letters issued to the two parties had been returned unserved and/or the assessee could not produce the said party before the CIT(A). It is clarified that though reference had been made in the assessment order to certain field enquiries, in the letter issued by this office to the AO during the appeal proceedings, the Specific details of such enquiries had been sought. However, the AO, in his remand report, has not given any remark with regard to such field enquiries. Therefore, it is assumed that the field enquiries, claimed to have been conducted in the assessment order, was a figment of AO's imagination. On the other hand, the fact that confirmations bearing the PAN, copies of the account of the parties for the year under consideration and the subsequent year evidencing credits on account of purchases and debits on account of payments made, through banking channels and purchase/sale bills of the party concerned with supporting documents have been given no credibility by the AO. Clearly, the AO does not seem to be interested in pursuing the audit trail*

*afforded by a purchase transaction but instead has repeatedly harped upon the obligation of the assessee to produce the party/ensure reply from the parties to the enquiry letters. It is not understood as to how the assessee is expected to have control over the parties from whom purchases are made, particularly several years after purchases had been made and payments against such purchases have also been made, so that they are at the beck and call of the assessee. These are not cases of cash credit which are in the nature of uni-dimensional transactions whereby one party has advanced the money to an assessee. In such cases, considering the nature of transaction, the statute has deemed it fit to incorporate Section 68 which casts burden on the assessee to substantiate the genuineness of such credit. In the case of a purchase, there are multiple audit trails, in the shape of documentation of purchase, transportation of goods, utilization of the goods for business purposes (raw material in the case of manufacturing and sale in the case of trading) and payments made in respect of such purchases. The AO has considerable power in his armory to investigate these aspects and establish if any purchase is not genuine. He cannot merely state that since an assessee has not produced a supplier that supplier has not responded to an enquiry letter or such enquiry letter has been returned unserved, the purchases as nongenuine. As held by the Allahabad the High Court in the case of Pancham Dass Jain (205 CTR for 44), the provisions of section 68 are not attracted to amounts representing purchases made on credit. Reference is also made to the decision of the honourable Supreme Court in the case of Orissa Corporation P Ltd (151 ITR 78) wherein it was held that where an assessee has given the names and addresses of creditors and it was also in the knowledge of the revenue that they were income tax assesseees, the onus lies on the revenue to pursue enquiries in such creditors. Mere issue of enquiry letters by the AO is not sufficient in such cases. Reference is made to the decision of the Supreme Court in the case of Lalchand Bhagat Ambica Ram (37*

*ITR 288), it was held that when a court of fact arrive at its decision by considering material which is irrelevant to the enquiry or acts on material, partly irrelevant and partly irrelevant and it is impossible to say what extent the mind of the court was affected by irrelevant material used by AO in arriving at its decision, a question of law arises, whether the finding of the court is not vitiated by reason of its having relied upon conjectures, surmises and suspicions not supported by any evidence on record or partly upon evidence and partly upon in admissible material. On no account whatever should the fact-finding authority base its findings on suspicions, conjectures on surmises, nor should it act on no evidence at all or improper rejection of material and relevant evidence or partly on evidence and partly on suspicion, conjectures and surmises. It was held that if an assessee has given the name and address of a party, it has discharged the burden that had been cast upon him. This particular case was where an assessee had received a loan. In the present case, the credit in the books of accounts is arising on account of purchases. Obviously, the onus to prove the genuineness of the transaction lies more in the case of a loan than in case of a purchase transaction. Never the less, the assessee was requested to ascertain why the enquiry letters issued to the two parties had been returned unserved. It now transpires that both the parties are the concerns of a single individual Shri Chagganlal Jain, who has given a letter saying that he had closed his business and for this reason, the enquiry letters issued by the Department had been returned unserved. Never the less, keeping in view the quantum of disallowance and as a measure of abundant caution, the AO is directed to conduct enquiry with the AO having jurisdiction over the PAN of this party and ascertain whether return of income had been filed for the relevant year by this party and if so, he had disclosed turnover of business in such return, in excess of the amount of purchases, shown by the assessee as having made from the said party. If the result of such verification is negative, the addition*

*is confirmed. Otherwise, the AO is directed to delete the addition.”*

4. The assessee filed a writ petition before the Hon’ble Allahabad High Court challenging the said directions of the Ld. CIT(A). The Hon’ble High Court dismissed the writ petition on the ground of availability of alternative remedy as the same can be challenged before the ITAT. Consequently the Revenue and assessee filed the appeals. The ITAT by order dated 13-04-2007 dismissed the appeal of the Revenue and appeal of the assessee allowed. Being aggrieved the order of the ITAT the Revenue filed the appeal before the Hon’ble Allahabad High Court which was allowed. The Hon’ble High Court observed as under:

*“The Tribunal, being the last court of fact and law, ought to have considered the materials on record, especially, when it has come on record that the said party has not filed the return of income. The tribunal was swayed away by the contention of the respondent –assessee , but lost sight of the fact that the Revenue has also raised the issue of addition of Rs.3,38,72,852/- to be non –genuine purchases.*

*In view of the aforesaid facts and circumstances of the case, the impugned judgment and order dated 13-04-2017 passed in income Tax appeal No. 3895/Del/2013 by the Income Tax Appellate Tribunal Delhi Bench ‘E’ New Delhi cannot be sustained and it is set aside to the extent.*

*The appeal succeeds and is allowed. The matter is remanded back to the Tribunal concerned to re-hear the matter afresh and decide the appeal on merits.*

*The question of law is answered in favour of the Revenue and against the respondent-assessee.”*

5. The Ld. Sr. DR submitted that the proper opportunity was given to the assessee to prove the entity of the parties. She also submitted that the AO was found that at both address given by the assessee no such companies were existed. The both companies has not filed the return of income, which also create the doubt regarding the existence of the companies. The both companies has not filed the confirmation. She relied the order of the Ld. AO.

6. Ld. AR of the assessee submitted that addition cannot be made on the basis of not filing the return of income. He also submitted that purchases made by the both parties are supported by the sale bills of parties containing their sale tax registration telephone numbers etc. The assessee was filed the PAN number of Shri Chagganllal Jain proprietor of the both proprietorship concerns. The sale which have been made through Form No.38 were accepted in Sales Tax assessment. The assessee also filed the bill of the transportation to prove the genuineness of the transaction. The books of accounts maintained and audited by the assessee have not been rejected by the Assessing Officer. Reliance is placed on the following decisions: (i) ITO v. Sri Puspall Kumar Das ITA No. 1442/Kol/2012

(ii) 141 taxmann.com 509 Pr. CIT v. Shapoorji Pallonji and Co. Ltd. (Supreme Court)

6.1 He also submitted that if the purchases were not verified than all the amount of purchase cannot be included in taxable income. In the case of CIT v. Bhalanath Poly Fab Pvt. Ltd. 355 ITR 290 it was held that the maximum amount that may be include in taxable income is the profit element embodied in such purchases. Reliance is placed on the following decisions :

- (i) Pr. CIT v. Rishabhdev Tachnocable Ltd. (2020) 424 ITR 0338 (Bom.)
- (ii) PCIT v. Mohommad Haji Adam & Co (2019) 103 Taxmann.com 459(Bom)
- (iii) CIT v. Bhalanath Poly Fab Pvt. Ltd. 355 ITR 290

6.2 We have heard both the parties and perused the records. We find that the both parties were not found at the given addresses and assessee had failed to file the confirmed copy of these parties. During the assessment order the Assessing Officer found that at the given addresses no such companied existed. Both the parties have not filed the return of income for the year under consideration. None filing the ITR by the both parties creates the doubts regarding the genuineness and creditworthiness of the parties. The Assessing Officer added the 10% of the purchases to the

total income of the assessee towards the inflated purchases, because assessee has failed to file the confirmation, although this addition has been deleted in the appeal. The assessee had offered the Net profit at the rate of 0.61% and Gross profit 4.73% for the A.Y.2009-10. The total purchases amount from the both parties cannot be included in the taxable income but profit on purchases be included in the taxable income. Considering the facts and circumstances of the case we, deem it fit and proper to restrict the profit @5% estimated gross profit on alleged purchases amounting to Rs. 3,38,72,852/-.

7. In the result, the Revenue appeal is partly allowed.

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8. Assessee filed this appeal against the Ld. CIT(A) order dated 8.3.2017. The assessing officer passed the giving effect of the order dated 28-03-2013 of the Ld. CIT(A) and in the compliance of the Hon'ble High Court order passed in writ Tax No. 163 of 2014 dated 13-03-2014 and relief allowed of Rs.2,24,32,889/- to the assessee. Aggrieved the order of the AO the assessee preferred the appeal before the Ld. CIT(A), who dismissed the appeal. The Ld. CIT(A) observed in his order as under:

*Thus it is evident from the caption that the said assessment order has been passed in consequence to the direction of the Ld. CIT(A), Meerut. In this regard, it is pertinent to note that u/s 246 there is no section providing for adjudication by CIT(A) of an order passed u/s 250/143(3) of the Act.*

*Further, the canons of judicial propriety do not allow for a co-equal judicial Authority to adjudicate a matter/ order which has been passed as a consequence of specific directions given by another co-equal Authority namely a CIT(A).*

*In view of the forgoing discussion the present appeal is not maintainable before the undersigned and is accordingly dismissed.*

**In the result, the appeal is dismissed.**

9. Being aggrieved the order of the Ld.CIT(A) the assessee is in appeal.

We have heard both the parties and perused the records. Against the original assessment order, the appeal filed by the assessee was allowed by the ITAT by order dated 13-04-2017 and appeal filed by the Revenue was dismissed. The Assessing Officer passed the giving effect order in the compliance of the order of the Ld CIT(A), but the Hon'ble ITAT

allowing the appeal of the assessee deleted the addition made by AO, thus the appeal becomes infructuous and dismissed being infructuous.

10. In the result, the Revenue appeal is partly allowed and Assessee's appeal is dismissed being infructuous.

Order pronounced in the open court on 23-01-2026.

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**  
**\*SR BHATNAGGAR\***

Sd/-  
**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

Date:- 23.1.2026

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT NEW DELHI**