IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI

BEFORE
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No.3592/Del/2025, A.Y. 2021-22

M/s. Cone Craft Paper Pvt. Ltd. 2/37 4th Floor, ANSARI ROAD, Dariya Ganj, Central Delhi PIN: 110002 New Delhi PAN: AAACC5135H	Vs.	Principal Commissioner of Income Tax, Delhi-1,
(Appellant)		**(Respondent)**

Appellant by	Sh. Gaurav Kalra, AR
Respondent by	Ms. Amisha S Gupt, CIT DR

Date of Hearing	10/12/2025
Date of Pronouncement	29/01/2026

O R D E R

PER RAJ KUMAR CHAUHAN (J.M.):

1. The appeal is directed against the order dated 19.03.25 passed by Principal Commissioner of Income Tax, Delhi [Hereinafter referred to as the "PCIT"] under section 263 of the Income Tax Act, 1961 (hereinafter referred to 'the Act') wherein the assessment order dated

23.12.2022 was held to be erroneous and prejudicial to the interest of Revenue and Assessing Officer ('AO') was directed to pass a fresh order taking necessary remedial action as per direction of the Ld. PCIT.

2. The facts in brief as culled out from the order of the authorities below are that the appellant/assessee is a company engaged in trading business of all type of paper e.g. waste paper, craft paper, Duplex Board etc. The assessee filed its e-ITR on 7th March, 2022 for the concerned A.Y. 2021-22 declaring total income of Rs. 82,84,260/-. Subsequently, the assessee filed revised return on 8th March, 2022 declaring total income of Rs. 82,84,260/- and the said return of income was processed by the CPC, Bangaluru, wherein notice u/s 143(2) of the Act dated 28.06.2022 was issued and thereafter notice u/s 142(1) of the Act dated 5th August, 2022 and 4th October, 2022 were issued but no reply was filed. However, the reply was filed for additional queries raised vide letter dated 20.10.2022 and subsequent to that notice u/s 142(1) of the Act dated 08.11.2022 was issued to which part reply was filed. Final show cause notice was issued on 12.12.2022 but no reply was received. However, the assessee company filed reply on 26.10.2022 to the notice dated 05.08.2022 giving

details of turnover, gross profit and net profit for A.Y. 2020-21 and 2021-22 and 2019-20.

3. During the course of assessment proceedings, the assessee company was asked to provide details of purchases made by it during the year under consideration. It is noted that the assessee company has not furnished any document/details regarding genuineness and creditworthiness of the substantial purchases from suppliers who were either non-filers or have filed non-business ITR or reflected a substantially lower turnover in ITR as compared to turn over shown in GSTR-1 return. On perusal of the information related to purchase made by the assessee company available as per GSTR-1 data with the Income Tax Department, it is noticed that the assessee company has made purchases from several persons /entities during the year under consideration. Out of those entities, several parties/ suppliers have not filed the return of income for A.Y. 2020-21 and 2021-22 or shown very low turnover. Accordingly, notice u/s 133(6) of the Act were issued to the several parties/ suppliers to verify the genuineness/ correctness of the transaction in which the following party have not filed any reply to the notice details of which is as under:

Srl.	*Party Name*	*Party PAN*	*Purchase as per*

No.			*information available (Rs.)*
1.	*Manoj Prasad Gupta*	*CKUPM8767*	*1,56,720/-*
2.	*Arjun Prasad*	*BEQPP6996F*	*1,77,210*
3.	*Matrix Cellular (International) Services Private Limited*	*AAECM5169M*	*2,948*
4.	*Gaurav Kumar Shukla*	*DNTPS6045C*	*30,87,979*
5.	*Bijal AHIR*	*AODPA3934J*	*2,119*
6.	*AJAY KUMAR*	*IGYPK2414Q*	*2,11,730*
7.	*FURQAN*	*ADTPF4365M*	*1,23,027*
8.	*BHASO KUMAR YADAV*	*ABVPY3744M*	*9,19,850*
9.	*NITESH KUMAR SRIVASTVA*	*IFCPS8815G*	*3,05,719*
10.	*VIKAS BANSAL*	*EWKPB1504E*	*6315330*
11.	*JAGRATI DEVI*	*DSNPD0897N*	*147600*
12.	*PRAGYA BANSAL*	*FATPB0291Q*	*129900*
13.	*RAJ KUMAR*	*FECPK2782E*	*115902*
Total purchase made by the assessee company			*Rs. 11696034*

4. It was noticed that only two parties i.e. *GOEL PAPER AND PAPER CHEMICALS, PAN: AAWFG8663P* has responded to the notice u/s 133(6) of the Act by furnishing reply on 09.11.2022. Similarly, *SONIA KANDPAL, PAN: CHZPS3645D* has also replied a notice u/s 133(6) of the Act. Both these parties stated that they did not have any transaction with the assessee, hence, a show cause notice was issued as to why 25% of said purchases of Rs. 1,23,97,466/- (Rs. 1519946 + 10877520) i.e. 30,99,369/- should not be disallowed and added to the total income.

5. Further, following five parties were found having no digital footprint as per ITBA from whom the assessee were allegedly made purchases of Rs. 24,34,403/- is extracted as under:

S. No.	*Party Name*	*Party PAN*	*Purchase as per information available (Rs.)*
1.	*ROHIT*	*COKPR9125K*	*4,14,603/-*
2.	*BHOLA NATH PRASAD*	*BHVPP9120P*	*85000*
3.	*UPENDRA PRASAD*	*CHRPP9977M*	*13,78,619/-*
4.	*CHANDAN KUMAR*	*BDOPK3127N*	*399186/-*
5.	*AJAY GUPTA*	*BUHPG1569G*	*156995/-*
	Total		***24,34,403/-***

6. Accordingly, the show cause notice was issued as to why purchases made by the assessee from above mentioned 18 entities / persons should not be treated as bogus purchase and 12.5 % of said purchases of Rs. 1,41,30,437/- which comes to 17,66,305/- should not be disallowed and added to the total income. The assessee did not file any reply to the show cause notice dated 12.12.2022. Hence, it was concluded by the AO that Assessee Company has failed to establish the genuineness and creditworthiness of substantial purchases from

alleged suppliers who were either non-filers or have filed non-business ITR. Accordingly, a sum of Rs. 48,65,671/- was disallowed and added back to the total income of the assessee and final computation of the taxable income is shown as under: -

S. No.	*Description*	*Amount (in Rs.)*
1.	*Income as per return of income filled*	*Rs. 82,84,260/-*
2.	*Income as computed u/s 143(1)(a)*	*Rs. 82,84,260/-*
3.	*Disallowance of bogus purchase discussed above para 1*	*Rs. 30,99,366/-*
4.	*Disallowance of bogus purchase discussed above para 2*	*Rs. 17,66,305/-*
5.	*Total income/loss determined as per the above proposal*	*Rs. 1,31,49,931/-*
6.	*Total income/loss determined (R/o)*	*Rs. 1,31,49,930/-*

7. The assessment record was examined by the PCIT and it was noticed that the assessee has made unverified purchases of Rs. 1,41,30,437/- and 12.50% of these unverified purchases i.e. Rs. 17,66,305/- were disallowed during the assessment proceedings. Further, the assessee has allegedly made bogus purchase of Rs. 1,23,97,466/- and 25% of bogus purchases i.e. Rs. 30,99,366/- were disallowed during the assessment proceeding. The Ld. PCIT was of the opinion that in view of non-genuine, unverified and bogus purchases, the whole amount of purchases should have been added as unexplained expenditure u/s 69 C of the Act r.w.s. 115BB of the Act. Accordingly, a show cause

notice was issued by Ld. PCIT to the assessee to which reply dated 4/6.12.2024 was filed where it was stated that being aggrieved by the assessment order, the appellant has filed appeal before the Ld. CIT(A) and a copy of Form 35 was enclosed. Therefore, it was stated that since the matter was pending before the Ld. CIT(A), Jurisdiction u/s 263 of the Act cannot be invoked.

8. To these arguments of assessee, the Ld. PCIT was of the opinion that the issue before the Ld. CIT(A) in appeal is not identical with the issues mentioned in show cause notice u/s 263 of the Act. It was observed that the appeal before the Ld. CIT(A) is only limited to the quantum of addition made by the AO in the assessment order.

9. Regarding the objection of the assessee to the proceeding u/s 263 of the Act on the ground that the Ld. AO issued the order after making various inquiries and has finally adopted one of the plausible view, the Ld. PCIT was of the opinion that the assessment order is hit by clause B and Clause D of explanation 2 of Section 263 of the Act because the assessment order has been passed and relief has been allowed without inquiry into the claim and further the assessment order has not been passed in accordance with the decision of Hon'ble

Mumbai High Court in PCIT vs. Kanak Impex (India) Ltd. (2025) 172 taxmann.com 283 (Bombay) and Hon'ble Supreme Court in N.K.Proteins Ltd. vs. DCIT (2017) 84 taxman.com 195 (SC)). Therefore, the Ld. PCIT was of the opinion that following the above two judgments of the Hon'ble Bombay High Court and Hon'ble Supreme Court where issued has been decided in favour of the Revenue, the entire bogus purchases made by the assessee are disallowable expenses and therefore, 100% of such bogus purchases should be added to taxable income of the assessee and further any addition made on account of bogus purchases will fall within the scope of Section 69C of the Act. Ld. PCIT, therefore, concluded that the assessment order u/s 143(3) r.w.s. 144B of the Act for A.Y. 2021-22 is held to be erroneous, in so far as it is prejudicial to the interest of Revenue and accordingly, the AO was directed to pass a order u/s 263 r.w.s. 143(3) of the Act along with Section 144B of the Act by taking necessary remedial action on various issues involved and as directed by the Ld. PCIT.

10. Aggrieved by the impugned order, the assessee is in appeal before us and has raised following grounds of appeal:

"1. On the fact and circumstances of the case as well as in Law, the Learned Principal Commissioner of Income Tax (PCIT) has erred in initiating proceedings U/s.263 of the Income Tax Act, 1961 (the Act) and passing an order U/s 263 of the Act, without considering the facts & Circumstances of the case.
2. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in passing Revision Order u/s.263 of the Income Tax Act, 1961 for the assessment order u/s.143(3) of the Act, 1961, passed by the Learned Assessing Officer after making adequate enquiries and application of mind, without the facts and considering circumstances of the case.
3. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in considering the order passed u/s.143(3)of the Income Tax Act, 1961 by the Learned Assessing officer as erroneous and prejudicial to the interest of the revenue, without appreciating the facts and circumstances of the case.
4. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in partly setting aside Assessment order passed by the Learned Assessing Officer and directing him to modify the assessment order, without considering the facts circumstances of the case.
5. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in directing the Learned Assessing Officer for addition of purchases to the taxable income, without considering the facts and circumstances of the case.
6. The appellant craves leave to add, amend, alter or delete the said ground of appeal."

11. On summarizing the grounds raised in the appeal and the contention made by the assessee and the observation of the Ld. PCIT in the impugned order, in our opinion, the following question arises for consideration before us as under:

Whether the Ld. PCIT has rightly exercised the Jurisdiction u/s 263 of the Act or the assessment order has been passed in violation of Clause b and d of Explanation 2 to Section 263 of the Act?

12. We have heard the Ld. AR for the assessee and Ld. Sr. DR on behalf of the Revenue and examined the record. The Ld. AR at the very outset submitted that the impugned order is bad in law because the Ld. PCIT has wrongly exercised the jurisdiction u/s 263 in violation of Clause C of explanation 1 of Section 263 of the Act because the identical issue of addition on account of bogus purchases is subject matter of appeal pending before the Ld. CIT(A).

13. Secondly, it is argued that the Ld. PCIT has wrongly concluded that the assessment order has been passed and relief has been granted by the AO without inquiry into the claim and further that the order has not been passed in accordance with the decision of Hon'ble Bombay High Court in Kanak Impex (India) Ltd. (supra) and Hon'ble Supreme Court in N.K.Proteins Ltd. (supra). It is argued that the necessary statutory notices u/s 142(1) and 143(2) of the Act were issued along with show cause notice dated 12.12.2022 to which detail submission were made by the assessee. The Ld. AO has also issued notice u/s 133(6) of the Act to the various entities from whom the alleged bogus purchases were made and after due deliberation and consideration of all the submissions, the assessment order was passed wherein the reply of the assessee was not considered and instead of

granting relief, disallowance of expenditure spent on purchases was made and as such clause b of explanation 2 to Section 263 of the Act does not get attracted.

14. Ld. Sr. DR on the other hand supported the judgment of Ld. PCIT and prayed for dismissal.

15. We have considered the rival submission and have perused the record.

16. It is settled law by the Hon'ble Jurisdictional High Court that it is only lack of inquiry and not inadequacy of inquiry which may make the assessment order as erroneous and thus, prejudicial to interest of Revenue so that Jurisdictional u/s 263 of the Act can be exercised by the Ld. PCIT. The Hon'ble High Court of Delhi recently in PCIT -2 Delhi Vs. M/s. Clix Finance India Pvt. Ltd., ITA No. 1428/2018, order dated 01.03.2024 while relying on the case of *Malabar Industrial Co. Ltd referred (supra)* has held that "*the phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income Tax Officer adopted one of the courses*

permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law."

17. The Hon'ble High Court of Delhi was further pleased to hold in para no. 27 of the same judgment that "*inadequacy of enquiry by the AO with respect to certain claims would not in itself be a reason to invoke the powers enshrined in Section 263 of "the Act"*. Considering the facts and circumstances and the discussion made, we are of the opinion that in the case in hand, the AO has done all necessary inquiries in the matter by issuing notice u/s 142(1) & 143(2) of the Act. The AO has also issued notice to the parties' u/s 133(6) of the Act. Therefore, it is not a case of lack of inquiry and clause (b) of Explanation 2 of the Section 263 of the Act does not get attracted.

18. Regarding the observation of the Ld. PCIT that the assessment order has been passed without following the binding precedents of the Hon'ble Bombay High Court as well as the Hon'ble Supreme Court in Kanak Impex (India) Ltd. (supra) and N.K.Proteins Ltd. (supra), we are of the considered opinion that the facts and circumstances of the

case in hand are totaling distinguishable from the facts and circumstances of the Kanak Impex (India) Ltd. and it will become more lucid by extracting the relevant portion of Palmon Impex Pvt. Ltd. vs. ITO-7(3)(1), Mumbai Tribunal, in ITA No. 2561/MUM/2025 order dated 28.07.2025 in which one of us i.e. (judicial member) was a party and the relevant portion from para 16 onwards is extracted below as under: -

"16. On the basis of above table, Ld. AR argued that the case of Kanak Impex (India) Ltd. (supra) does not apply in the assessee's case because the said case was on the issue of bogus purchase with important implications u/s 69C of the Act and the assessee therein did not attend reassessment proceedings or explain the source of fund and even at appellate level, there was no explanation or rebuttal to allegations of bogus purchase and at the time of assessment, the AO invoked the provision of section 69C of the Act and made 100% addition of bogus purchase of Rs. 20.06. crores. Ld. AR further submitted that the various Tribunal including Jurisdictional Tribunal have distinguished the ratio of Kanak Impex (India) Ltd. (supra). Therefore, we proceed to discuss each case one by one as under:-

i) ITO vs. Pradeep Kumar Agarwal (ITA No. 1544/JPR/2024) dated 04.04.2025 (Jaipur Tribunal)

"During the course of hearing, Ld. D/R relied on the decision of Hon'ble Bombay High Court in case of PCIT vs Kanak Impex India Ltd. order dated 03.03.2025 where it confirmed the addition made by AO on account of bogus purchases of Rs.20,06,80,150/- for the reason that assessee failed to prove genuineness of the purchases, the case was reopened on the ground that purchases made by the assessee are from hawala operator, the assessee choose not to attend the reassessment proceedings, the assessee having consciously and intentionally decided not to join the investigation, he cannot now contend that revenue should

have given them all the details before making the addition and the decisions relied on by the Ld. Counsel of the respondent assessee are distinguishable on the facts. However, the facts of the present case is entirely different in as much as the revenue has not brought any evidence on record that purchase made from these parties are bogus or hawala transactions or accommodation entries. Assessee has brought on record the fact that these concerns run into heavy losses and to avoid the payment to the creditors, they have left their premises and are absconding for which copy of the case filed by these parties against these suppliers for dishonoring the cheques against the supply of goods to them was filed. The assessee has also linked the purchases made from these parties with the corresponding sales and the GP rate and NP rate declared by the assessee during the year is comparable with earlier years……"

ii) ACIT CC-7(3) vs. Dhiraj Parbat Gothi (ITA No. 580/Mum/2025) dated 30.05.2025 (Mumbai Tribunal)

"12. We also take note of the additional ground raised by the revenue for which Ld.SR DR referred to the decision of Hon'ble Jurisdictional High Court of Bombay in the case of Kanak Impex (India) Ltd. (supra). We have perused the said judgment. For the reliance placed by Ld. SR DR on the decision of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs Kanak Impex (India) Ltd (supra) calling for addition of 100% of the alleged bogus purchases as against 25% made by the Ld.AO and confirmed by Ld. CIT(A), we have perused this aforesaid judgment. We observe that in para 4, Hon'ble Court noted the factual position that assessee did not appear before the Ld.AO during the course of assessment proceedings and failed to prove the genuineness of the purchase. The said assessment was completed ex-parte u/s. 144 r.w.s 147 of the Act. Hon'ble Court also observed in para 17 about the non-appearance of assessee before the Ld.AO for which there is no justification. Again, it noted in para 29 that the assessee chose not to attend the reassessment proceedings even though the notices were sent by post, email and affixture. Accordingly, in para 13, Hon'ble Court concluded that assessee having not joined the reassessment proceedings, the contention raised by the assessee are to be rejected. Observation of the Hon'ble Court while rejecting the contention of the assessee are:

"30. We fail to understand that the respondent-assessee having consciously and intentionally decided not to join the investigation, cannot now contend that the appellant-revenue should have given them all the details before making the addition. In our view, such a conduct of the respondent-assessee cannot be accepted. It was incumbent upon the respondent-assessee to have joined the re-assessment proceedings, discharge the initial onus of proving the purchases and seek details, if any."

13. In the present set of facts, elaborately discussed above and in view of the submissions made by the assessee which have not been disproved or controverted by bringing any cogent material on record, judgement of Hon'ble Jurisdictional High Court of Bombay in the case of Kanak Impex (India) Limited (supra) is distinguishable and hence not applicable. Accordingly, additional ground raised by the revenue by relying on the said judgment is dismissed."

iii) ITO vs. Khimchand Okchand Bhansali (2025) 174 taxmann.com 148 (Mumbai Tribunal) dated 03.04.2025.

"6. The revenue department being aggrieved is in appeal before this court and at outset has placed reliance on the judgment passed by the Hon'ble Jurisdictional High Court in the case of Principal Commissioner Of Income Tax-5 Vs. Kanak Impex (India) Ltd. in ITA No. 791/2021 decided on 03.03.2025, wherein the Hon'ble High Court restored the addition made by the assessing officer @100% of the bogus purchases, which was restricted to 12.5% by the Ld. Commissioner, and subsequently got affirmed by the Hon'ble Tribunal, restricting the disallowance qua profit margin, on unproven purchases.

7. Ld. Counsel Mr. Dhaval Shah, on the contrary has demonstrated that this case is factually dissimilar to the case dealt with the Hon'ble High

Court, as the Hon'ble High Court considered the case, wherein the assessing officer has made the addition @100%, but in the instant case, the Assessing Officer himself has estimated the profit @12.5%.

8. This Court observe that the Hon'ble High Court, while deciding the issue, has also taken into consideration the relevant fact specific to the effects that the Assessee in that case failed to prove the purchases including source of expenditure, by not offering any explanation in the course of reassessment proceedings and therefore in the absence of any explanation qua source of expenditure, the AO had applied the provisions of section 69(c) of the Act and therefore, the Hon'ble High Court justified the action of the AO, in making the addition @100%. Whereas in the instant case, admittedly the Assessee has proved that the transactions have been carried out through banking channels and the assessing officer has not also not doubted the same and accepted specifically in the assessment order itself vide para 7(xii) for making the payment through banking channel.

9. The Ld. Counsel also submitted four judgments qua identical issue, by the Hon'ble Jurisdictional High Court, including in the case of Principal Commissioner of Income Tax-2 Vs Refrigerated Distribute Private Limited (ITA No. 1840/2018) decided on 05.03.2005, wherein the Assessing Officer estimated the gross profit @25%, which was confirmed by the then Ld. CIT(A). However, subsequently reduced by the tribunal to 10% and therefore, the Hon'ble High Court, by considering the peculiar fact that the issue involved relates to only estimation of profit; ultimately opined/decided that no substantial question of law can be said to have arisen in the instant case.

10. Thus this Court is in concurrence with the contention raised by Mr. Dhaval and the claim made by the Assessee that this case is factually dissimilar to the case dealt with by the Hon'ble High Court Principal

Commissioner Of Income Tax-5 Vs. Kanak Impex (India) Ltd. in ITA No. 791/2021 decided on 03.03.2025. Hence the addition the addition @ 100% of the bogus purchases made by the AO and as claimed by the Ld. DR, cannot be restored."

iv) Quality Heightcon Pvt. Ltd. Vs. DCIT (ITA No. 1489/Mum/2025) dated 07.05.2025 (Mumbai Tribunal)

"8. The decision relied upon by the ld. D/R is fact specific and distinguishable from the facts of the case in hand inasmuch as in that case, the assessee consciously and intentionally decided not to join the investigation and did not file the details relating to purchases and failed to prove the genuineness of purchases because of allegation of purchase by accommodation entries whereas the facts of the case in hand show that the assessee not only participated in the assessment proceedings and in the proceedings before the ld. CIT(A) but also filed necessary details relating to purchases. The allegation that the assessee did not maintain any stock registers does not hold good because the AO never rejected books of accounts but has accepted the book of accounts but for the alleged bogus purchases."

v) ITO vs. M/s Mangalam Drugs & Organics Ltd. (ITA No. 5279/Mum/2015) dated 08.05.2025 (Mumbai Tribunal)

"20. The ld DR submitted that the CIT(A)'s finding that the AO without rejecting the sales cannot hold the purchases is not correct in the light of the latest decision of the Hon'ble Bombay High Court in the case of PCIT vs Kanak Impex (India) Ltd (ITA No.791 of 2021 dated 03.03.2025). In our considered view, the facts considered in the said case are distinguishable. The Hon'ble High Court in the said case had dealt with the fact where the goods are purchased from grey market using cash against which purchase bills were obtained from a different party. The

ground on which the Hon'ble High Court held that rejecting sales is not required is that in the said case the source for the real purchase from grey market is unexplained and therefore the Hon'ble High Court held that adding only the profit element in incorrect. The decision of the Hon'ble High Court in the said case was also on the ground that the assessee has not discharged the onus of proving genuineness, has been non-cooperative during the assessment proceedings. In assessee's case, the assessee's contention is that the purchases are genuine and the assessee has discharged the onus by producing the necessary evidences to substantiate the claim. The assessee has well cooperated with the proceedings before the lower authorities which fact has been recorded by the CIT(A) in the appellate order. Therefore in our considered view, the decision of the Hon'ble High Court in the case of Kanak Impex (India) Ltd (supra) is not applicable to assessee's case."

vi) Rajesh Shivji Shah vs. ITO (ITA No. 525/Mum/2025) dated 29.04.2025 (Mumbai Tribunal)

11. Since the facts of the present case are identical with the facts in the case of Ashok Kumar Rungta (supra), therefore I am of the view that disallowance of purchases in the present case cannot be sustained when the VAT authorities itself have accepted the transactions. Although revenue has relied upon the decision of Hon'ble Bombay High Court in the case of PCIT Vs. Kanak Impex (Ind) Ltd Vs. ITA No. 791 of 2021, but the facts contained in the said decisions are different from the facts of the present case as in the case of PCIT Vs. Kanak Impex (Ind) Ltd (supra), the assessee had not cooperated and has not submitted the entire records and the books of accounts in the said case were also rejected. Whereas as per the facts of the present case the assessee had made full compliance before the AO by submitting all the relevant documents and the books of accounts have not been rejected by the AO. All the payments made in the present case were through banking channel and the same have been

proved on record but the facts of the cited case i.e PCIT Vs. Kanak Impex (Ind) Ltd (supra), is based on materially different facts. Therefore cannot be applied upon the present case. Considering the totality of the facts and circumstances independently as discussed by me above I allow the grounds raised by the assessee and direct the AO to delete additions made u/s 69C of the Act."

17. On examining the case in hand, we have noticed that during the course of assessment proceedings, the assessee furnished all legal documentation in the form of purchase invoices, sales invoices, bank statement highlighting the payment made through banking channels, ledger accounts of the suppliers, etc. Thus, the Ld. CIT(A) has restricted the addition to 12.5% of the non-genuine/suspicious/bogus purchases in place of 18.5% applied in the assessment order on the ground that the assessee did not produce the parties in person for the purpose of examination and recording statement on oath regarding the transactions they had with the assessee. The assessee on the other hand made a request to restrict 5% of alleged bogus purchase in place of 12.5% on the ground that assessment was made without disclosing the information to the assessee and without providing opportunity of cross examination, which was violation of principle of natural justice. Thus, it is evident from the submission of the assessee and the findings of Ld. CIT(A) that assessee in the present case has admittedly submitted at the stages from assessment proceedings till the first appellate authority as well as before us all that necessary documents to establish the purchases made and the payment made through banking channel, etc.

18. We have noticed that the case of Kanak Impex (India) Ltd. (supra) relied by the Ld. DR has been rightly distinguished in the various judgments of Tribunals including the Jurisdictional Tribunals as referred (supra). Further we have noticed that the ***Hon'ble Allahabad High Court in the case of Commissioner of Income-tax vs. Smt. Swapna Roy in ITA Nos 8, 9, 20, 21, 23 and 31 of 2005, decided on May 24, 2010,*** *was pleased to elaborate as to when the judgment can be followed as binding precedent. The relevant portion of the order of Hon'ble High Court is reproduced below:-*

"61. Reliance placed by the learned counsel for the assessee to the dismissal of the appeal in limine by the Delhi High Court or the Supreme Court seems to be not sustainable. A perusal of the order passed by the

Delhi High Court and the hon'ble Supreme Court shows that the appeal has been dismissed without recording a finding with regard to argument advanced or dispute raised. ***It is settled law that a judgment shall be binding only in case the dispute is identical based on the same set of facts. The judgment should be considered in reference to the context keeping in view the facts and circumstances of each case.*** *It is not borne out from the judgment of the Delhi High Court that the question cropped up for adjudication in this court was raised and adjudicated by the Delhi High Court.*

62. The expression, "judgment" has been defined in section 2(9) of the Code of Civil Procedure. The judgment means the statement given by a judge on the grounds of a decree or order. Meaning thereby the court has to state the ground on which it bases its decision. It must be intelligible and must have a meaning. It has a distinction from a word, order as the latter may not contain reasons. Unless, a judgment is based on reason, it would not be possible for an appellate/revisional court to decide as to whether the judgment is in accordance with law vide Surendra Singh v. State of U. P., AIR 1954 SC 194.

63. The Hon'ble Supreme Court in a case reported in Tarapore and Co., Madras v. Tractors Export, Moscow, AIR 1970 SC 1168 held that the judgment means a final adjudication by the court of rights of the parties.

64. In Vidyacharan Shukla vs. Khubchand Baghel, AIR 1964 SC 1099, their Lordships of the hon'ble Supreme Court held that the judgment is statement of reason given by a judge.

65. So far as the argument of the respondent's counsel with regard to binding precedent is concerned, it has been held by the hon'ble Supreme Court by a catena of judgments that the issue which has not been considered by the court while delivering a judgment cannot be said to be binding as a decision of the court takes its colour from the questions involved in the case in which it is rendered and while applying decision to a later case, the court must carefully try to ascertain the true principle laid down by the decision of the court. ***The court should not place reliance upon the decision without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed as it has to be ascertained by analysing all the material facts and issue involved in the case and argued by both sides.*** *The judgment has to be read with*

reference to and in context with a particular statutory provisions interpreted by the court, as the court has to examine as to what principle of law has been decided and the decision cannot be relied upon in support of a proposition that it did not decide (vide H. H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur v. Union of India, AIR 1971 SC 530, Amar Nath Om Parkash v. State of Punjab, AIR 1985 SC 218, Rajpur Ruda Meha v. State of Gujarat, AIR 1980 SC 1707, CIT v. Sun Engineering Works P. Limited Hume Pipe Co. Limited (1993) 2 SCC 386 and Makhija Construction and Enggr. Pvt. Limited v. Indore Development Authority, AIR 2005 SC 2499.

66. ***In Jawahar Lal Sazawal v. State of Jammu and Kashmir, AIR 2002 SC 1187 their Lordships of the hon'ble Supreme Court held that a judgment may not be followed in a given case if it has some distinguishing features.***

67. In Bhavnagar University v. Palitana Sugar Mill P. Ltd., AIR 2003 SC 511, the hon'ble Supreme Court held that a decision is an authority for which it is decided and not what can logically be deduced therefrom. A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

68. The aforesaid principle of law has been followed in other cases reported in Delhi Administration v. Manohar Lal, AIR 2002 SC 3088, Union of India v. Chajju Ram, AIR 2003 SC 2339 and Ashwani Kumar Singh v. U. P. Public Service Commission, AIR 2003 SC 2661.

69. In view of the above, keeping in view the finding and the material discussed by the assessing authority and the submission made by the parties, the judgment of the Delhi High Court does not have binding precedent being not a reasoned order deciding the issue in question. It also lacks persuasive effect being not deciding the issue involved."

19. Thus, it can be culled out from the findings of Hon'ble High Court as extracted above that the judgment should be considered in reference to the context, keeping in view the facts and circumstances of each case. Further the issue which has not been considered by the court while delivering a judgment cannot be said to be binding, as a decision of the court takes its colour from the questions involved in the case in which it is rendered and while applying decision to a later case, the court must

carefully try to ascertain the true principle laid down by the decision of the court. The court should not place reliance upon the decision without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

20. From the above discussion, we notice that the case of Kanak Impex (India) Pvt. Ltd. (supra) is distinguishable on account of the facts of the case in hand on various grounds. While respectfully following various decisions of Jurisdictional Tribunal relied by assessee and referred by us in preceding paras, we are of the considered opinion that the case of Kanak Impex (India) Pvt. Ltd. (supra) is not applicable to the case of the assessee because the facts and circumstances are distinguishable on various counts as discussed by us in the preceding paras. We are also not convinced with the arguments of the assessee, in appeal, for reducing the addition to 5% instead of 12.5% as done by the Ld. CIT(A) because there is no illegality or perversity in the order passed by the Ld. CIT(A) wherein the assessee has failed to produce the parties for their examination to prove the transactions done by them with the assessee and the Ld. CIT(A) has applied holistic view in this regard to restrict the addition from 18.5% to 12.5% of alleged bogus purchases. Therefore, we do not find any need to interfere with the order passed by the Ld. CIT(A). Accordingly, we uphold the order passed by the Ld. CIT(A). Resultantly, the Ground No. 3 raised by the assessee and Ground no. 1 and 2 raised by the revenue in their respective appeals are dismissed.

21. In the result, both the appeals filed by the assessee and revenue are dismissed in above terms."

19. Similarly, the factual matrix of the N.K.Proteins Ltd. is distinguishable from the facts of the case in hand and the observation of the Ld. PCIT that Clause (d) of Explanation 2 of the Section 263 of the Act is attracted is found to be without sound legal basis and not tenable.

20. We find force in the argument of the Ld. AR on behalf of the assessee that the plausible view in the factual matrix of the case having been taken by the AO cannot be substituted by the Ld. PCIT by assuming Jurisdiction u/s 263 of the Act. Our view is supported by the Hon'ble Apex Court pronouncements in Malabar Industrial Co. Ltd. vs. CIT [2000] 109 taxman 66 (SC) where it was held as under:

> *"9. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC)."*

21. For the above discussion, we are of the considered opinion that the Ld. PCIT has assumed the Jurisdiction wrongly and his observation that the assessment order is hit by Clause b and d of Explanation 2 of Section 263 of the Act are found to be not supported by facts and the law. Further, we are of the view that in the given facts and circumstances, the AO has adopted one of the courses permissible in

law and there is nothing brought to our notice which may suggests that the view taken by the AO is unsustainable in law. For these reasons, the impugned order is not sustainable and accordingly set aside. The question framed is accordingly decided in negative i.e. against the revenue and in favour of the assessee.

22. In the result, the appeal of the assessee is accordingly allowed.

Order pronounced in open Court on 29th January, 2026.

Sd/-	Sd/-
(S. RIFAUR RAHMAN)	**(RAJ KUMAR CHAUHAN)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated:29th/01/2026
Binita, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT/PCIT
4. CIT(Appeals)
5. Sr. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI