

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 91/Del/2025
(Assessment Year: 2017-18)

Gargi Overseas Pvt. Ltd, 2623-A, Naya Bazar, Delhi	Vs.	Income Tax Officer, Ward-10(1), Delhi
(Appellant)		(Respondent)
PAN: AAACG3165F		

Assessee by :	Shri Ashwani Kumar, CA Shri Ankur Agarwal, Adv
Revenue by:	Shri Jitender Singh, CIT DR
Date of Hearing	09/12/2025
Date of pronouncement	30/01/2026

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 91/Del/2025 for AY 2017-18, arises out of the order of the Id National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. CIT(A)', in short] dated 18.11.2024 against the order of assessment passed u/s 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.05.2023 by the Assessing Officer, ITO, Ward-10(1), (hereinafter referred to as 'Id. AO').
2. The issues to be decided in this appeal are as to whether the Id CIT(A) was justified in confirming the addition made u/s 69C of the Act in respect of purchases made from M/s. Mahavir Prasad Suresh Kumar (Rs. 13,24,76,193/- and M/s. Umesh Kumar Vivek Kumar (Rs. 13,81,75,159/-) in facts and circumstances of the instant case. The inter connected issue involved therein is as to whether the Id CIT(A) was justified in treating the

sales made by assessee to M/s. Kalki Trading Company in the sum of Rs. 11,17,38,184/- and adding the same as unexplained cash credit u/s 68 of the Act in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the material available on record. The original return of income for AY 2017-18 was filed by the assessee company on 31.10.2017 declaring total income of Rs. 3,19,770/-. On the basis of information obtained through Risk Profiling System of Income Tax Department regarding alleged tax evasion through sales and purchase made through entry operators, notice u/s 148 of the Act stood issued to the assessee on 30.06.2021. The information which was received was based on survey conducted u/s 133A of the Act on 30.11.2018 in the case of Shri Ashok Kumar Gupta , Shri Sandeep Gupta and Shri Anuj Gupta. During the survey proceedings, statement was recorded of Shri Ashok Kumar Gupta wherein, he had stated that he was engaged in providing accommodation entries of non-genuine purchases and sales to various parties through his entities. The assessee had made purchase from M/s. Mahavir Prasad Suresh Kumar and M/s. Umesh Kumar Vivek Kumar and had made sales to Kalki Trading Company which were purportedly belonging to Shri Ashok Kumar Gupta. Accordingly, a show cause notice u/s 148A(b) of the Act dated 15.05.2022 was issued to the assessee. The assessee filed replies on 30.05.2022 and 04.06.2022. The reply filed by the assessee was not found satisfactory and the Id AO passed an order u/s 148A(d) of the Act on 25.07.2022 and issued notice u/s 148 of the Act on 25.07.2022. In response to the said notice, the assessee company filed its return of income on 24.08.2022 declaring the same total income of Rs. 3,19,770/-.

4. The assessee is engaged in the purchase and sale of bullion and commodities like rice. During the year under consideration, the assessee company had purchased goods from M/s. Umesh Kumar Vivek Kumar (proprietor Vivek Gupta) of Rs. 13,81,75,159/- and from M/s. Mahavir Prasad Suresh Kumar (proprietor Shri Suresh Kumar) of Rs. 13,24,76,193/- . These transactions are evidenced by invoices , inward movement of goods in stock register and duly recorded in the books of account of the assessee by debiting the purchase account in the profit and loss account for which payments were made through regular banking channels through accounted source of the assessee company. The aforesaid two entities were controlled and related to Shri Ashok Kumar Gupta inasmuch as Shri Vivek Gupta is nephew of Shri Ashok Kumar Gupta and Shri Suresh Kumar Gupta is the servant of Shri Ashok Kumar Gupta. Accordingly, the Id AO concluded from the statement recorded from Ashok Kumar Gupta during the course of his survey which was received from Investigation Wing that Shri Ashok Kumar Gupta had created bogus entities in the name of his family members and people who are under his control and since those entities were engaged in providing only bogus accommodation entries in the form of purchase and sales to various beneficiaries without physical movement of goods in lieu of commission charged from the beneficiaries, the Id AO of the assessee herein proceeded to treat the purchase made from the aforesaid two parties in the total sum of Rs. 27,06,51,352/- as unexplained expenditure u/s 69C of the Act. The contentions of the assessee that the purchases were duly reflected already in the books of account of the assessee duly supported by documentary evidences and payments made to the suppliers through regular banking channels of the assessee out of disclosed source by the assessee, were not appreciated by the Id AO. The assessee had also submitted that it had maintained

complete stock records of the transactions which include purchase made from the aforesaid two parties. The quantitative tally of the stock is also reflected in the tax audit report furnished by the independent firm of Chartered Accountants. From the side of the assessee, the assessee filed the following documents before the Id AO :-

- a. copy of account of M/s. Umesh Kumar Vivek Kumar and M/s. Mahavir Prasad Suresh Kumar in the books of the assessee company.
- b. copies of purchase bills along with billty on sample basis for purchase made from aforesaid two parties.
- c. extract of bank statement evidencing amounts paid to aforesaid two parties.
- d. copy of stock register wherein the transactions with aforesaid two parties are recorded.

5. With regard to observations made by the Id AO that the aforesaid two suppliers had not paid any VAT on the alleged sale of rice made to the assessee, it was submitted that there is no element of VAT on purchase and sale of rice. With regard to observation made by the Id DR before us that no e-way bills are available for purchase and sales and accordingly no actual movement of goods took place, it was submitted that Goods And Service Tax (GST), wherein, e-way bill was mandated, came into effect from AY 2018-19 and hence, there was no question of filing e-way bills for the year under consideration. With regard to yet another argument advanced by the Id DR that entire stock register submitted by the assessee contain purchase and sale made only from aforesaid parties, it was submitted by the Id AR by drawing our attention to pages 570 and 571 of the paper book to prove that transactions were carried out with other

parties also. With regard to yet another observation made by the Id DR by referring to observation made by Id CITA in page 64 of his order that the parties from whom assessee had transacted had not filed their return of income, it was submitted by the Id AR that assessee cannot be faulted for the third parties not filing the income tax return and that it is for the Income Tax Department to take proper action on the third parties in the manner known to law, if they so desire. With regard to reliance placed on the statement recorded during survey of Shri Ashok Kumar Gupta, the Id AR submitted that the survey statement does not have any evidentiary value and reliance in this regard was placed on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Khader Khan Sons reported in 352 ITR 480. Further, the Id AR also submitted that the assessee had sought cross examination of Shri Ashok Kumar Gupta during the course of assessment proceedings and the parties who are departmental witnesses failed to appear on the date of cross examination before the Id AO. Hence, it was the departmental witness who had not complied to the cross-examination proceedings and assessee cannot be faulted at all and accordingly any statement recorded from those witnesses cannot be relied upon proving detrimental to the assessee.

6. Similar observations were made by both the sides with regard to sales made by the assessee to M/s. Kalki Trading Company in the sum of ₹11,17,38,184/- which was sought to be treated as unexplained cash credit u/s 68 of the Act by the lower authorities.

7. At the outset, we find that purchases made by the assessee from two suppliers in the total sum of ₹27,06,51,352/- has been added u/s 69C of the Act. At the outset, we find that all the transactions the assessee had with the aforesaid parties had already been duly accounted in the books of

account of the assessee. The payments made thereon were sourced out of accounted source of the assessee company. Now the short point that arises for our consideration is as to whether the provisions of Section 69C of the Act could at all be made applicable by the lower authorities in the facts and circumstances of the instant case to the aforesaid transactions with the aforesaid parties. It is pertinent to note that the lower authorities in the instant case had not doubted the source of incurrence of expenditure of the assessee. Even otherwise, we find that the sources of funds for making the payment to the aforesaid 2 parties are fully explained and traceable. We find that the issue in dispute qua the applicability of provisions of Section 69C of the Act was subject matter of adjudication by the co-ordinate bench of this Tribunal in the case of Garg Acrylics Ltd Vs. DCIT in ITA No. 2562/Del/2023 for AY 2011-12 dated 30.09.2024 under identical circumstances, wherein, the Co-ordinate Bench has held as under:-

"6. The Id. CIT(A) made an enhancement to the income of the assessee by making an addition of 100% of value of purchases from these two concerns at Rs 1,62,13,633/- as against Rs 32,42,726/- made by the Id. AO. This addition was confirmed by the Id. CIT(A) by stating that the addition has been made u/s 69C of the Act.

7. First of all, we find that the entire purchases made from these two concerns had been duly recorded in the books of accounts of the assessee company and payments made to them were through regular banking channels out of disclosed bank accounts of the assessee. The sources for making such payments are duly drawn from the books of accounts of the assessee and available bank balances. Once the purchase transactions are disclosed by the assessee and payments made thereon are out of disclosed sources, nothing there could be treated as unexplained to warrant an addition u/s 69C of the Act. It is not the case of the revenue that the assessee had made bogus purchases and hence the same would be liable for disallowance u/s 37 of the Act as not incurred for the purpose of business of the assessee company. Hence the addition made u/s 69C of the Act deserves to be deleted.

8. Since the entire addition made u/s 69C of the Act cannot be sustained in the eyes of law, the other arguments advanced by the Id. AR on the validity of reopening and also on merits need not be gone into and they are left open. "

8. Respectfully following the aforesaid decision, we hold that the provisions of Section 69C of the Act per se could not be made applicable for making the addition in respect of purchase of rice made from M/s. Mahavir Prasad Suresh Kumar and M/s Umesh Kumar Vivek Kumar. Accordingly, the grounds raised by the assessee in this regard are hereby allowed.

9. With regard to sales made by the assessee to M/s. Kalki Trading Company, we find that assessee had already disclosed it as taxable revenue receipt in the return of income. This very same receipt is sought to be treated as unexplained cash credit u/s 68 of the Act by making a separate addition in the assessment which amounts to double addition. To the extent of sales made by the assessee, corresponding reduction in stocks had duly taken place. It is also pertinent to note that the books of account, quantitative details, stock registers, closing stock of assessee had not been rejected by the Lower Authorities in the instant case. Hence, no part of the sales already disclosed by the assessee as taxable revenue could be treated as unexplained cash credit u/s 68 of the Act in the facts and circumstances of the instant case. Accordingly, the addition made is hereby directed to be deleted. Further, we also find that Hon'ble Madras High Court in the case of of SMILE Microfinance Limited vs ACIT in WP (MD) No. 2078 of 2020 and WMP (MD) No. 1742 of 2020 dated 19-11-2024 had held that the provisions of section 115BBE of the Act which enhanced the rate of tax could be made applicable only from 01.04.2017,

relevant to assessment year 2018-19 onwards and not earlier. Accordingly grounds raised by the assessee are allowed.

10. No arguments were advanced by the Id AR with regard to validity of the assessment u/s 147 of the Act before us, hence the grounds raised in that regard are hereby dismissed as not pressed.

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

Order pronounced in the open court on 30/01/2026.

-Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 30/01/2026
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi