

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

**BEFORE SH.SUDHIR KUMAR, JUDICIAL MEMBER
AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

ITA No.6242/Del/2025
Assessment Year: 2021-22

Income Tax Officer	Vs.	Mahesh Kumar Aggarwal 19/176 Near Usha Mata Mandir Old Rohtak Road , North West Delhi 110035 PAN NO. ADUPA7276 K
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Ajay Kumar Arora, Sr.DR
Respondent by	Sh. Amit Rai, CA

Date of hearing:	29/01/2026
Date of Pronouncement:	06/02/2026

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the Revenue is directed against the order of the National Faceless Appeal Centre Delhi [hereinafter referred to as "Ld. NFAC)"] vide order dated 08.04.2025 pertaining to A.Y. 2021-22.

2. This appeal is filed with the delay of 95 days. An application for condonation of delay is filed by the revenue, in which it is

stated that delay in filing the appeal was purely unintentional and occurred due to genuine and unavoidable circumstances due to heavy workload. The Revenue has shown the sufficient cause not to filing the appeal within time, therefore, the delay is condoned and appeal is admitted for adjudication.

3. The Revenue raised the following grounds in appeal:

1. *Whether on the facts and circumstances of the case the Ld. CIT(A) erred in deleting the income assessed by the AO at Rs.4,25,47,065/- on estimation basis at 8% of the turn over u/s 145(3) of the Act.*

2. *Whether on the facts and circumstances of the case the Ld. CIT(A) has failed to appreciate the fact the AO's decision to reject the books of account and estimate assessee's income at 8% of the turnover was based on a diligent and comprehensive inquiry process.*

3. *The appellant craves leave for permission to modify any of the grounds of appeal/raise additional grounds of appeal at the time of hearing. The appellant reverses the right to add, amend, or alter the grounds of appeal on or before the date of disposal of appeal.*

4. The brief facts of the case are that the assessee is an individual proprietor of two concern namely (i) M/s MK Overseas & (ii) M/s Shiv Trading Company and engaged in the business of wholesale and trading of Scrap Metal goods like Copper Scrap, Aluminium Scrap, Brass Scrap and Stainless Steel Scrap metal.

The assessee filed return of income declaring total income of Rs.25,86,260/- on 28-02-2022 for A.Y. 2021-22. The case of assessee was selected for Complete Scrutiny in CASS for the following reasons:

(i) The Assessee had made substantial purchases from suppliers who are either Non filer(s) or have filed non-business ITR or reflected a substantially lower turnover in ITR. The Assessing Officer after considering the submission submitted by the assessee completed the assessment rejecting the books of account of the assessee and assessed the income Rs.4,23,73,112/- against the return of income of Rs.25,86,260/- at the net profit considering @ 8% of turnover.

5. Aggrieved the order of the AO the assessee filed the appeal before the Ld. NFAC. The Ld. NFAC, vide his order dated 08-04-2025 allowed the appeal. The Ld.NFAC has observed in his order as under:

"5.0 Decision

1. Ground of Appeal No. 1 - " That the Assessment order passed by learned officer of assessment unit is unlawful, unwarranted and against natural justice."

1.1 This ground is general in nature and does not require any adjudication.

2 Ground of Appeal No.II - "That the addition of Rs. 3,97,86, 852 with the declared taxable income of Rs. 25,86,260 offered by your

appellant by applying the ration of 8 percent of the turnover against the estimate basis is unlawful, unwarranted and against the natural justice."

2.1- The appellant is an individual proprietor of two concerns namely (i) M/s M.K Overseas and (ii) M/s Shiv Trading Company and engaged in business of wholesale and trading of scrap metal goods like copper scrap, aluminium scrap, brass scrap and stainless steel metal. The case was selected for the complete scrutiny for the reason that the assessee had made substantial purchases from suppliers who are either non-filers or have filed non business ITR or have reflected substantially lower turnover in TR The AO sent notices u/s 133(6) to various parties from whom the appellant has conducted business. Out of five parties to whom 133(6) was issued, two parties replied to the notices and three did not send any response. The AO has utilised services of GST portal and has mentioned that for various parties, GST No. was found inactive, whereas certain parties conducted business only with the appellant. Therefore, the AO rejected the books of account of Assessee u/s 145(3) OFIT Act and estimated the Net Profit at the rate of 8 percent of total turnover making addition of Rs. 4,25,47,065. As the assessee had already shown Net Profit of Rs. 27,60,213 in his return of income, a final addition of Rs. 3,97,86,852 was made by the AO.

2.2 The AO has made a huge addition only for the reason that the parties with which the appellant had conducted business did not respond to the notices u/s 133(6) sent by the department. The AO having PAN no. as well as the GST no. of all the parties from whom purchase has been made by the appellant, it is not the responsibility of the appellant to force the parties who have made purchases to comply with the notices send by the IT department. The AO should have conducted more in depth investigation to reach the conclusion that the assessee is involved in the bogus purchases method to reduce his income.

Various judicial pronouncements have already settled the issue of bogus purchase.

a. CIT VIs Anju Jindal 387 ITR 418(Punjab and Haryana)-

"where for all purchases orders to be disallowed by AO, payments have been made by assessee through accounts payee cheques, Tribunal rightly deleted addition made by AO."

b. CIT V/s Manish Enterprises 276 CTR 89-

" 6. Since the tribunal had found from the materials on record that payments were made by accounts payee cheques which were duly debited to the assessee' bank accounts and credited in the bank accounts of the suppliers and the AO had presumed and made the addition by observing the

assesse had purchased goods by making cash payments, in our view there is no substantial question of law arises."

c. *Pr.CIT Vs M/s Moh. Haji Adam & Company TR 1004 of 2016 (Bombay HC)*

"we are of the view that the assessee cannot be punished since sale prices accepted by the revenue. Therefore, even if 6 percent gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price."

d. *CIT v/s Simit P. Sheth 356 ITR 451 (Gujarat) AY2006-07*

"when the total sale is accepted by the AO, he could not have questioned the vary basis of purchases."

The purchase parties could not reply to notices u/s 133(6) and there can be various reasons for that like shifting their business premises etc. but the appellant has produced the copies of bank statements, where the payments were made through cheques and ledger copies of the books of the assessee, to prove the genuineness of the purchases. The AO never doubted the sales made by the assessee for such purchases, in fact he has accepted the sales. Without there being any purchases there could not be any sales. It is also not proved by the AO that the amounts paid by the assessee to the dealers were returned back to assessee and the purchase bills issued are accommodation entries.

If the AO doubted the genuineness of the said purchases, it was incumbent upon him to cause further inquiries in the manner in order to ascertain the genuineness or otherwise of these transactions. Without causing any further inquiries to be made in respect of the said purchases, the AO cannot make addition by estimating Net Profit as percentage of total turnover. The appellant should have been afforded an opportunity to cross examine those persons for non-response to information called for u/s 133(6) of the Act. The Hon'ble Bombay High Court in the case of CIT V/s Ashish International (ITA No. 4299/2009 has held that the genuineness of the statements relied upon by revenue is not established when the assessee disputes the correctness thereof and has not been afforded opportunity to cross examine these parties.

In the case of CIT v/s M/s Rice India Exports Pvt. Ltd ITA No. 999/2010 (Delhi), it was decided-

“it is settled law that in revenue matters, the onus of proof is not a static one. Though the initial burden of proof lies on assessee yet when it is files purchase bills and affidavits, the onus shifts to the revenue. One must not forget that it is Revenue which has powers regarding discovery, inspection,

production and calling for evidence as well as survey, search seizure and requisition of books of account."

2.3- Hence the ground of appeal filed by the appellant is allowed as the AO could not substantiate the addition of bogus purchases and application of NP on estimate basis without any justification and application....."

6. Being aggrieved the order of the Ld. NFAC the Revenue is in appeal before the tribunal.

7. The Ld. DR has relied the orders of the Assessing Officer and submitted that the vehicle used was shown as TATA Ace diesel, which has the less carrying capacity as compared to quantity delivered mentioned in invoices. He also submitted that the parties from which purchases have been claimed by the assessee have not file their return of income. The sale have made for a huge amount but the parties are non-filer of the ITR. He further submitted that in the most cases the present status of GST registration found inactive. The Ld. DR also submitted that the Assessing Officer issued the notice u/s 133(6) of the Income Tax Act, 1961 (in Short "the Act") but the only two parties furnished copy of accounts which shows the purchases were not genuine.

8. The Ld. AR of the assessee submitted the assessee has produced the details of purchase before the AO with PAN number and GST number. The assessee has discharged his burden by filing the purchase bills, bank statement and the

ledger books of the assessee now the onus shifts to the revenue. He also submitted that assessee has duly discharged its initial burden of substantiating the genuineness of the purchase transaction by furnishing necessary documentary evidences.

6. We have heard the parties and perused the material available on record. Perusal of the order of the Ld. NFAC reveals that the AO doubted the genuineness of the said purchases, but no physical enquiries were made to ascertain the genuineness of the parties from whom it is alleged that assessee have made the purchases. The AO issued the notices to the five parties, out of five the two parties submitted their confirmations, if the rest parties did not respond to notices issued under section 133(6) of the Act, would not in itself suffice to treat the purchases as bogus. If the AO doubted the genuineness of the purchase then additions cannot be made without causing any further enquiries. The assessee has discharged his burden by providing the bills, bank statements etc to prove the genuineness of the parties. From the record it is evident that the AO doubted the capacity of the vehicle which was to delivered, the items on the basis of the invoices. The AO has not made any enquiry about this vehicle that what was the capacity of the vehicle and what quantity delivered by this

vehicle. The AO doubted the capacity of the vehicle on the basis of the invoices without making and detail enquiry. The Ld. NFAC has examined the issue in the correct perspective and rightly deleted the additions made by Assessing Officer. The reasoning and findings of the Ld. NFAC, while granting relief is on proper appreciation of law expounded by the judicial dicta. We, find no reason for interference in the order of the Ld. NFAC and consequently uphold his order deleting the addition of Rs.3,97,86,852/-.

7. In the result the appeal of Revenue is dismissed.

Order pronounced in the open court on 06-2-2026.

Sd/-

Sd/-

(RENU JAHURI)
ACCOUNTANT MEMBER
SR BHATNAGGR

(SUDHIR KUMAR)
JUDICIAL MEMBER

Date:- 06.02.2026

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI