

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.5865/Mum/2025
(Assessment year: 2012-13)

M/S Bhagyesh A. Patel Flat No.3A Happy Home APTS, 28 A Nepean Sea Road, Mumbai-400036 PAN:AADPP1643D	vs	Assistant Commissioner of Income-tax 19(1), Mumbai Piramal Chamber, Mumbai-400012
APPELLANT		RESPONDENT

Assessee by : Shri Ajay R. Singh, Adv, & Akshay Pawar, Adv
Respondent by : Shri Leyaqt Ali Aafaqui (SR DR)

Date of hearing : 29/01/2026
Date of pronouncement : 12/02/2026

ORDER

Per: Anikesh Banerjee (JM):

The instant appeal of the assessee filed against the order of the NFAC, Delhi [for brevity 'the Ld. CIT(A)], order passed under section 250 of the Income Tax Act 1961 (for brevity 'the Act') for assessment year 2012-13, date of order 01.09.2025. The impugned order emanated from the order of the Ld. Assistant Commissioner of Income Tax-19(1), Mumbai (for brevity the 'Ld. AO') order passed under section 143(3) r.w.s. 147 of the Act date of order 16.12.2019.

2. The brief facts of the case is that a search and seizure action was conducted in the place of Gautam Jain Group and others on 03.10.2013 by DGIT (Inv), Mumbai. The Investigation Wing, Mumbai covered certain names seeks/dummy Directors/partners of various concern which was duly maintained and controlled by the Mr. Gautam Jain Group and Family. The Ld. AO received the information from DGIT (Inv) that the assessee had made a purchase transaction with “M/s. Khushi Gems Pvt. Ltd.” amount of Rs.2,22,99,751/-. Considering the report of Investigation Wing the Ld. AO issued notice U/s 148 of the Act. The assessee filed the return in compliance of the notice U/s 148 of the Act. During the assessment proceeding the Ld. AO had considered the purchase from M/s Khushi Gems Pvt Ltd” as bogus transaction because the transaction is only the books transaction without physical delivering of the goods. Accordingly, Ld. AO made the addition amount of Rs.2,22,99,751/- U/s 69C to the total income of the assessee. Being aggrieved assessee filed an appeal before the Ld. CIT(A). the Ld. CIT(A) uphold the impugned assessment order. Being aggrieved the assessee filed an appeal before us.

3. The Ld. AR argued filed a paper book containing **pages 1 to 95** which has been placed on record. The Ld. AR contended that the assessee had purchased the goods from the party, “M/s. Khushi Gems Pvt. Ltd.” which is registered under Companies Act, 1956 date of incorporation 23.06.2008 & CIN U51398MH2008PTC183862. The assessee is the exporter and the alleged goods related to this purchase was exported outside India. During the hearing the Ld. AR contended that the assessee duly submitted the followings before the revenue authorities:-

- a) The claim of purchases is duly supported by invoice which shows basic details
- b) Bank statements evidencing the payments by account payee cheques made to the supplier
- c) Ledger account.
- d) Stock Summary.
- e) Corresponding exports made by appellant
- f) Even the sales tax department has issued the registration of VAT on the said address after personally visiting the place by the officials of sales tax department as per their registration procedure.

He further argued that since, the party is registered with the sales tax authority, it cannot be treated as non-existing party and the transaction could not be treated as non-genuine. Merely because search and survey action was carried out by DGIT it does not prove that assessee purchase transactions are not genuine. When assessee had purchased the goods, the party was registered with the sale tax department and the name of the party was duly registered with the department.

4. The Ld. AR in advance his arguments and invited our attention in the **APB page 32 to 51** were the assessee submitted by a letter dated 11.07.2019 before the Ld. AO along with the documents viz stock register, retail invoices of party, export bill for export of duty free goods and bank statement of the assessee. The details of export bill including shipping bill in export of duty free goods specially enclosed in **page no.47**. The Ld. AO had not rejected the books of accounts and

not allowed the assessee the reasonable opportunity of hearing for verification of the relied upon documents. The Ld. AR argued that the same issue is duly considered and adjudicated by the Coordinate Bench of ITAT, Mumbai in the case of **Real Star vs ITO, ITA No.4173/Mum/2025 A.Y. 2011-12** date of pronouncement **26.11.2025** relevant para no.6.6 is reproduced as below:

“6.6 It is further noted that, no independent inquiry was conducted by the Ld.AO to verify or disprove the genuineness of the purchases. In the absence of any material to suggest that the assessee incurred expenditure outside the books of account, the disallowance made is purely based on presumption. Once the source of the expenditure stands duly explained and recorded in the regular books of account, the same cannot be brought to tax under section 69C of the Act, unless the revenue, by cogent and corroborative evidence, establishes the contrary. In view of the above facts and settled legal position, the purchases cannot be treated as bogus, and the addition made on this account is unsustainable and liable to be deleted.”

5. Ld. DR argued and stated that as per the report from DGIT(Inv), Mumbai the seller “M/s Khushi Gems Pvt. Ltd.” is managed & controlled by Mr. Gautam Jain. The alleged transaction is an accommodation entry and executed without the physical delivery of the goods. The Ld. DR filed a written submission bearing No. Sr AR/ITAT-01/B Bench/2025-26 dated 23.12.2025 the relevant para of the DR’s submission is reproduced as below:

*“3. **Reliance on Third-Party Statements and Denial of Cross-Examination:** The statements were recorded under section 132/133A during search, carrying high evidentiary value. The Appellant was confronted with the material during reassessment and could have sought cross-examination but did not insist adequately. Even without cross-examination, the overwhelming evidence from the search (admissions of dummy operations) suffices, General observations from the investigation are applicable, as the syndicate’s modus operandi directly implicates the Appellant’s transactions.*

4. The addition is not based solely on a third-party statement. It is underpinned by a comprehensive investigation that revealed:

1. Khushi Gems was a benami entity of the Gautam Jain syndicate, created solely for providing accommodation entries.
2. No physical stock was found at the business premises of any of the 70 syndicate concerns during the search
3. The dummy directors/partners admitted to having no knowledge of the diamond business.
- 4. Shri Gautam Jain himself admitted to the modus operandi of providing bogus bills.**
5. The denial of cross-examination in this context does not vitiate the assessment, The principle from Andaman Timber Industries is not absolute. When the addition is based on a robust chain of circumstantial evidence and investigation findings (as in this case), and not solely on a retractable statement, the failure to grant cross-examination is not fatal. The Hon'ble Bombay High Court in Hitesh A. Shah v ITO has supported this view.

5. Full Addition Under Section 69C Justified; No Estimation of Profit Element: Since no goods were actually purchased (bogus entries), the entire amount represents unexplained expenditure, warranting 100% addition. Estimation of profit (e.g., GP rate) applies only where purchases are genuine but inflated; here, the transactions are wholly sham. Treating them as accommodation entries aligns with the business realities uncovered.

The plea for restricting the disallowance to the "profit element" is untenable. The investigation conclusively proved that the purchases themselves were non-genuine, and only bills were obtained without any actual movement of goods. When the transaction itself is bogus, the entire expenditure claimed is liable to be disallowed. The Hon'ble Supreme Court's dismissal of the SLP in N.K. Proteins Ltd affirms this position, where the High Court had held that the addition could not be restricted to a percentage when the entire transaction was bogus.

6. No Cogent Material from Appellant; *Direct Evidence from Search: The Appellant did not discharge the onus under section 69C. The search provided direct evidence of the syndicate's hawala operations, linking to the Appellant's supplier.*

Judicial Precedents:

Hon'ble Supreme Court in SumatiDayal v. CIT (1995) 214 ITR 801 (SC): Held that apparent must be considered real unless disproved; however, where surrounding circumstances (like investigation findings) indicate sham transactions, the burden shifts to the assessee to prove genuineness.

Conclusion

The CIT (A)'s order is a well-reasoned and legally sound decision that correctly appreciated the facts of the case and the applicable legal principles. The reassessment was validly initiated based on specific, tangible material, and the substantive addition was justified given the overwhelming evidence against the genuineness of the purchases from Khushi Gems Pvt. Ltd., a proven accommodation entry provider. The assessee failed to discharge the primary onus of proving the genuineness of the transactions beyond producing self-serving documents.

PRAYER

In view of the above submissions, supported by facts, law, and judicial precedents, the Revenue humbly prays that the Hon'ble ITAT may be pleased to dismiss the appeal in to and confirm the orders of the AO and CIT(A). Any other relief as deemed fit may also be granted."

6. We have heard the rival submissions and perused the material available on record. The case of the assessee was reopened solely on the basis of information received from the DGIT (Investigation), Mumbai, alleging that the Gautam Jain Group was engaged in providing accommodation entries and that "M/s. Khushi Gems Pvt. Ltd." was a benami concern controlled by the said group. Relying entirely on the investigation report, the Ld. AO treated the purchases made by the assessee from the said party as bogus and made an addition of

Rs.2,22,99,751/- under section 69C of the Act. On careful verification of the facts, we find that the assessee had maintained regular books of account, including stock registers, purchase invoices, ledger accounts, bank statements, and export documents, all of which were duly furnished before the Ld. AO. The assessee is an exporter, and the corresponding exports of duty-free goods against the impugned purchases were supported by shipping bills and export documentation, copies of which form part of the record. The veracity and authenticity of these documents were never disputed or disproved by the Ld. AO.

It is also an undisputed fact that the books of account of the assessee were not rejected, nor was any defect pointed out in the stock register or quantitative tally. Without physical delivery of goods, maintenance of stock and execution of export sales would not have been possible. Notably, no adverse inference was drawn by the Ld. AO with respect to the closing stock, quantitative reconciliation, or the gross profit ratio, which stood at a reasonable level of 9.87%. We further observe that the Ld. AO made no independent inquiry whatsoever to verify or disprove the genuineness of the purchases, and the entire addition was made purely on the basis of the investigation report. Except for relying on third-party statements and general observations of the Investigation Wing, no cogent or corroborative material was brought on record by the revenue to establish that the assessee had incurred any expenditure outside the books of account or that the purchases were merely accommodation entries.

In this regard, we find that the issue is squarely covered by the decision of the Coordinate Bench of ITAT, Mumbai in the case of **Real Star** (supra), wherein it has been held that, in the absence of independent inquiry and material evidence to

disprove the purchases, an addition under section 69C cannot be sustained merely on presumptions based on investigation reports.

Applying the ratio of the said decision to the facts of the present case, we hold that the purchases made by the assessee are duly supported by books of account, stock records, and export documentation, and therefore, cannot be treated as bogus. Consequently, the impugned order passed by the Ld. CIT(A) is set aside, and the addition of Rs.2,22,99,751/- made under section 69C of the Act is hereby deleted.

Accordingly, the appeal of the assessee is allowed.

7. In the result, the appeal of the assessee bearing **ITA No.5865/Mum/2025** is allowed.

Order pronounced in the open court on 12th day of February 2026.

Sd/-

(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 12/02/2026
SAUMYASr.PS

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), **ITAT, MUMBAI**