

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH MUMBAI**

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI OMKARESWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No. 4004/Mum/2025
A.Y: 2017-18**

DCIT, CC – 7(1) Room No. 653, 6 th Floor, AayakarBhawan, MK Road, churchgate, Mumbai.	Vs.	Jorss Bullion Pvt Ltd Room No. 4, 1 st Floor, 97 Shreenathji Building, Bhuleshwar road, Kalbadevi, Mumbai
PAN/GIR No. AABCJ9650P		
(Applicant)		(Respondent)

**ITA No. 4758/Mum/2025
A.Y: 2017-18**

Jorss Bullion Pvt Ltd Room No. 4, 1 st Floor, 97 Shreenathji Building, Bhuleshwar road, Kalbadevi, Mumbai	Vs.	DCIT, CC – 7(1) Room No. 653, 6 th Floor, AayakarBhawan, MK Road, churchgate, Mumbai.
PAN/GIR No. AABCJ9650P		
(Applicant)		(Respondent)

Assessee by	Shri Satyaprakash Singh
Revenue by	Shri Vivek Perampurna, CIT DR

Date of Hearing	01.12.2025
Date of Pronouncement	04.03.2026

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeals have been preferred by the revenue and assessee against the common order dated 28.03.2025 passed by the National Faceless Appeal Centre, Delhi / Ld. CIT(A) Mumbai, for the A.Y 2017-18.

Since all the issues involved in these two appeals are common and identical and belongs to one assessee therefore, they have been clubbed, heard together and consolidated order is being passed. However, we shall take up revenue appeal in **ITA No. 4004/Mum/2025, A.Y 2017-18** as lead case and facts narrated therein.

ITA No. 4004/Mum/2025, A.Y 2017-18

2. At the very outset we noticed that there is a 2 days delay in filing the present appeal before us. In this regard Ld.DR explained the sufficient cause for not filing the appeal within the time.

3. Considering the entire factual position as explained before us and also keeping in view, the principles laid down by Hon'ble Supreme Court in the case of **Land Acquisition Collector Vs. Mst. Katiji &Ors., [1987] AIR 1353 (SC)**, wherein it has been held that where substantial justice is pitted against technicalities of non-deliberate delay, then in that eventuality substantial justice is to be preferred. In our view the principals of advancing substantial justice is of prime importance. Hence considering the explanation put forth by the revenue by

justifiably and properly explaining the delay which occurred in filing the appeal and construing the expression "sufficient cause" liberally we are inclined to condone the delay in filing the appeal before us and thus the appeal is registered to be heard on merits.

The revenue has raised the following grounds of appeal:

Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in deleting the addition of ₹39,36,03,084/- made u/s 69C of the Income Tax Act, 1961, on account of unexplained expenditure in the form of bogus purchases/operative expenses.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the provisions of Section 69C are not applicable despite clear findings that the purchases were non-genuine and made through shell entities merely for providing accommodation entries.

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the assessee could not establish the identity and creditworthiness of the purchase parties or produce any confirmations, thereby rendering the purchases as unexplained expenditure liable for addition u/s 69C.

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in placing reliance on the fact that the transactions were routed through banking channels, whereas the surrounding facts and evidence clearly establish that the transactions were sham in nature.

5. Whether on the facts and in the circumstances of the case and in law, the order of the Ld. CIT(A) is against the weight of evidence gathered during the course of survey proceedings, including statements

from third parties confirming the modus operandi of routing unaccounted money through bogus transactions.

6. The appellant craves leave to add to alter, amend, modify and/or delete any or all of the above said grounds of appeal. The appellant reserves its right to file further submission in the appeal.

The assessee has also raised the following grounds of appeal in their appeal ITA No. 4758/M/25:

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in making addition of Rs. 28,88,464/- by estimating 0.5% of sale and 11 purchase as commission Income. The appellant pray that said addition may please be deleted.

2. The appellant craves leave to add, alter, delete or modify above grounds of appeal.

4. All the grounds raised by the Revenue and that of assessee are interrelated and interconnected and relates to challenging the order of Ld. CIT(A). Therefore, we have decided to adjudicate all these grounds through the present consolidated order.

5. Ld. DR appearing on behalf of the revenue relied upon the order passed by the AO and submitted that Ld. CIT(A) had erred in deleting the additions made u/s 69C of the Act on account of unexplained expenditure in the form of bogus purchases / operative expenses. It was further submitted that although the AO had recorded clear finding that the purchases were not genuine and had been made through shell entities merely for providing accommodation

entries. It was also submitted that the assessee could not establish the identity and creditworthiness of the purchase parties. Thus the order of Ld. CIT(A) in deleting the addition is not sustainable.

6. Whereas on the contrary Ld. AR appearing on behalf of the assessee reiterated the same arguments as were raised by him before the Ld. CIT(A) and the same is reproduced herein below:

01. The original Income Tax Return for A.Y. 2017-2018 was filed declaring total loss of Rs. 1,18,819. The assessment was completed under Section 143(3) on 27-12-2019 and the order was passed determining the total income of Rs. 1,28,00,000 on 27-12-2019. The appeal before CIT(A) in relation to this addition is pending for disposal.

02. Subsequently, the assessment was reopened on the basis of DDIT Investigation information in relation to unexplained expenditure of Rs. 39,36,03,084. During the reassessment proceedings, the addition of unexplained expenditure of Rs. 39,36,03,084 [Amarnath International of Rs. 13,21,39,764 + Neeyorkan Corporation of Rs.4,50,23,880 + M/s. Puhu Gold of Rs. 21,64,39,440] is made under Section 69C read with Section 115BBE on the ground that these three suppliers are not genuine parties.

03. During the course of reassessment proceedings, the detailed information in relation to this three parties along with supporting documents to demonstrate that the assessee company has actually sold goods to this three parties and has not made any purchases of the alleged amount.

04. It may also be noted that entire assessment is reopened on the ground of transaction with Amarnath International and Neeyorkan Corporation and M/s. Pihu Gold only on the basis of information received from DDIT Investigation. There is no even a

prima facie independent inquiry made by AO before issue of notice under Section 148. This is nothing but borrowed satisfaction and the assessment cannot be reopened on the basis of borrowed satisfaction. This view is taken by the High Courts in the following cases:

(i) GandhibagSahakari Bank Ltd. V/s. DCIT458 ITR 157 (Bom). The catch-note is reproduced as under:

"Section 147/148: Reassessment notice income escaping assessment - reason to believe - formation of belief - reassessment on basis of information from insight portal reopening on borrowed satisfaction and change of opinion - assessee furnishing all details in response to notices and questionnaire - notice without jurisdiction - notice and subsequent proceedings invalid."

(ii) Nila Infrastructure Ltd. V/s. ACIT451 ITR 283 (Guj). The catch-note is reproduced as under:

"Reassessment notice after four years condition precedent reason to believe income escaped assessment cannot be based on change of opinion no suppression of any information at time of assessment proceedings -assessee's objections to reassessment brushed aside without assigning reasons no independent finding recorded for reopening - reopening based on communication from officer in Kolkata - borrowed satisfaction - no mention of failure by assessee to disclose fully and truly all material facts and no such failure inferable from reasons recorded grounds on which reopening proposed part of scrutiny assessment - reopening based on change of opinion - notice and order disposing of assessee's objections quashed."

(iii) Richa Enterprises Pvt. Ltd. V/s. ITO ITAT Delhi in ITA No.4163/Del/2014 dated 01.09.2016. The catch-note is reproduced as under:

"Section 147- Reopening merely based on a report received from Investigation Wing is not permissible if AO has not examined such evidences. It is merely a case of reopening based on "Borrowed satisfaction".

(iv) PCIT V/s. Meenakshi Overseas Pvt. Ltd. ITAT Delhi in ITANo.692 of 2016 dated 26.05.2017. The catch-note is reproduced as under:

"Section 147-Reopening based on "Borrowed satisfaction" is impermissible. Here, AO resorted to reopening merely on the basis of report received from the Investigation Wing without any independent application of mind at his end.

(v) Harikishan SunderlalVirmani V/s. DCIT394 ITR 146 (Guj). The catch-note is reproduced as under:

"Section 147 & 148: Reassessment- notice after four years- validity- failure to disclose material facts necessary for assessment- notice based on information from Investigation Wing- no allegation of failure to disclose material facts for assessment- notice not valid - borrowed satisfaction- In favour of assessee.

05. It may also be noted that the reasons do not mentioned the amount of escapement of income which is condition required under Section 147 read with Section 149. It only states that the income chargeable to amounting to Rs. 1 lac has escaped assessment. The amount of Rs. 1 lac is stated in view of the proviso of Section 149(1)(b). However, the estimated amount of escapement is not stated in the reasons, therefore the notice issued under Section 148 dated 31-03-2021 is bad in law. This view is taken by the Gujarat High Court and Karnataka High Court in the following cases:

(i) Sayaji Hotels Ltd. V/s. ITO339 ITR 498 (Guj). The catch-note is reproduced as under:

"Reassessment limitation effect of Section 149(1)(b) - period extended where alleged escaped income exceeds prescribed limit Section 149 does not override provisions of section 147- notice after four years - failure to disclose material facts necessary for assessment must exist."

(ii) Novo Nordisk India P. Ltd. V/s. DCIT[2018] 95 taxmann.com 225 Karnataka. The catch-note is reproduced as under:

"Section 149, read with Section 147, of the Income-tax Act, 1961- Income escaping assessment Time-limit for issuance of notice (General)- A.Y.2006-07- Whether it is mandatory for AO to state in reasons recorded that escaped assessment amounts to, or is likely to be Rs. 1 lakh or more, to bring it within ambit of Section 149(1)(b) for invoking extended period of limitation Held, Yes After lapse of six years from end of relevant assessment year, AO initiated re-assessment proceedings for subject assessment year on ground that income of assessee for relevant year had escaped assessment under section 147 Notice issued under section 148 by AO was challenged mainly on ground that reasons assigned by AO for invoking section 147 did not specify that escaped assessment amounted to Rs. 1 lakh or more Whether material aspect for invoking extended period of limitation under section 149(1)(b) not being forthcoming, further proceedings in pursuance to said notice could not be sustained - Held, Yes [Paras 12 to 15] [In favour of assessee]."

(iii) *Bakulbhai Ramanlal Patel V/s. ITO56 DTR 212 (Guj)*. The Court observed as under:

"Reasons recorded must state that the income escaping is likely to exceeds Rs. 1 lac for reopening within six years - if not stated invalid."

06. The assessment is reopened on the ground of purchases made amounting of Rs. 39,36,03,084 from above referred three parties. The facts show that the assessee sold goods worth Rs. 39,36,03,084 to this three parties. Thus, the entire basis of reopening is bad in law and there is complete non-application of mind by the learned AO in recording the reasons. There is a distinction between information and reasons to believe. Merely basis on information, the assessment cannot be reopened. Thus, there was no reason to believe that there is escapement of income in as much as the foundation of reasons is on wrong facts and therefore the entire notice is bad in law. Therefore, the entire assessment under Section 143(3) RWS 147 is bad in law. This principle is following in the following cases:

(i) *Chhugamal Rajpal V/s. S.P. Chaliha [1971] 79 ITR 603 (SC)*

(ii) *Surani Steel Tubes Ltd. V/s. ITO [2022] 136 taxmann.com 139 (Gujarat)*

(iii) *Kantibhai DharamshibhaiNarola V/s. ACIT [2021] 125 taxmann.com 348 [Guj]*

(iv) *Harikishan SundarlalVirmani V/s. ITO [2017] 88 taxmann.com 548 (Guj)*

(v) *Anwar Mohammed Shaikh V/s. ACIT [2023] 148 taxmann.com 288 (Bom)*

The copy of above judgements are attached herewith.

Merits:

07. The AO has made addition of Rs. 39,36,03,084 under Section 69C being unexplained expenditure i.e. alleged purchases from three parties as under:

08. In this connection, it may please be noted that the total sales as per Profit & Loss Account is Rs. 39,92,92,084 and total purchases is Rs. 17,84,00,829.

09. The assessee company has actually made sales of Rs.13,21,39,764 to M/s. Amarnath International and has not made any purchases from this party during the year. The copy of account of M/s. Amarnath International for the year under consideration is enclosed herewith as per Annexure-1.

10. The assessee company has actually made sales of Rs.4,50,23,880 to M/s. Neeyorkan Corporation and has not made any purchases from this party during the year. The copy of account of M/s. Neeyorkan Corporation for the year under consideration is enclosed herewith as per Annexure-2.

11. The assessee has made sales of Rs.21,64,39,441 to M/s. Pihu Gold during the year, the amount which is alleged by the AO. The copy of account of M/s. Pihu Gold from the books of the assessee company is enclosed herewith as per Annexure- 3. The assessee company had received an advance during earlier year

which is adjusted against the sales made in the current year. This is evident from the copy of account.

The assessee company was in financial difficulty during the year and bank accounts were classified as NPA and therefore the assessee company did not receive any amount from the certain debtors and in turn could not pay to the creditors.

12. It may be appreciated that when total purchases as per Profit & Loss Account is only Rs. 17,84,00,829 [there is no dispute on this], there is no question of addition of Rs. 39,36,03,084 alleged by the AO.

13. The copy of Stock Register demonstrating the purchases and sales [to M/s. Amarnath International and M/s. Pihu Gold] and vat return disclosing the sales to these parties is enclosed herewith as per Annexure-4.

14. The SCN issued by the AO on 26-03-2022 did not show any amount of proposed addition. The facts was also communicated by letter dated 29-03-2022. However, the same has not been considered by the AO and thus there is violation of principle of natural justice.

15. The AO has given detailed explanation about certain parties in the assessment order. It has also reproduced the statement recorded under Section 131 during the course of survey at the assessee company premises.

16. In this connection, it may please be noted that the assessee company has no relationship except the business transactions with M/s. Amarnath International and Neeyorkan Corporation and M/s. Pihu Gold and the assessee is not aware about any alleged non-genuine activities carried out by other parties.

17. The assessee company was in financial difficulty and therefore from Financial Year 2017-2018 the business was gradually discontinued. Therefore, the statement was given that there is no business activity.

18. From the above referred information, the assesses company has sold goods to M/s. Amarnath International and

Neeyorkan Corporation and M/s. Pihu Gold and the amount has been received by account payee cheque [in the case of M/s. Pihu Gold]. No opportunity was given for cross examination of any of the alleged parties.

19. It is accepted principles of law that any statement or information without any corroborative evidence cannot be taken as an evident for the purpose of determining the taxable income.

20. The AO has made an addition under Section 69C being unexplained expenditure. From the above referred facts, it is amply clear that there is no expenditure whatsoever incurred with M/s. Amarnath International and Neeyork an Corporation and M/s. Pihu Gold as alleged. The real transaction is sales and the amount of sale consideration is credited to Profit & Loss Account and is also reflected in the stock register. Therefore, the question of application of Section 69C on sale proceeds does not arise.

7. It was submitted by Ld. AR that, Ld. CIT(A) erred in making addition of Rs. 28,88,464/- by estimating at the rate of 0.5% of sales and purchases as commission income. Thus requested for deletion of entire additions on estimation.

8. We have heard the counsels for both the parties, perused the material placed on record, judgments cited before us and also the orders passed by the revenue authorities. From the records we noticed that in this case the survey action u/s. 133A of the I.T. Act was conducted on 21.06.2017 on M/s.Triresh Tradelink Pvt Ltd. and Pihu Gold and consequential actions u/s. 133A and u/s. 131 were also conducted on the assessee and other related

entities, viz. M/s. Satnam Jewels, M/s. Rialto Exim Ltd., M/s. Baiju Trading and Investment Pvt. Ltd., M/s. Access Diamonds Pvt Ltd and others. Thus based on the findings of survey action, the case of the assessee was reopened and Assessment Order u/s 143(3) r.w.s. 147 of the I.T. Act, 1961 was passed, thereby, assessing the total income at Rs. 40,64,03,080/- after making addition u/s 69C of the Act of Rs. 39,36,03,084/-

9. However during the appellate proceedings it was submitted by the assessee that the AO has made addition of Rs. 39,36,03,084/- u/s 69C being unexplained expenditure on the basis of alleged purchases from three parties as under:

M/s Amarnath International	Rs. 13,21,764/-
M/s Neeyorkar Corporation	Rs. 4,50,23,880/-
M/s Pihu Gold	Rs. 21,64,39,440/-
Total	Rs. 39,36,03,084/-

We noticed that the total sales as per Profit & Loss Account was Rs. 39,92,92,084/- and total purchases was Rs. 17,84,00,829/-. In this way, the assessee had actually made sales of Rs. 13,21,764/- to M/s. Amarnath International and had not made any purchases from this party during

the year, as far copy of account of M/s. Amamath International for the year under consideration.

10. We further noticed that assessee had actually made sales of Rs.4,50,23,880/- to M/s. Neeyorkan Corporation and had not made any purchases from this party during the year as per copy of account of M/s. Neeyorkan Corporation for the year under consideration.

11. Similarly, the assessee had made sales of Rs.21,64,39,441/- to M/s. Pihu Gold during the year, as per the copy of account of M/s. Pihu Gold. Apart from this, the assessee had also received an advance during earlier year which according to Ld. AR was adjusted against the sales made in the current year which is evident from the copy of account. As per Ld. AR the assessee was in financial difficulty during the year and bank accounts were classified as NPA, therefore the assessee did not receive any amount from certain debtors and in turn could not pay to the creditors.

12. In this way total purchases as per Profit & Loss Account was only Rs. 17,84,00,829/- and not Rs. 39,36,03,084/-. Thus addition could not have been made by AO of Rs. 36,39,03,084/-. Ld. AR had also drawn our attention towards the copy of Stock Register demonstrating the purchases and sales (to M/s Amarnath International and M/s. Pihu Gold) and VAT return disclosing the sales to

these parties which also goes to show the figure of purchases.

13. It was submitted that although the AO had given detailed explanation about certain parties in the assessment order and relied upon the statement recorded under Section 131 during the course of survey. However, in this regard, it was submitted that assessee company had no relationship except the business transactions with M/s. Amamath interactional and Neeyorkan Corporation and M/s. Pihu Gold and the assessee was not aware about any alleged non-genuine activities carried out by other parties. Since the assessee company was in financial difficulty and therefore from Financial Year 2017- 2018 the business was gradually discontinued, whereas as in the fact the assessee had not incurred any expenditure with M/s. Amarnath International and Neeyorken Corporation and M/s. Pihu Gold. The real transaction was sales and the amount of the sale consideration was credited to Profit & Loss Account and was also reflected in the stock register. Hence, the question of application of Section 69C on sale proceeds does not arise."

14. Consequently remand report was sought by Ld. CIT(A) on the purchases made by the assessee, however AO failed to submit the same even in spite of availing opportunities

therefore the matter was decided by Ld. CIT(A) and the operative portion of the same is reproduced herein below:

8.5. | *proceed to decide the appeal on merits. As discussed in the assessment order, the AO has taken the total purchases shown by the appellant from 1/4/2016 to 31/12/2016 and added the same u/s 69C of the Act. Appellant, while challenging the addition made has put forth its arguments on following points;*

a) That it had actually made sales of Rs 39,36,03,084/- and purchases of Rs. 17,84,00,829 during the year.

b) The said transactions are supported /reflected in the stock register and the VAT return.

c) All the transactions are through the banking channels

d) Since it was in financial difficulty, the its business had gradually discontinued from FY 2017- 18. Therefore, the statement was given that there is no business activity.

e) Appellant has submitted the annual report, sales and purchase ledger, stock register ledger of the sales parties.

8.5.1. I have considered the submission of the appellant. To get the right perspective, one must delve into the circumstances that led to reopening of the case. Appellant had shown cash deposits of Rs 128,00,000 in their bank accounts during the demonetisation period, which were claimed as cash sales. On perusal of the cash book, it has shown cash sales of Rs. 1,04,80,478 during the period of 11/10/2016 to 30/12/2016. All the cash sales are of less than Rs. 2,00,000/- per transaction. All the cash sales were in old demonetized currency. During the original assessment proceedings, the appellant could not substantiate the source of the cash deposited in the bank account. Therefore, the entire amount of cash sales of 128,00,000 was added to its income u/s 68 of the Act in the assessment order passed u/s 143(3) of the Act dated 27/12/2019.

8.5.2. Appellant had shown sales to parties namely, Pihu Gold, Neeryokan corporation and Amarnath International. It has shown purchases from Pihu Gold, Satnam jewellers, Riddhi Siddhi Bullion Ltd. The survey action carried out on M/s Pihu Gold, revealed that the said premises was manned by only one person who worked as a peorn. M/s Pihu Gold has shown purchases from a concern named M/s. Rishabh Jewellers. On conducting enquiry, the said M/s RishabhJewellers had denied making any sales to M/s Pihu Gold. Appellants. Since, the appellant had entered into transaction with M/s Pihu Gold, its premises at Office no 4, Shrinathji Building 97, Bhuleshwar Road, Mumbai was covered u/s 133A of the Act. The said premises were found to be locked. The survey team recorded the statement of the neighbour, Shri Deepak Agrawal, who confirmed that the said premises was last seen, open three months back and no business activity was conducted from said premises. AO has referred to the statements of various other persons recorded during the survey action on the other concerns like Shri Rakesh Champaklal Shah, Shri Dinesh Jani, Ms. BhoomiMomaya& Shri Manoj B. Punamiya which confirm that all the entities as mentioned above are paper concerns and that they were not engaged in any genuine business activity and were being used merely for routing of funds. Typically, all these concerns including the appellant have filed loss returns. AO has analysed the pattern of transactions carried out by the group entities and has concluded that

"The entitios are bogus in nature. There is no substantial office/shop/ store space. The directors are either dummy directors or bogus. These on tilies have meagre to non-existent employees:

There are back to back transactions which don't adduce the picture of genuine business transactions.

The cash deposited during demonetization are immediately transferred to other parties through banking channels to the uitimate beneficiaries (i.e. person whose cash was deposited) through a complex chain of bogus transactions.

The transactions are entered between potentially related parties. The web of bogus entities is involved in proving accommodation entries as per convenience.

The entity suddenly got inactive after demonetization period. A genuine business entity can't have such a huge fluctuation in the business activity that in certain periods it becomes highly active and in other periods it becomes dormant.

8.5.3 Considering the findings discussed above, I agree with the AO that the appellant concern is a bogus concern created on paper for purpose of providing accommodation entries. For the year under consideration such accommodation entries have resulted in creating stock in trade on paper, which was used to show cash sales during the demonetisation. It is mentioned the entity named M/s Satnam Jewels is known to have entered into unexplained transactions with appellant in the FY 2012-13, "for which additions have been made in the hands of the appellant in assessment order passed for that year. For this year too, appellant has shown purchases from M/s Satriam jewels.

8.5.4 One argument taken by the appellant is that the sale and purchase transactions have been routed through bank accounts and the said transactions have been disclosed to the Sales tax authorities and therefore the transactions are said to be genuine. In my view, the concerns that created for providing accommodation entries are known to carry out the necessary paper work and undertake all the required statutory obligations. They have all the documents in place and therefore these concerns appear to be genuine on paper. It is only when actions such as 132 / 133A of the Act or third-party enquiries are carried out, the facade gets lifted and actual picture emerges. Same is the case with the appellant group, wherein the survey action u/s 133A and enquires with the third parties have revealed that the concerns of the group including the appellant are merely paper concerns, without any genuine business activity. Therefore, I do not accept the argument of the appellant.

8.5.5. Considering the discussion above, I agree with the findings of the AO that the appellant is a paper concern created

for purpose of providing accommodation entries. With this finding, I proceed to decide whether AO was justified in making the addition of purchases from 1/4/2016 to 31/12/2016 u/s 69C of the Act. For the sake of reference, the Section 69C is reproduced as under-

89c. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year:

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income."

In my view, section 69C can be invoked only when the assessee is found to have incurred expenditure and source of such expenditure could not be explained by it. The underlying thought is that the assessee, in such cases, has used its unaccounted money to incur, such expenditure and therefore the amount paid for such expenses is deemed as the income of the assessee u/s 69C. In the appellant's case, the finding of the AO is that the purchases shown by the appellant are in nature of accommodation entries. It is not a case of unrecorded purchase. Both the purchases and the corresponding sales have been recorded in the books and the payment for the same is made through banking channels. Purchases have been shown to be made mainly from the entities who are assessed to tax. Therefore, purchases cannot be said to be unexplained. I do not think that the provisions of section 69C are applicable in the present case. The addition u/s 69C, therefore, cannot be upheld.

8.5.6. As discussed above, the appellant is an entry provider and both the sales and purchases shown by the appellant are in the nature of accommodation entries. In such cases, the actual income is in the form of commission received for

providing accommodation entries. I have taken identical view in the appellate order in the concerns of Punamiya group i.e. M/s Trikesh Tradelink Pvt ltd, M/s Shalibhadra Exports Pvt ltd, M/s Access Diamonds Pvt ltd, M/s Balaji Bullion and Commodities India Pvt Ltd and Worldwide online services pvt ltd for AY 2017-18. In the appeal before me I hold that the transactions recorded in the books of accounts are paper transactions and the books of accounts of the appellant are held to be incorrect and unreliable. Same are rejected as per the provisions of Section 145(3) of the I.T Act. The loss declared by the appellant in the return of income is rejected. The income is estimated at the rate of 0.5% of total sales and purchases. For the purpose of estimating commission income, I take the purchases and sales for the entire year. For the AY 2017-18, appellant has shown purchases of 17,84,00,829/-. Commission income is calculated at the rate of 0.5% of the purchase which comes to Rs 8,92,004 /-. Appellant has shown sales of Rs 39,92,92,084/-. Commission on of sale of Rs 39,92,92,084/- at the rate of 0.5% comes to Rs 19,96,460/-. Total commission on sales and purchases comes to Rs 28,88,464/, which is taken as the additional income of the appellant. Penalty proceedings u/s. 270A of the I.T. Act. for under reported income which is in consequence of misreporting thereof, are initiated separately.

8.5.7. Ground no 3 & 4 are partly allowed.

9. The Appeal is Partly Allowed.

15. After having meticulously gone through the facts of the present case, we noticed that although addition of Rs. 39,36,03,084/- u/s 69C r.w.s 115BBE of the Act were made thereby treating the said amount as ‘**unexplained expenditure / bogus purchases**’ however the AO had committed “**fundamental factual error**” by treating the recorded sales as “**unexplained purchases**”, whereas in fact as per the records the amount of Rs. 39.36 Cr. does

not represent purchases or expenditure, but represents sales recorded in the regular books of account duly reflected in profit and loss account, stock register and VAT returns and thus this ***fundamental factual error*** vitiates the consequential proceedings.

16. We noticed that assessee in order to substantiate its case had furnished

- 1. purchase and sale invoices of bullion,***
- 2. complete bank statements evidencing transactions,***
- 3. quantitative stock registers,***
- 4. VAT returns filed with the Sales Tax authorities.***

and none of these primary evidences furnished by the assessee were proved to be false, fabricated or unreliable by the AO during assessment proceedings and it is a settled law that investigation reports and general observations cannot override direct documentary evidence maintained in the regular course of business.

17. Although Ld. CIT(A) during the appellate proceedings categorically mentioned and held that the provisions of section 69C of the Act are not applicable, observing that:

- a. both purchases and sales are recorded in the books,
- b. payments are routed through banking channels,
and
- c. the case is not one of unrecorded purchases.

18. However, while deleting the additions under section 69C, of the Act, Ld. CIT(A) had travelled far beyond the scope of appeal and had held, *the appellant to be an entry provider / paper concern; rejected the books of account under section 145(3); rejected the loss declared by the appellant, and estimated commission income @ 0.5% on purchases and sales amounting to Rs. 28,88,464.*

19. Whereas Ld. CIT(A) had initially recorded a positive finding in **para 8.5.5** of its order which is reproduced herein below:

In my view, section 69C can be invoked only when the assessee is found to have incurred expenditure and source of such expenditure could not be explained by it. The underlying thought is that the assessee, in such cases, has used its unaccounted money to incur such expenditure and therefore the amount paid for such expenses is deemed as the income of the assessee u/s 69C. In the appellant's case, the finding of the AO is that the purchases shown by the appellant are in nature of accommodation entries. It is not a case of unrecorded purchase. Both the purchases and the corresponding sales have been recorded in the books and the payment for the same is made through banking channels. Purchases have been shown to be made mainly from the entities who are assessed to tax. Therefore, purchases cannot be said to be unexplained. I do not think that the provisions of section 69C are applicable in the present case. The addition u/s 69C, therefore, cannot be upheld.

20. Thus concluded, that section 69C of the Act applies only where expenditure is incurred from unexplained sources, in the assessee's case, purchases and sales were

recorded in the books, payments were through banking channels, and therefore, purchases cannot be said to be unexplained.

21. We are of the view that, having so held, the Ld. CIT(A) could not have simultaneously concluded that the assessee is a paper concern, all transactions are accommodation entries, and the books of account are incorrect and unreliable as these findings are self-contradictory. Once the transactions are accepted as recorded, banked, and disclosed, then the same cannot be branded as sham solely on suspicion or investigation inputs.

22. Hence the conclusion of the Ld. CIT(A) that the assessee is an entry provider is not supported by any independent evidence, and is even not based on any admission by the assessee, not corroborated by rejection of stock records, VAT returns, or bank statements. We also noticed that Ld. CIT(A) had rejected the books of accounts of the assessee u/s 145(3) of the Act which in our view is wholly unjustified as the books of account can only be rejected when **'correctness or completeness'** is not established, or accounting standards were not followed. Whereas in the present case no such discrepancy was found in stock registers, no mismatch existed between purchases, sales and closing stock and even VAT returns

tally with books. Thus on mere allegation that transactions are accommodation entries cannot substitute statutory conditions for rejection of books, as had been held in the Case of:

a) **S.N. Namasivayam Chettiar v. CIT (1960) 38 ITR 579 (SC)** Rejection of books must be based on definite defects and not on mere suspicion.

b) **CIT v. A. Krishnaswami Mudaliar - (1964) 53 ITR 122 (SC)** - Before rejecting books, the AO must show that true profits cannot be deduced from the method of accounting regularly employed.

c) **Kachwala Gems v. JCIT - (2007) 288 ITR 10 (SC)** - Rejection of books is permissible only after pointing out specific defects, such as (a) non-maintenance of stock register, (b) unverifiable purchases/sales, (c) incorrect valuation

23. Having rejected section 69C addition, the Ld. CIT(A) was not expected to have adopted a presumptive assumption and had no authority to estimate commission income without, identifying actual receipt of commission, establishing rate of commission, bringing comparable cases on record. Therefore, estimation of commission by Ld. CIT

(A) @ **0.5% on both purchases and sales** was purely ad hoc in nature and, based on assumptions, borrowed mechanically from alleged "group concerns" without confronting the assessee. More particularly, no evidence of commission receipt had been brought on record. Thus, in our view as per Act Income-tax can be levied on real income, not on hypothetical or assumed income, as had already been held in catena of cases, more particularly:

(a) CIT v. Shapoorji Pallonji Mistry - (1962) 46 ITR 144 (SC) - *"Income-tax is a levy on income. Though the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of income or its receipt, the substance of the matter is the income. If income does not result at all, there cannot be a tax.*

(b) Godhra Electricity Co. Ltd. v. CIT - (1997) 225 ITR 746 (SC) - *Income which has not really accrued due to uncertainty or dispute cannot be taxed on notional basis.*

(c) 3. CIT v. Excel Industries Ltd. (2013) 358 ITR 295 (SC) - *Where income has not actually accrued and its realization is uncertain, there is no real income, hence not taxable.*

24. Therefore, considering the totality of the facts and circumstances of the present case and legal proposition as discussed by us above, we dismiss the appeal filed by the Revenue and consequently allow the appeal filed by the assessee.

Order pronounced in the open court on 04.03.2026

Sd/-
(OMKARESWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 04/03/2026

KRK, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai