

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.131/RPR/2026

निर्धारण वर्ष / Assessment Year : 2011-12

The Joint Commissioner of Income Tax (OSD),
Circle-1(1), Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

Mahendra Kumar Gupta, HUF,
Kelkar Para, Telghani Naka Chowk,
Raipur (C.G.)-492 001
PAN: AAGHM8528M

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 10.03.2026

घोषणा की तारीख / Date of Pronouncement : 10.03.2026

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM**

The present appeal preferred by the Revenue emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 19.12.2025 for the assessment year 2011-12 as per the grounds of appeal on record.

2. In this case, assessment was completed u/s. 147 r.w.s. 144 of the Income Tax Act, 1961 (for short 'the Act'). The relevant facts in this case are that as per the information available with the Department, the assessee had earned long term capital gain from the sales of shares of Konark Commerce Industries Ltd. The assessee had sold 40,000 shares of Konark Commerce Industries Ltd. in 8 counts and there has been capital gain of Rs.39,03,999.92/-. The A.O, thereafter, examined the financial details of the company and opined that the transactions were not genuine since any prudent person will not buy shares of a company having weak financial background. It was also noted by the A.O that shares of the company was sold at Rs.97/- and the assessee had not filed return of income. In order to verify the genuineness of transaction, notice u/s. 133(6) of the Act was issued to Konark Commerce Industries Ltd. at its registered address which however returned unserved. Further, it was observed by the A.O that the operator who managed the paper/shell company i.e. Mr. Praveen Agrawal had given statement on oath which is

made part of the A.O's order before the Investigation Wing Department that he had given accommodation entries as long term capital gain. The A.O. after recording his findings finally held as follows:

15. Therefore, considering the facts and circumstances of the case as discussed above it is held that there was no real purchase and sale of shares by the assessee. Therefore, the total sale consideration received by the assessee from the sale of shares of Konark Commerce and Industries Ltd. amounting to **Rs. 39,03,999/-** is held as income from other unexplained sources u/s 68 of the I.T. Act, 1961 r.w.s section 115 BBE of the I.T. Act, 1961. Penalty u/s 271(1)(c) of Income-tax Act, 1961 shall be initiated separately for concealment of income.

Subject to the above discussions the total income of the assessee is re-computed and determined as under -

Total Income As per Return		Rs.2,18,170/-
	Add: as discussed above in Para 15	Rs.
a)	Addition u/s 68 of the Act	39,03,999/-
Total Assessed Income		Rs. 41,22,169/-

Assessed u/s 147 rws 144 of the Income-tax Act, 1961. Credit for prepaid taxes is allowed. Interest charged u/s 234B, 234C and 234D as per law. Demand notice and challan are issued. Tax payable is as per ITNS-150 enclosed. Penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 are initiated separately.

3. In this background, the Ld. CIT(Appeals)/NFAC had held and observed as follows:

"7.3 Decision: I have carefully examined the assessment order and the written submission filed by the assessee. The remand report was requisitioned from the AO on 07.11.2025 but the AO has not submitted the remand report till date. The appellant in his written submission has stated as follows:

"C) Assessee has purchased the shares of Swamim Papers and Traders Private Limited on 02.07.2008 through broker

Matfair Barter Pvt. Ltd. Assessee purchased 8000 shares at cost of Rs.10 each totaling Rs.80000/- (PB 2). A copy of balance sheet for the F. Y. 2008-09 is at (PB 3)

D) On 06.10.2010 Swamim Papers and Traders Private Limited amalgamated with Konark Commerce and Industries limited (PB 144-165) High court of sanctioned the proposed scheme of amalgamation. (PB 148)."

In view of the above, the addition amounting to Rs.39,03,999/- A.O. is being deleted. Hence, ground no.1 & 2 of appeal are allowed.

8. Ground No.3: The appellant has not exercised the option during proceedings, therefore, this ground of appeal is dismissed.

9. In the result, the appeal is hereby allowed."

4. At the time of hearing, none appeared for the assessee. The submissions of the Ld. Sr. DR were recorded. She submitted that as evident from Para 7.3 of the impugned order, the Ld. CIT(Appeals)/NFAC though had called for remand report from the A.O which was not submitted, however, one opportunity may be provided to the Ld. CIT(Appeals)/NFAC so that the remand report can be submitted by the A.O since this issue of bogus purchases and accommodation entries involving shell companies has huge impact on the financial economy of the country.

5. I find force in the contention raised by the Ld. Sr. DR since nothing has been brought on record by the Ld. CIT(Appeals)/NFAC as regards the notices that were sent to the A.O for furnishing remand report. The whole purpose of remand report is for ground reality check and thorough

examination of the facts of the case pertaining to the assessee and since in this case, the issue is with regard to the bogus purchases operated through brokers, intermediaries shell companies which creates a vacuum so far as the legitimate collection of tax is concerned, therefore, it is of utmost importance to have ground verification done regarding the genuineness of the transactions through a remand report. That further, the Ld. CIT(Appeals)/NFAC has simply stated that since Swarnim Papers and Traders Private Limited amalgamated with Konark Commerce and Industries Limited vide an amalgamation order of the Hon'ble High Court of Calcutta, therefore, the addition was deleted. However, this is not in terms with Section 250(4) & (6) of the Act. That whether the order of amalgamation is sufficient to provide relief to the assessee and whether the entire addition should be deleted, nothing has been brought on record by the Ld. CIT(Appeals)/NFAC. That further, regarding the genuineness of the transaction, no independent inquiry has been conducted by the Ld. CIT(Appeals)/NFAC which renders its findings as perverse and it had summarily provided relief to the assessee which is not in terms with the provisions of the Act. Therefore, keeping in view the principles of natural justice, I provide one final opportunity to the Ld. CIT(Appeals)/NFAC to come out with a speaking order through a remand report complying with the principles of natural justice. In view thereof, I set-aside the order of

the Ld. CIT(Appeals)/NFAC and remand the matter back to its file as per afore-stated direction. I order accordingly.

6. As per the aforesaid terms, grounds of appeal of the Revenue are allowed for statistical purposes.

7. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in open court on 10th day of March, 2026.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 10th March, 2026.

SB, Sr. PS

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur