

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

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND**

**ITA No.5435/Mum/2025  
(Assessment year: 2009-10)**

<b>ITO 41(1)(1), Mumbai</b> Room No.830, Kautilya Bhavan, BKC, Bandra East Mumbai-400051	<b>vs</b>	<b>Anil Transport Service</b> B-102, Harshad Apartment, E.E. Highway Behind Everad Nagar Sion East, Mumbai-400022 <b>PAN: AALFA8944J</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

**CO No.90/Mum/2026  
(Assessment Year: 2009-10)**

<b>Anil Transport Service</b> B-102, Harshad Apartment, E.E. Highway Behind Everad Nagar Sion East, Mumbai- 400022 <b>PAN: AALFA8944J</b>	<b>vs</b>	<b>ITO 41(1)(1)</b> Room No.830, Kautilya Bhavan, BKC, Bandra East Mumbai-400051
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri C.V.Dharkar  
Revenue by : Shri Surendra Mohan (Sr. DR)

Date of hearing : 01/04/2026  
Date of pronouncement : 07/04/2026

## **ORDER**

**Per: Anikesh Banerjee (JM):**

The instant appeal of the revenue and the cross objection 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 2009-10, date of order 30.06.2025. The impugned order emanated from the order of the Ld. Income Tax Officer Ward 15(1)(3), Mumbai (for brevity the ‘Ld. AO’) order passed under section 143(3) r.w.s. 147 of the Act, date of order 27.03.2014.

2. Brief facts of the case are that the assessee is a partnership firm which filed its return of income declaring a total income of Rs.19,78,876/-. During the year under consideration, the assessee reported total sales of Rs.4,53,79,314/- and purchases of Rs.3,57,03,898/-. The Ld. AO received information from the office of the DDIT (Inv.)–VI, Mumbai, stating that a search action had been conducted at the premises of M/s. SNB Infrastructure Pvt. Ltd., M/s. Swapnil Enterprises, and M/s. Amit Transport Services. During the course of such proceedings, a statement of Shri Ramnarayan Upadhyay was recorded under section 131 of the Act. In his statement, Shri Upadhyay admitted that he was the Managing Director of M/s. SNB Infrastructure Pvt. Ltd. and was also overseeing all associate concerns, including the assessee. He further admitted that the group concerns had booked purchases aggregating to Rs.46,73,63,536/- from various parties, which were alleged to be non-genuine. Based on the said information, the Ld. AO concluded that the assessee had made purchases amounting to Rs.2,17,94,500/- from such

alleged bogus entities. Accordingly, the Ld. AO added the entire amount of Rs.2,17,94,500/- as bogus purchases. Further, the Ld. AO disallowed unverifiable expenses at the rate of 10% of total expenses claimed, amounting to Rs.10,40,138/-, resulting in a disallowance of Rs.1,04,000/-. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) partly allowed the appeal by restricting the addition on account of non-genuine purchases is restricted to 15% of Rs. 2,17,94,500/- which amounts to Rs. 32,69,175/-. The remaining addition of Rs. 1,85,25,325/- [Rs. 2,17,94,500/- minus Rs. 32,69,175/-] is deleted. Being aggrieved, the revenue has preferred an appeal before us challenging the deletion on merits, whereas the assessee has filed cross-objections challenging the validity of the reopening of assessment. It is noted that the assessee has not challenged the disallowance relating to unverifiable expenses before any of the appellate authorities.

3. The Ld. DR submitted that Shri Ramnarayan Upadhyay had categorically admitted that the group concerns had undertaken bogus purchases, out of which purchases amounting to Rs.2,17,94,500/- pertained to the assessee. It was contended that the Ld. AO had rightly made the addition based on the statement recorded during the course of search proceedings. Accordingly, the Ld. DR supported the order of the Ld. AO.

4. Per contra, the Ld. AR contended that the entire addition had been made solely on the basis of the statement of Shri Upadhyay, without any corroborative evidence. It was submitted that there was no cogent material to substantiate the allegation of bogus purchases in the hands of the assessee. The Ld. AR further submitted that all transactions were carried out through banking channels and

that complete documentary evidence, including bills and supporting records, had been furnished before the revenue authorities. The Ld. AR thus relied upon the order of the Ld. CIT(A). The relevant extract from paragraph 5.2 of the impugned appellate order is reproduced hereunder:

**“5.2. Grounds 2 to 8**

*These grounds pertain to the addition of Rs. 2,17,94,500/- made by the AO on These grounds pertain to the addition of B account of disallowance of bogus purchases.*

**5.2.1.** *In this case, information was initially received by the AO from DCIT-15(3), Mumbai that one Ms. DishaKapasi, Proprietor of M/s. D.C. Corporation and Mis D.K. Enterprises during the course of remand proceedings before the AO had submitted in her statement that she had passed only accommodation entries to the assessee and sales reported by her were bogus. The case of the assessee was reopened on the basis of this information. Further, information was also received by the AO during the course of assessment proceedings for A.Y. 2009-10 that, consequent to a search action in the case of the assessee group, it was found that the assessee group and its various entities including the assessee firm were availing accommodation entries of bogus purchase bills, The Managing Director of the flagship company of the group Shri RamnarayanUpadhay admitted of the group concerns having booked a sum of Rs. 46,73,63,536/-on account of bogus purchaseof service/goods from certain parties and voluntarily offered the same for taxation and promised to revise the income tax return of all group concerns and pay the tax arising out of such revised income. Accordingly, the AO issued a show cause notice to the assessee asking to show cause as to why an amount of Rs. 2,17,94,500/-being accommodation bills/entries taken from (1) M/s. D.C. Corporation - Rs. 27,18,900/-; (2) M/s. Dev Chayya Trading Co. Rs. 30,92,000/-; (3) M/s. Disha Transport Rs.36,48,400/-; (4) M/s. Shikha Transport Rs. 29,77,100/-; (5) M/s. Siddhi Enterprises - Rs. 32,31,800/- (6) M/s. S.K. Enterprises Rs. 28,99,700/- and (7) M/s. D.K. Enterprises Rs. 32,26,600/- totaling to Rs. 2,17,94,500/-, being the sum booked on account of purchase of services / goods from the above parties, should not be disallowed and added to the total income of the assessee firm.*

**5.2.2.** *The AO after going through the submission of the assessee did not accept the same. The AO placed reliance on the statements given by various persons, as stated above, that the Appellant had availed bogus purchases/ accommodation bills. Thus, after going through the facts of the case, the AO came to the conclusion that assessee had taken accommodation entries from the above parties to the tune of Rs. 2,17,94,500/- in the form of transport charges.*

Hence, the AO added an amount of Rs. 2,17,94,500/- to the total income of the assessee. The appellant on the other hand has argued that the reliance placed by the AO on third party statements was misplaced as the statements were without any basis. The appellant also submitted that the Managing Director of a group concern Shri Ramnarayan Upadhyya, who had earlier admitted the discrepancies, had duly retracted before the AO. The appellant also stated that in the case of its trading activity of buying and selling transportation services, without there being purchases, the sales cannot happen. The appellant thus argued that the addition made be deleted.

**5.2.3.** In this regard it is seen that the claim of the appellant that the reliance placed by the AO on third party statements is misplaced is again without any basis as the statements were recorded on oath and have not been retracted by the deponents. Moreover, these third party statements stating that the assessee firm was taking accommodation entries in the form of bogus purchases are duly corroborated by the statement of the Managing Director of a group concern, Shri Ramnarayan Upadhyya, who had also admitted the anomalies in the bills, discrepancies in the procedure and accounting of purchases entered into with the tainted parties. His retraction made at a much later date before the AO doesn't have any meaning. In various judicial rulings like in the case of *Sinhagad Technical Education Society V DCIT (2022) 139 taxmann.com 270 (Pune Trib.)* and in the case of *Nayyar Patel v. ACIT [2022] 137 taxmann.com 149 (Kerala)*, the Hon'ble Courts have held that unless retractions are made within a short span of time duly supported by evidence that the initial statement was obtained under force or coercion and a complaint is lodged with the higher officials, the initial statement cannot be treated as retracted.

However, the fact also remains that the AO has not drawn any adverse inference regarding the sales made by the assessee. Once sales have been made, it cannot be said that no purchases were made against the sales. There also cannot be any dispute about a well settled legal proposition that tax can be levied only on real income. It is an elementary rule of accountancy as well as of taxation laws that profit from business cannot be ascertained without deducting cost of purchase from sales, otherwise it would amount to levy of income tax on gross receipts or sales. Such a course is not permissible unless it is specifically authorized to do so under any particular provisions contained in the Act. The Hon'ble Jurisdictional High Court in the case of *Hariram Bhamhani (ITA No. 31 of 2013)* has held that only the profit attributable to the unaccounted sales can be brought to tax. It is further observed that the Hon'ble Gujarat High Court in the case of *Simit P Sheth (38) Taxmann.com 385* has held that not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. Similar view has been taken by the Gujarat High Court in the cases of *Vijay M Mistry Construction P Ltd (355 ITR 498)*, *Bholanath Poly Fab (P) Ltd (355 ITR 290)* and *Vijay Proteins Ltd. (58 Taxmann.com 44)*, In the decision of Hon'ble Bombay High Court in case of

*RishabhdevTechnocable Ltd., [2020] 115 taxmann.com 333 (Bombay), the Jurisdictional High Court has held that in a case where the parties from whom such purchases were allegedly made were bogus but the purchases in themselves were not bogus, only a gross profit ratio could be added to the income of an assessee. The Court held that*

*10. For the grounds and reasons given in the appellate order dated 14th October, 2014, CIT(A) found as a matter of fact that assessee had made circular purchases and sales from 12 parties as declared in the sales tax return. Though the genuineness of purchases and sales were not proved before the Assessing Officer and also during the appellate proceedings, CIT (A) noted that while Assessing Officer had treated the purchases as bogus but had accepted the sales and gross profit declared in the return of income. CIT(A) held that there can be no sales without purchases. When the sales were accepted, then the corresponding purchases could not be disallowed. Therefore, CIT(A) held that only the profit element embedded in the purchases would be subject to tax and not the entire purchase amount. On due consideration CIT(A) added 2% of the purchase amount of Rs.65.65,30,470.00 as profit which worked out to Rs 1,31,30,609.00 to the income of the assessee and the balance addition was deleted.*

*11. Aggrieved by the said order of the CIT(A), Revenue preferred appeal before the Tribunal. Tribunal vide the order dated 3 rd November, 2016 took The view that 2% of the profit which was directed to be added by the CIT (A) was on the lower side and therefore, the Assessing Officer was directed to make further addition of 3%*

.....

*19. On thorough consideration of the matter, we do not find any error or infirmity in the view taken by the Tribunal. The lower appellate authorities had enhanced the quantum of purchases much beyond that of the Assessing Officer i.e., from Rs. 24,18,06,385.00 to Rs. 65,65,30,470.00 but having found that the purchases corresponded to sales which were reflected in the returns of the assessee in sales tax proceedings and in addition, were also recorded in the books of accounts with payments made through account payee cheques, the purchases were accepted by the two appellate authorities and following judicial dictum decided to add the profit percentage on such purchases to the income of the assessee. While the CIT (A) had assessed profit at 2% which was added to the income of the assessee, Tribunal made further addition of 3% profit, thereby protecting the interest of the Revenue. We have also considered the two decisions relied upon by learned standing counsel and we find that facts of the present case are clearly distinguishable from the facts of those two cases to warrant application of the legal principles enunciated in the two cited decisions*

*20. In Bholanath Poly feb (P.) Ltd. (supra), Gujarat High Court was also confronted with a similar issue. In that case Tribunal was of the opinion that the purchases might have been*

*made from bogus parties but the purchases themselves were not bogus. Considering the fact situation, Tribunal was of the opinion that not the entire amount of purchases but the profit margin embedded in such amount would be subjected to tax. Gujarat High Court upheld the finding of the Tribunal. It was held that whether the purchases were bogus or whether the parties from whom such purchases were allegedly made were bogus was essentially a question of fact. When the Tribunal had concluded that the assessee did make the purchase, as a natural corollary not the entire amount covered by such purchase but the profit element embedded therein would be subject to tax.*

*21. We are in respectful agreement with the view expressed by the Gujarat High Court.”*

*A similar view was taken by the Hon'ble Bombay High Court in the case of Jakharia Fabric (P.) Ltd [2020] 118 taxmann.com 406 (Bombay). Elaborating the facts, the Jurisdictional High Court observed that:*

*7. In the appellate proceedings, CIT(A) while accepting the contention of the Assessing Officer about the bogus nature of the transactions however held that the entire purchases from the eight parties could not be added as bogus, but what needed to be taxed is the profit element embedded in such transaction. Following Gujarat High Court decision in the case of CIT v. Simit P. Sheth [2013] 38 taxmann.com 385/219 Taxman 85 (Mag.)/356 ITR 451 (Guj.), CIT(A) vide its appellate order dated 18th August, 2014 took the view that the estimation of 17.5% of profit would meet the ends of justice. Accordingly, direction was issued to the Assessing Officer.*

*8. In appeal before the Tribunal by the Revenue, Tribunal held that there was no reason to intervene in the finding of the CIT(A) which was a reasonable view. Accordingly, vide the order dated 21st September, 2016, Tribunal affirmed the findings of the CIT (A).*

**On merits, the Court held that:**

*16. Today while dealing with Income-tax Appeal No. 1330 of 2017 (Pr. CIT v. Rishabhdev Techno cable Ltd.) [2020] 115 taxmann.com 333 (Bom.), we have held as under*

*"19. On thorough consideration of the matter, we do not find any error or infirmity in the view taken by the Tribunal. The lower appellate authorities had enhanced the quantum of purchases much beyond that of the Assessing Officer i.e., from Rs. 24,18,06,385.00 to Rs. 65,65,30,470.00 but having found that the purchases corresponded to sales which were reflected in the returns of the assessee in sales tax proceedings and in addition, were also recorded in the book so f accounts with payments made through account payee cheques, the purchases were accepted by the two appellate authorities and following judicial dictum decided to add the profit percentage on such purchases to the income of the assessee. While*

*the CIT(A) had assessed profit at 2% which was added to the income of the assessee, Tribunal made further addition of 3% profit, thereby protecting the interest of the Revenue. We have also considered the two decisions relied upon by learned standing counsel and we find that facts of the present case are clearly distinguishable from the facts of those two cases to warrant application of the legal principles enunciated in the two cited decisions.*

*20. In Bholanath Poly fab Limited (supra), Gujarat High Court was also confronted with a similar issue. In that case Tribunal was of the opinion that the purchases might have been made from bogus parties but the purchases themselves were not bogus. Considering the fact situation, Tribunal was of the opinion that not the entire amount of purchases but the profit margin embedded in such amount would be subjected to tax. Gujarat High Court upheld the finding of the Tribunal. It was held that whether the purchases were bogus or whether the parties from whom such purchases were allegedly made were bogus was essentially a question of fact. When the Tribunal had concluded that the assessee did make the purchase, as a natural corollary not the entire amount covered by such purchase but the profit element embedded therein would be subject to tax*

*21. We are in respectful agreement with the view expressed by the Gujarat High Court.”*

*16. On thorough consideration of the matter, we do not find any error or infirmity in the finding returned by the Tribunal. No substantial question of law arises from such finding returned by the Tribunal*

***Recently, Hon'ble Bombay High Court in the case of PCIT v. Vishwashakti Construction (ITA No. 1016 of 2018, dated 04-05-2023)(Bom)*** wherein the Appellant is a contractor, who had been allotted a subcontract for carrying out civil works of road and buildings repairs for which various types of building materials are stated to have been purchased from several suppliers including the ten suppliers, who are alleged to have been providing accommodation entries. High Court held that it is not denied that the works allotted had been completed for the concerned agency. which would have been otherwise impossible, if the entire purchases made by the Appellant were to be held as non-genuine. The Tribunal upheld the view of the CIT(A) to treat the purchases from ten parties as bogus and also upheld the view expressed by the CIT(A) to sustain the addition to the extent of 12.5% of the amount of the disputed purchases. High Court upheld the order passed by the Tribunal warrants no interference.

*Reference is also drawn on the decision of Hon'ble Mumbai Tribunal in case of Apollo Heat Exchangers Pvt Ltd v. ACIT (ITA No 5864-5865/Mum/2016, dated 16.06.2016)* wherein the assessee was manufacturing company and made purchases from Hawala entities, the Hon'ble Tribunal held that, since the purchases consumed and the sales are recorded and has provided

*the stock register and consumption of material, thus only profit element has to be added. The relevant part of the order is reproduced as under:*

*"Thus, as can be seen that the assessee has duly proved that the said material was duly recorded in stock records and utilization/consumption of the said material for manufacturing finished goods stood proved which remained uncontroverted by Revenue even by learned DR before us. But on the other side, the said party Nutan Metals has confessed before sales tax authorities that they are engaged in providing accommodation entries without supplying any material physically wherein only bogus bills are issued. The said party has allegedly issued bills to the tune of Rs. 56,55,569/- to the assessee. The said information was received by Revenue from Sales Tax Department wherein the assessee is stated to be beneficiary of the accommodation entry provided by Nutan Metals. Notices u/s 133(6) by the AO to the said party remained uncomplied with by Nutan Metals and the assessee could not produce the said party before the authorities below. The assessee is not able to discharge the onus lay on it under provisions of the 1961 Act in this case. The conclusion of the cumulative factual matrix of the case is that the assessee has obtained actual material from grey market at lower price and to save on VAT, grey market profits etc. has obtained bogus invoices from the said party namely Nutan Metals. The consumption/utilization of the material reflected by the said bogus invoices stood proved while the GP already declared is 31.91% which included these alleged purchases, which has already suffered tax. End of justice in this case will be best served in this if addition is sustained to the tune of 6% of the purchases to the tune of Rs. 56,55,569 so made from Nutan Metals, which will lead to confirmation/upholding of addition to the tune of Rs.3.39.334/- We order accordingly."5.2.4. Now the issue to be further adjudicated is that what is the reasonable profit percentage to be adopted for computing the profits arising from the trading in transport services to arrive at the profit element embedded in such bogus purchases. The AO has mentioned in the assessment order that the assessee has declared operating profits in the range of 14%-15%. Taking a cue from the above judicial precedents as well as looking at the factual aspects enumerated above, the profit element embedded in the bogus purchases is thus estimated to be 15% of such bogus purchases and it is this profit element which needs to be added to the income of the assessee. Thus, the addition on account of non-genuine purchases is restricted to 15% of Rs. 2,17,94,500/- which amounts to Rs. 32,69,175/-. The remaining addition of Rs. 1,85,25,325/- [Rs. 2,17,94,500/- minus Rs. 32,69,175/-] is accordingly deleted. The grounds of appeal are, therefore, partly allowed.*

*5.3. Ground No. 9 is general in nature and does not require any adjudication, hence, dismissed.*

*6. In the result, the Appeal is partly allowed."*

5. We have heard the rival submissions and perused the material available on record, including the impugned appellate order passed by the Ld. CIT(A). It is an undisputed fact that the addition made by the Ld. AO was primarily based on third-party statements and information received from the Investigation Wing, without bringing any direct incriminating material on record to establish that the purchases were entirely non-genuine in the hands of the assessee. On perusal of the order of the Ld. CIT(A), we find that the Ld. CIT(A) has examined the entire factual matrix in detail and has rightly observed that the sales declared by the assessee have not been doubted by the Ld. AO. Once the sales are accepted, it cannot be presumed that no purchases were made, as purchases are intrinsically linked to sales in a trading activity. The Ld. CIT(A), after considering the judicial precedents of the Hon'ble Jurisdictional High Court as well as other High Courts, has taken a plausible view that only the profit element embedded in such purchases can be brought to tax.

We find that the Ld. CIT(A) has reasonably estimated the profit element at 15% of the alleged non-genuine purchases, having regard to the nature of business and the operating profit disclosed by the assessee. Such estimation is in consonance with the settled legal position that in cases of alleged bogus purchases, only the embedded profit element is liable to be taxed and not the entire purchase amount. The findings of the Ld. CIT(A) are well-reasoned and supported by binding judicial precedents, and no infirmity has been pointed out by the revenue warranting our interference. Accordingly, we uphold the order of the Ld. CIT(A) on this issue. As regards the cross-objection filed by the assessee challenging the validity of reopening, we find that since the addition on merits has been

substantially adjudicated and the revenue's appeal has been dismissed, the cross-objection does not survive for separate adjudication and is accordingly dismissed.

6. In the result, the appeal of the revenue bearing **ITA No.5435/Mum/2025** and the assessee's **CO No.90/Mum/2026** are dismissed.

Order pronounced in the open court on 07<sup>th</sup> day of April 2026.

Sd/-

(OM PRAKASH KANT)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 07/04/2026

SAUMYA Sr.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