

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “B” BENCH: NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.2693/Del/2025
[Assessment Year : 2021-22]**

Nitin Mangla D-15, Ground Floor, Vikaspuri, New Delhi- 110018. PAN-AJBPM5834C	vs	PCIT-15 Delhi
APPELLANT		RESPONDENT
Appellant by	Shri Shantanu Kanungo, Adv. & Ms. Sayantani Kanungo, Adv.	
Respondent by	Ms. Pooja Swaroop, CIT DR	
Date of Hearing	22.01.2026	
Date of Pronouncement	10.04.2026	

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by assessee against the order dated 27.03.2025 by Ld. Pr. Commissioner of Income Tax, Delhi-5 [“Ld. Pr. CIT”] passed u/s 263 of the Income Tax Act, 1961 [“the Act”] pertaining to Assessment Year 2021-22.

2. Brief facts of the case are that assessee has e-filed his return of income on 01.01.2022, declaring total income at INR 14,38,120/-. The case of the assessee was selected under CASS for complete scrutiny for the reason that assessee has made substantial purchase from buyers where either non-suppliers or non-filer(s) of ITR.

Accordingly, notice u/s 143(2) followed by notices u/s 142(1) were issued alongwith questionnaires from time to time. The AO at page 2 of the assessment order observed that except one reply dated 13.10.2022, no notice was complied with by the assessee. Therefore, the AO issued summons u/s 133(6) of the Act to the respective supplier parties. The AO also obtained information from GST portal and it was observed that out of 08 parties who have not filed their ITRs for the year under appeal, in reply to notice issued u/s 133(6) of the Act, three parties have filed the details however, the notice in case of remaining five parties remained un-complied therefore, the AO hold the total purchase made from these Five parties at INR 10,47,03,730/- as not genuine and bogus and by following the judgment of Hon'ble Gujarat High Court in the case of **CIT vs Simit P Sheth** reported in **356 ITR 451 (Guj. HC)** made the addition @ 12.5% of total purchases held as bogus and made the addition of INR 1,30,87,966/- u/s 69C of the Act. The total income of the assessee thus, was computed at INR 1,45,26,090/-. Thereafter, Ld. PCIT initiated the revision proceedings u/s 263 of the Act by issue of show cause notice dated 03.03.2025 wherein Ld. PCIT observed that once the assessee has failed to substantiate the purchases made from Five parties, the AO should have made the disallowance of the entire purchase as against the disallowance made @ 12.5% of such purchase and therefore, the assessment is erroneous and pre-judicial to the interest of the Revenue. In response, assessee filed purchase invoices, copies of accounts, e-way bills, GR etc. and further filed copy of the bank statements however, Ld. PCIT observed that

assessee has not filed stock register and confirmation of the parties therefore, the purchases remained unverified. Ld. PCIT thus, observed that AO should have made the disallowance of the entire purchases and accordingly, held the assessment order as erroneous and pre-judicial to the interest of the Revenue and enhanced the income of the assessee by INR 9,16,15,764/- u/s 69C of the Act r.w.s. 115BBE of the Act.

3. Against the said order, the assessee is in appeal before the Tribunal wherein various Grounds of appeal taken by the assessee as per the appeal memo.

4. Since all the Grounds of appeal taken by the assessee are with respect to the action of Ld. PCIT in making the addition on account of entire purchases held as bogus after holding the assessment order as erroneous and pre-judicial to the interest of the Revenue u/s 263 of the Act therefore, they are taken together for consideration.

5. Before us, Ld.AR submits that case of the assessee was selected for scrutiny for the reason that a search action was carried out u/s 132 of the Act on M/s. Johnson Watch Group where GST data indicated that assessee firm M/s. Kesho Ram Mangla Oil Exports had appeared in connection with alleged accommodation entry transactions. Thereafter, AO had examined the data in GST portal and found total Eight parties as non-filers of income tax returns. Thus, in order to examine the purchases made from them, notices

u/s 133(6) were issued to those parties out of which Three parties have responded and filed their details. Ld.AR submits that AO had accepted the purchases made from three parties who had made compliance as genuine and purchases made from remaining Fice parties were held as bogus. Ld. AR submits that in the assessment order, AO observed that only one reply was filed on 13.10.2022 which fact is not correct as the assessee has filed further replies before the AO in response to notice u/s 142(1) dated 05.12.2022 on 15.12.2022. Copy of the said replies are placed at pages 64 and onwards of the Paper Book wherein assessee has filed copies of all the e-filing acknowledgements through which information was filed before the AO. Ld. AR submits that it is incorrect to say that the assessee has not made compliances to the notices issued by AO. Ld.AR submits that AO has taken one of the plausible view that the profits on such alleged and unverifiable purchases could be added and once a plausible view is taken, it cannot be said that such view is not correct and therefore, the observation of Ld. PCIT is incorrect holding the assessment order as erroneous and pre-judicial to the interest of the Revenue. Ld. AR further submits that assessee has filed all the details in order to establish the purchases as genuine before Ld.PCIT. However, Ld.PCIT has failed to point out any defect in the same and hold that AO should have made the addition of the entire purchases. Ld.AR further submits that AO making the addition @ 12.5% of the alleged bogus purchases, have already been filed before Ld. PCIT however, no default / error was pointed out in the same before reaching to the conclusion that the assessment order is erroneous

and prejudicial to the interest of revenue. Ld. AR further submits that an appeal was filed against the addition made in the assessment order which is pending therefore, the issue under hand is sub-judiced before Ld. CIT(A) on which no action should be taken u/s 263 of the Act. He prayed accordingly.

6. On the other hand, Ld. CIT DR for the Revenue vehemently supported the orders of lower authorities and submits that when the purchases of INR 10,47,03,730/- were found as bogus and assessee has failed to substantiate the purchases made by placing on record the evidences therefore, AO should have made disallowed the entire purchases as against disallowance @ 12.5% made by him. It is thus prayed by ld. CIT DR to confirm the order of Ld. PCIT. In this regard, reliance placed on the judgment of Hon'ble Bombay High Court in the case of **PCIT vs Kanak Impex (India) Ltd.** reported in **ITA No. 791 of 2021 (Bom.)**.

7. Heard the contentions of both the parties at length and perused the material available on record. From the perusal of the orders of the lower authorities, it is observed that the case of the assessee was selected for scrutiny for the reason that it had made purchases from various parties which are non-filers. The AO had identified Eight such parties to whom notices u/s 133(6) were sent and after considering the replies filed by three parties, remaining parties who had not complied with the notices, AO hold the purchases made from these parties as bogus and disallowed 12.5% of the purchases made

from them by placing reliance on the judgement of Hon'ble Gujarat High Court in the case of CIT vs Simit P. Sheth (supra). Ld. PCIT observed that once the purchases were held as bogus, 100% disallowance of the same should be made and thus, hold the assessment order as erroneous and pre-judicial to the interest of the Revenue and by placing reliance on the judgement of Hon'ble Supreme Court in the case of **Malabar Industrial Co. Ltd v. CIT [2000] 243 ITR 83 (SC)**. It is observed that AO in its order alleged that assessee has not filed the details however, from the perusal of the acknowledgements of e-proceedings filed before us dated 15.12.2022 through which assessee has filed various details to establish the genuineness of the purchases made.

8. The assessee has filed all the details before the lower authorities which includes copies of invoices, bank statements, GR & e-way bills etc. It is observed that these details were also filed before the Ld. PCIT who has failed to point out any error in the details filed by the assessee and ignored/rejected for the reason that assessee has not filed stock register and confirmations of the respective parties. It is further observed that sales made by the assessee had not been doubted nor the profits declared were disturbed and the trading results declared were accepted by the AO as well as by Ld. PCIT in the order passed u/s 263 of the Act. It is a matter of fact that the alleged parties from whom purchases made were held as bogus are having valid PAN and there may be other reasons for non-filing of the returns solely for these reasons, entire purchases cannot be doubted.

It is further observed that GST authorities have passed the order in the case of the assessee placed at pages 45 to 63 wherein the purchases made from these parties have been accepted and proceedings were initiated u/s 73/74 of the GST Act were dropped. Once the purchase made from these parties, have been accepted by GST authorities, it cannot be said that the entire purchases made from these parties are bogus. The AO has placed reliance on the judgement of Hon'ble Gujarat High Court in the case of CIT vs Simit P.Sheth (supra) for making disallowance @ 12.5% as profit suppressed by the assessee through such bogus purchases. This view is further supported by various judgement of Hon'ble Gujarat High Court confirmed by Hon'ble Supreme Court in the case of **N.K. Proteins Ltd v. Dy. CIT** reported in **(2017) 84 Taxmann.com195 (SC)**. Once the AO has taken one of the plausible views which is supported by the judicial pronouncements. Ld. PCIT cannot held that view as erroneous and prejudicial to the interest of revenue based on some other judgement.

9. Ld. PCIT had ignored the fact that assessee has filed an appeal against the addition made by the AO and in appellate proceedings, Ld. CIT (A) has power of enhancements of income assessed, if desired so, therefore, once the AO has framed an opinion based on judicial pronouncements and accepted the trading results declared by the assessee, the action of Ld. PCIT in holding the said order as erroneous and pre-judicial to the interest of Revenue without specifically pointed out the errors and omissions in the details filed

by the assessee with respect to the purchases made from these parties is not acceptable. Element of profit, if any, is still suppressed, Ld.CIT(A) has all the powers to enhance the income of the assessee. Therefore, we the order of ld. PCIT holding the assessment order as erroneous and prejudicial to the interest of revenue is not correct and accordingly the order passed u/s 263 of the Act is hereby quashed. has wrongly initiated the proceedings u/s 263 of the Act and therefore, the order so passed u/s 263 is quashed. All the grounds of appeal taken by the assessee are thus, allowed.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 10.04.2026.

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

Date:- 10.04.2026

Amit Kumar, Sr.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT
6. Guard File

ASSISTANT REGISTRAR
ITAT, NEW DELHI