

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA Nos.2319, 2321 & 2320/PUN/2024
Assessment years : 2009-10, 2010-11 & 2011-12**

Co-Operation Metals 218, New Ravivar Peth, Phulwala Chowk, Pune – 411002	Vs.	ITO, Ward 6(3), Pune
PAN: AAAFC8677P		
(Appellant)		(Respondent)

**ITA Nos.2262, 2271 & 2263/PUN/2024
Assessment years : 2009-10, 2010-11 & 2011-12**

ITO, Ward 6(3), Pune	Vs.	Co-Operation Metals 218, New Ravivar Peth, Phulwala Chowk, Pune – 411002
		PAN: AAAFC8677P
(Appellant)		(Respondent)

Assessee by : Shri Kishor B Phadke
Department by : Shri Madhan Thirmanpalli, Addl. CIT
(through virtual)

Date of hearing : 16-04-2026
Date of pronouncement : 21-04-2026

ORDER

PER BENCH:

ITA No.2319/PUN/2024 and ITA No.2262/PUN/2024 are cross appeals. The first one is filed by the assessee and the second one filed by the Revenue and are directed against the order dated 12.09.2024 of the Ld. CIT(A) / NFAC, Delhi relating to assessment year 2009-10. ITA No.2321/PUN/2024 and ITA No.2320/PUN/2024 filed by the assessee and ITA No.2271/PUN/2024 and ITA

No.2263/PUN/2024 filed by the Revenue are cross appeals and are directed against the separate orders dated 10.09.2024 of the Ld. CIT(A) / NFAC, Delhi relating to assessment years 2010-11 and 2011-12 respectively. Since identical grounds have been raised by the assessee and the Revenue in these appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

2. First we take up cross appeals in ITA No.2321/PUN/2024 filed by the assessee and ITA No.2271/PUN/2024 filed by the Revenue for assessment year 2010-11 as the lead case. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of trading in steels. It filed its return of income on 28.09.2010 declaring total income of Rs.1,36,630/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') accepting the returned income. Subsequently, on the basis of information received from the sales tax department that the assessee was one of the beneficiaries and indulged in the hawala transaction, the case of the assessee was reopened u/s 147 of the Act by recording the following reasons:

"The assessee filed his return of income for AY 2010-11 declaring total income of Rs. 1,36,630/- was filed on 28.09.2010, the return was processed u/s 143(1) of the IT Act, 1961.

The Sales-tax department has sent information wherein the sales tax department unearthed racket of hawala dealers who have issued fake purchase bills to the various traders and in the instant case showing Hawala transactions amounting to Rs. 88,76,319/- for F.Y.

2009-10 in the relevant assessment year 2010-11, in respect of Co-Operation Metals as under:

Sr. No	Name of the Party supplying Bogus Bills	Amount
1	M/s. Raj Metal Industries & M/s. Rajlaxmi Corporation & Reliable Metal Works	47,44,414
2	Ramani Metal Corporation	41,31,905
	Total	88,76,319

These transactions relate to bogus bills, fake purchases bills and fake purchases. Non-genuine bills utilized by the said assessee to inflate the expenses or reduce its total income.

In view of the information above, I have the reasons to believe that an income to the extent of Rs. 88,76,319/- for A.Y. 2010-11 has escaped assessment.

3. Subsequently the order u/s 143(3) r.w.s. 147 of the Act was passed on 13.03.2015 determining the total income of the assessee at Rs.5,80,450/- wherein the Assessing Officer made addition of Rs.4,43,816/- being GP @ 5% on account of unproved purchases from the vendor declared as hawala parties. Subsequently the Ld. CIT-III, Pune examined the record and found the order of the Assessing Officer to be erroneous and prejudicial to the interest of the Revenue since the Assessing Officer has not verified all the relevant issues to arrive at the correct taxable income. He, therefore, set aside the issue to the file of the Assessing Officer with certain directions. Subsequently the Assessing Officer issued notice u/s 143(2) r.w.s. 263 of the Act in response to which the assessee filed its submissions. It was explained that the assessee has made purchases from the parties concerned from whom physical delivery of goods were taken and supplied

to the industries for consumption across Pune. The above parties have not made VAT payment to the Sales Tax Department and hence were declared as hawala dealers but the fact remains that the assessee has made physical purchase of goods from the parties. It was further submitted that had there been no purchases, there would not have been any corresponding sales too. It was submitted that merely because the above parties did not pay VAT does not justify the purchases are bogus and warrants the addition to the total income of the assessee. Relying on various decisions it was submitted that no addition is called for.

4. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He observed that a survey action u/s 133A of the Act was carried on 15.02.2013 in the case of the assessee. The Assessing Officer in the course of survey action had recorded statement of Shri Mafatlal N Shah u/s 131 of the Act. In the statement the Assessing Officer confronted the partner of the assessee regarding purchases of Rs.88,76,319/- from the parties M/s. Raj Metal Industries, M/s. Rajlaxmi Corporation & Reliable Metal Works and Ramani Metal Corporation. He noted that the transaction relates to bogus bills, fake purchases bills and without actual movement of goods. Non-genuine bills were utilized by the assessee to inflate the expenses and in turn reduce its total income. Rejecting the various explanations given by the assessee, the Assessing Officer made addition of Rs.84,32,503/- (i.e. Rs.88,76,319 – Rs.4,43,816) being unproved purchases from the vendors declared as hawala parties.

5. In appeal the Ld. CIT(A) / NFAC directed the Assessing Officer to restrict the addition to 18% of the said bogus purchases by observing as under:

3. Analysis and Decision:

3.1 The case of the assessee firm for Assessment Year 2010-11 had been reopened u/s.147 on the basis of information received from Maharashtra Sales Tax Department. In such information, it was informed that the assessee for Assessment Year 2010-11 had procured certain bogus purchase bills without any actual supply of goods from two suppliers viz., M/s. Raj Metals Industries for a sum of Rs.47,44,414/- and M/s. Ramani Metals Corporation for a sum of Rs.41,31,905/- totaling a sum of Rs.88,76,319/-. In the reopened assessment u/s.147 dated 13.03.2015, the Assessing Officer made an addition of Rs.4,43,816/- being 5% of the bogus purchase bills on account of additional Gross Profit out of such bogus bills. Subsequently, the PCIT-3, Pune, passed an order u/s.263 on 24.03.2017 observing that it would be fair and justified to restore the matter to the Assessing Officer for proper verification of the purchases and the PCIT set aside the assessment order passed u/s.147 directing the Assessing Officer to give adequate opportunity of being heard to the assessee, call for relevant details on various issues from the assessee and after examining the assessee's submission/explanation pass fresh assessment in accordance with law.

3.2 Following such direction of the PCIT, the case was reopened to give effect of the direction for revision of the assessment. During such proceedings, the Assessing Officer found that the assessee was relying only on the purchase bills and payment made with regard to such purchase but the assessee firm was not able to submit details like transport

document, Octroi details, etc. supporting actual movement of goods to the assessee from the alleged sellers. The assessee was not able to produce any confirmation from the vendors of such transaction stating that the sellers were not traceable. As a result, the Assessing Officer was of the opinion that the entire purchase was nothing but bogus accommodation entry and disallowed the entire sum of purchase to the total income declared by the assessee in its return.

3.3 Aggrieved with the order, the assessee had instituted the present appeal. In the document submitted with the appeal papers, it is seen that the assessee for the Financial Year 2009-10 had disclosed that it had an opening stock of goods traded for Rs.23,93,561/-, it made purchase for Rs.3,10,01,875/-. The stock was sold for Rs.3,28,17,613/- and the closing stock remained unsold for Rs.23,74,320/-. Therefore, the assessee disclosed Gross Profit to sales ratio for 4.53%. Out of total purchase of Rs.3,10,01,875/-, the Assessing Officer in the order passed u/s.263 r.w.s. 143(3) dated 29.12.2017, disallowed Rs.84,32,503/- of such purchase.

3.4 Coming back to the facts of the case, it is gathered that during Financial Year 2008-09, the Maharashtra Sales Tax Department disclosed before Bombay High Court that it had investigated about 1555 Hawala operators involving about 39488 beneficiary dealers who during the course of preceding three years had passed on input tax credit of Rs.1333 crores. The modus operandi was to claim and obtain input tax credit against the declaration of fake tax invoices without actual transaction involving the sale and purchase of goods. In order to show the transaction as genuine, the payments were made against the invoices by cheque or bank transfer and later on the amounts were reversed/withdrawn from the bank account of the Hawala dealers. The Maharashtra Sales Tax Department started putting the list of suspicious dealers who had issued false bills without delivery of goods on its website from 21.04.2011 onwards. As on 2013, the list contains around 2059 dealers who had issued invoices involving tax evasion of more than Rs.10,640/- crores.

3.4 Under the above background, the Maharashtra Sales Tax Department identified the sellers in question in this case and forwarded such information to the Assessing Officer.

3.5 Apparently, the fact remains that the assessee had never procured any goods against the suspicious bills. Neither did it pay the required VAT although it had taken input VAT credit of such purported purchase bills.

3.6 However, this issue is not a unique case as thousands of assesseees received such benefit from the listed Hawala operators and the Income Tax Department have taken

remedial measures in such cases by reopening of the assessments as was done in this particular case. Many of such cases had been referred to judiciary for decision of the treatment of the purported bogus bills. However, majority of the judicial decision state that where the Assessing Officer disallowed the entire expenditure on account of purchases made from certain parties treating the same as bogus, it would amount to levy of income tax on gross receipts or on sales. Such recourse is not permissible unless it is specifically authorized to do so under any particular provision contained in the Income Tax. It has been held by the higher judiciary that in such circumstances a certain percentage of expenditure has to be disallowed on account of inflation of purchase price. It was also held that if purchases are made from open market without insisting for genuine bills the suppliers may be willing to sale those products at a much lower rate compare to the rate at which they may charge in case of dealer has to give a genuine sale invoices in respect of that sale and supply of goods. There may be various factors due to which there is bound to be substantial difference between the purchase price of unaccounted materials and rate of purchase of accounted for goods. There may be a saving on account of sales tax and other taxes and duties which may be leviable in respect of sale of goods in question. However, it was held that no sale can be affected by a trader if there is no corresponding purchase of the materials sold. Therefore, complete disallowance of purchase is not called for. What is material gain of the sellers out of which unaccounted transactions are savings on account of unpaid taxes and lower rate of purchase price.

3.7 Under such judicial ratio, I am of the opinion that it was not judicious to disallow the entire purchase amount which may tantamount to taxing of the entire sales receipt of the corresponding goods. Therefore, a legitimate percentage of such bogus purchase bill needs to be disallowed to work out the actual profit of the goods sold by the assessee firm.

3.8 In the original assessment made u/s.147, the Assessing Officer worked out such percentage at 5% of the purchase disclosed in the account. I find such percentage to be low as the input VAT credit itself which was enjoyed by the assessee by through such bogus bills is 4 to 5% of the purchase value. The assessee disclosed G.P. of 4.53% of the total turnover disclosed in the account. However, as held by the judicial authority the actual unaccounted purchases must have been at a lesser value than the actual market price. An estimation of additional 8% of G.P. is found fit for such estimation. Moreover, the assessee must have incurred certain unaccounted expenditure for arrangement of such false bills, which is estimated to be 5% of the purchase value. As a whole, the proper estimation of 22.5% of the bogus purchase seems to be reasonable to assess the profit earned by the assessee by procuring the goods clandestinely and later legitimizing such purchase by procuring bogus bills. Since the assessee has already disclosed a G.P. of 4.5% in the account, the additional income to be charged and added to the total income disclosed should be $22.5\% - 4.5\% = 18\%$ of the bogus purchase amount. Therefore, the addition should be restricted to Rs.15,97,740/- being 18% of the bogus purchase of Rs.88,76,319/-, instead of the addition

made in the order u/s.263 r.w.s. 143(3) for Rs.84,32,503/-. The Assessing Officer is, therefore, directed to reduce the addition accordingly and the appeal of the assessee is **partly allowed**.

6. Aggrieved with part relief granted by the Ld. CIT(A) / NFAC, the assessee as well as the Revenue are in appeal by raising the following grounds:

Grounds raised by the assessee in ITA No.2231/PUN/2024 (A.Y. 2010-11)

1. *The learned CIT(A), NFAC erred in law and on facts in confirming addition on account of alleged Hawala Purchases amounting to Rs.15,97,740/- (after allowing partial reliefs). Learned I-T authorities ought to have appreciated that "purchases" made by Appellant were genuine.*
2. *The learned IT authorities ought to have appreciated that, Appellant, in the initial round of proceedings u/s 143(3) r.w.s. 147, has agreed for addition of 5% GPM (Gross profit margin) of alleged HAWALA Purchases in only to buy peace of mind.*
3. *Learned CIT(A), NFAC erred in law and on facts in deciding the GPM (gross profit margin) of 18% on alleged Hawala Purchases solely relying upon the information received from sales tax department indicating alleged bogus purchases made. The I-T authorities ought to have proceeded further for cross-examination of the suppliers/further probing of such suppliers, from whom the alleged bogus purchases were made. Appellant relies upon the decision of jurisdictional Honorable Bombay High Court in the case of PCIT Vs. Nitin Ramdeoji Lohiya - [2022] 145 taxmann.com 546.*
4. *The learned CIT(A), NFAC erred in law and on facts in assessing the gross profit margin (GPM) of the appellant at 18% on alleged HAWALA purchases instead of a reasonable lower plausible GPM. Appellant contends that, in business of trading of goods and assuming, such huge 18% GPM on alleged HAWALA Purchases is abnormal.*
5. *Appellant craves leave to add/alter/modify/amend/delete all or any of the grounds of appeal.*

Grounds raised by the Revenue in ITA No.2271/PUN/2024 (A.Y. 2010-11)

1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition made on account of non-genuine/bogus purchases at 18% of such value instead of the whole value of such bogus purchases as was done by the AO, when the Ld. CIT(A) himself has upheld the finding that the impugned purchases were bogus and especially, when there was nothing on record to establish that sales against such bogus purchases have been already disclosed by the assessee in its books.*

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not following the ratio of the decision of the Hon'ble Supreme Court in the case of N. K. Proteins Ltd. v. Deputy Commissioner of Income-tax [2017] 84 taxmann.com 195 (SC), wherein the Apex Court has upheld the disallowance of entire expenses claimed on account of bogus purchases?*
3. *The appellant craves leave to add to, amend, alter any of the above grounds of appeal.*

7. The Ld. DR heavily relied on the order of the Assessing Officer. He submitted that the Ld. CIT(A) / NFAC without appreciating the facts properly has reduced the addition to Rs.15,97,740/- as against Rs.84,32,503/- made by the Assessing Officer which is not justified.

8. The Ld. Counsel for the assessee on the other hand submitted that without purchases, there cannot be any sales and in the instant case the Assessing Officer has accepted the sales made by the assessee. Relying on the following decisions he submitted that only the profit element embedded in such unaccounted purchases can be added to the total income and not the entire purchases:

- 1) *Amcon Construction [TS-452-HC-2026 (Bom)]*
- 2) *ITO vs. Navin Sirahmal Mukim vide ITA No.1054/PUN/2025*
- 3) *CIT vs. Prathana Gems (2025) 9 NYPCTR 1752 (Guj)*
- 4) *PCIT vs. Sunil Kumar Parasmal Jain (2025) 9 NYPCTR 1753 (Guj)*
- 5) *Sha Tarachand Fojmal and Company vide ITA No.2541/Mum/2025*
- 6) *PCIT vs. Ramelex (P) Ltd (2025) 179 taxmann.com 374 (Bom)*
- 7) *Ramasamy Sivaprakasam vide ITA No.1266/Chny/2025*
- 8) *KDM Impex vide ITA No.3040/Mum/2025*

- 9) *Sailesh Metal Corporation vide ITA No.2977/Mum/2025*
- 10) *Leela Greenship Recycling Pvt. Ltd. vide ITA No.2135/Ahd/2024*
- 11) *PCIT vs. Zahira R. Khatun (2025) 172 taxmann.com 473 (SC)*
- 12) *PCIT vs. Pravin U. Parmar (Jain) (2025) 9 NYPCTR 455 (Bom)*
- 13) *Mahindra Chandrakant Thakkar vide ITA No.4619/Mum/2023*
- 14) *ITO vs. Sureshkumar N. Kadri vide ITA No.3236/Mum/2019*
- 15) *DCIT vs. Della Technica Interior Design Pvt Ltd vide ITA No.1217/Mum/2019*
- 16) *Jayesh Metal Corporation vs. ITO vide ITA Nos.2401 & 2402/Mum/2019*
- 17) *PCIT vs. Rishabhdev Technocable Ltd vide IT Appeal No.1330 of 2017 (Bom)*
- 18) *Shri Raakeshh S. Sureka vs. ACIT vide ITA No.1289/PUN/2017*
- 19) *Venky's (India) Ltd vs. DCIT vide ITA No.2222/PUN/2016*
- 20) *PCIT vs. Mohommad Haji Adam & Co (2019) 103 taxmann.com 459 (Bom)*
- 21) *ITO vs. Shri Manoj Suresh Sharma vide ITA No.1645/PUN/2016*
- 22) *Laiji Jetsi Maheshwari vs. ACIT vide ITA No.860/PUN/2016*
- 23) *Shri Ashwin Purushottam Bajaj vs. ITO vide ITA No.4736/Mum/2014*
- 24) *CIT vs. Simit P Sheth 356 ITR 451 (Guj)*
- 25) *Shri Madhukant B Gandhi vs. ITO vide ITA No.1950/Mum/2009*

9. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the original assessment order passed u/s 143(3) r.w.s. 147 of the Act on 13.03.2015 determined the total income of the

assessee at Rs.5,80,450/- as against the returned income of Rs.1,36,630/- by making addition @ 5% of the unproved purchases from the vendors declared as hawala parties. We find the CIT-III, Pune set aside the order passed by the Assessing Officer invoking the provisions of section 263 of the Act on the ground that the Assessing Officer has not verified all the relevant issues to determine the correct taxable income and therefore the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. We find in the set aside proceedings the Assessing Officer, rejecting the various explanations given by the assessee, made addition of Rs.84,32,503/- being the purchases made from M/s. Raj Metal Industries, M/s. Rajlaxmi Corporation & Reliable Metal Works and Ramani Metal Corporation, the details of which are given at para 3 of this order. The above figure was arrived at by deducting the addition of Rs.4,43,816/- made in the original 143(3) r.w.s. 147 order from the total bogus purchases of Rs.88,76,319/-. We find in appeal the Ld. CIT(A) / NFAC restricted such addition to 18% of bogus purchases, the reasons of which have already been reproduced in the preceding paragraphs. It is the case of the Revenue that the Ld. CIT(A) / NFAC is not justified in reducing such bogus purchases to 18% as against addition of 100% bogus purchases made by the Assessing Officer. It is the submission of the Ld. Counsel for the assessee that in view of the various decisions relied on by him such addition should be restricted to 3% to 5% of the amounts of unproved purchases. It is also his argument that had there been no purchases, there would not be any corresponding sales. Since the assessee in the instant case has produced the invoices, transportation bills, corresponding invoices of the alleged bogus parties

etc, therefore, estimation of profit at such high percentage is not justified since the assessee had never earned such income.

10. A perusal of the decisions relied on by the Ld. Counsel for the assessee shows that only the profit element embedded in such bogus purchases can be added and not the entire purchases to the total income of the assessee. It has been held that although the purchases were not fully proved, however, the entire disallowance is not justified since without purchases there cannot be any sales. In the instant case the Assessing Officer has not doubted the sales made by the assessee and only doubted the purchases made by the assessee from the parties who are treated as hawala operators. Considering the totality of the facts of the case and in the interest of justice, we are of the considered opinion that adoption of profit @ 10% of the total unproved purchases of Rs.88,76,319/- will meet the ends of justice. We, therefore, modify the order of the Ld. CIT(A) / NFAC and direct the Assessing Officer to restrict the addition to Rs.8,87,632/- being 10% of Rs.88,76,319/- as the income of the assessee. Since an amount of Rs.4,43,816/- has already been added in the original order passed u/s 143(3) / 147, therefore, the addition is restricted to Rs.8,87,632 – Rs.4,43,816 i.e. Rs.4,43,816/-. The grounds raised by the assessee are accordingly partly allowed and the grounds raised by the Revenue are dismissed.

11. After hearing both sides, we find identical grounds have been raised by the assessee in ITA Nos.2321/PUN/2024 & ITA No.2320/PUN/2024 and the Revenue

in ITA Nos.2271/PUN/2024 & 2263/PUN/2024 for assessment years 2010-11 and 2011-12 respectively. We have already decided the issue and partly allowed the appeal filed by the assessee and dismissed the appeal filed by the Revenue. Following similar reasonings, we partly allow the appeals filed by the assessee and dismiss the appeals filed by the Revenue.

12. In the result, the appeals filed by the assessee are partly allowed and the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on 21st April, 2026.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER
पुणे Pune; दिनांक Dated : 21st April, 2026
GCVSR

Sd/-
(R. K. PANDA)
VICE PRESIDENT

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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Assistant Registrar
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	21.04.2026		Sr. PS/PS
2	Draft placed before author	21.04.2026		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Office Superintendent			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			