

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "C", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1306/Ahd/2025
निर्धारण वर्ष / Assessment Year : 2018-19

The ITO Ward-4(2)(3) Ahmedabad	<u>बनाम/ v/s.</u>	Maheshwari Sales Corporation C-111, Ganesh Meridin Nr.Sola Bridge, Sola Ahmedabad-380 058
स्थायी लेखा सं./PAN: AALFM 4917 H		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Mehul K. Patel, AR	
Revenue by :	Smt. Mamta Singh, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 01/09/2025
घोषणा की तारीख /Date of Pronouncement: 30/10/2025

आदेश/ORDER

PER SIDDHARTHA NAUTIYAL, JM:

This appeal by the Revenue is directed against the order of the Ld.Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)"], dated 11/04/2025, passed u/s.250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the Assessment Year (AY) 2018-2019.

2. The Revenue has raised the following grounds of appeal:

“(a) The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs. 63,84,998/- u/s 68 of the Act in respect of cash payment. Despite furnishing ledger copies and bank statements, the assessee failed to produce transportation bills, weighment slips, gate register, stock register of other third-party documents evidencing actual movement and delivery of goods to establish the genuineness of transaction.

(b) The appellant craves leave to add, alter and/or to amend all or any ground before the final hearing of the appeal.”

3. The brief facts of the case are that the assessee firm, M/s. Maheshwari Sales Corporation, filed its original return of income for the Assessment Year 2018-19 on 10.09.2018 declaring total income of Rs. 10,30,030/-. Based on information flagged under the Risk Management Strategy formulated by the CBDT, the Assessing Officer noticed that during the year under consideration, the assessee had allegedly made cash transactions amounting to Rs. 63,84,998/- with Kushal Limited and its key associates for obtaining accommodation entries. Accordingly, the case was reopened under section 147 of the Income-tax Act, 1961 (the “Act”). During the course of reassessment proceedings, notices under sections 143(2) and 142(1) of the Act were issued and the assessee filed various details including audited accounts, computation of income, bank statements, and ledger of Kushal Tradelink in its books. The assessee contended that no cash transaction was made with Kushal Tradelink and that all transactions represented genuine sales made in the ordinary course of business. **However, upon verification, the Assessing Officer observed that the assessee failed to furnish transportation bills, challans, entry registers, or other supporting evidence to substantiate the movement of goods.** The AO relied upon the findings of the Investigation Wing, Ahmedabad, which had unearthed an accommodation entry racket operated by Kushal Tradelink Ltd. during a search under section 132 of the Act. Since the assessee failed to produce cogent evidence to disprove its

connection with the said racket or to establish the genuineness of the sales, the Assessing Officer held that the assessee had taken accommodation entries of bogus sales aggregating Rs. 63,84,998/-. Consequently, the said sum was treated as unexplained cash credit under section 68 of the Act and added to the total income of the assessee.

4. In appeal before CIT(Appeals), the assessee submitted that the addition made by the Assessing Officer was based solely on suspicion and general findings of the Investigation Wing without any direct evidence linking the assessee to any accommodation entry provider. The assessee contended that the transactions with Kushal Tradelink Ltd. were genuine sales duly recorded in its books and supported by bills, bank statements, and other records. **It was further argued that once the sales had already been recorded in the books and offered to tax, no separate addition under section 68 could be made as it would amount to double taxation of the same income,** relying on the decision of the Hon'ble Gujarat High Court in *CIT v. Vishal Exports Overseas Ltd.*, Tax Appeal No. 2471 of 2009 (decided on 03.07.2012). During the appellate proceedings, the assessee also furnished copies of bills No. 206 and 208 as additional evidence, which were admitted by the CIT(A) in the interest of natural justice. **The same were sent to the Assessing Officer for verification through a remand report; however, no remand report was received.** After perusal of the documentary evidences, the CIT(A) observed that the assessee had furnished sufficient proof to establish the identity of the purchaser, nature of the transactions, and genuineness of the sales through banking channels. It was further held that the Assessing Officer failed to bring any independent or direct evidence to show that unaccounted cash had changed hands or that the assessee was involved in any arrangement with the alleged entry providers. The CIT(A) noted that mere reliance on the

investigation report and general modus operandi without confronting the assessee or bringing any specific material on record could not justify the addition. Placing reliance on judicial precedents including *Omar Salay Mohamed Sait v. CIT* [1959] 37 ITR 151 (SC), *CIT v. Daulat Ram Rawatmull* [1973] 87 ITR 349 (SC), *Umacharan Shaw & Bros. v. CIT* [1959] 37 ITR 271 (SC), and *Lalchand Bhagat Ambica Ram v. CIT* [1959] 37 ITR 288 (SC), the CIT(A) held that suspicion, conjectures, and surmises cannot take the place of evidence. Accordingly, it was held that the Assessing Officer had made the addition merely on the basis of general suspicion without any corroborative evidence. The CIT(A), therefore, deleted the addition of Rs. 63,84,998/- made under section 68 of the Act, holding that the assessee had satisfactorily explained the nature and source of the transaction. Grounds relating to levy of interest under sections 234B, 234C, and 234D were held to be consequential, and other grounds being general or premature were dismissed. Consequently, the appeal of the assessee was partly allowed.

5. The Department is in appeal before us against the order passed by CIT(Appeals) allowing the appeal of the assessee. Before us. Ld. DR placed reliance on the observations made by the Assessing Officer in the assessment order. Ld. DR submitted that the assessee has not been able to prove the actual delivery of goods and therefore, the transactions are clearly bogus. In response, the ld. counsel for the assessee submitted that that all transactions have been made through cheque, stock register has been submitted to the Assessing Officer and same has not been rejected by the Assessing Officer, that during the impugned year under consideration the assessee has recorded sales amounting to Rs. 21 crores which have been duly offered to tax, the books of accounts are duly audited and the same were not rejected by the Assessing Officer. Accordingly, the ld. counsel for the assessee submitted that

that in light of these facts, CIT(Appeals) has correctly allowed relief to the assessee, looking into the assessee's set of facts.

6. We have carefully considered the rival submissions and perused the material available on record. The brief facts of the case are that the Assessing Officer had made an addition of Rs. 63,84,998/- under section 68 of the Act treating the same as unexplained cash credit on the allegation that the assessee had taken accommodation entries from M/s. Kushal Tradelink Ltd. and its associates. The Assessing Officer primarily relied on the investigation report of the Investigation Wing, Ahmedabad, without bringing on record any direct evidence linking the assessee to the alleged racket or establishing that the assessee had paid cash in lieu of accommodation entries. The Assessing Officer also did not reject the books of account maintained by the assessee, which were duly audited, and there was no finding that the sales recorded therein were not genuine or that the purchases were unverifiable. The assessee, on the other hand, furnished copies of sale bills, ledger accounts, bank statements, and other relevant documents demonstrating that all transactions were conducted through banking channels and that no cash payments were made. We find that the CIT(Appeals), after admitting additional evidences in the interest of justice and calling for a remand report from the Assessing Officer (which was not submitted by the AO), has given a categorical finding that the assessee had discharged its onus of proving the identity of the party, genuineness of the transaction, and source of the credit as required under section 68 of the Act. The CIT(Appeals) has further observed that no specific or direct evidence was brought on record by the Assessing Officer to prove that any unaccounted money changed hands or that the assessee was involved in any accommodation entry arrangement. The addition was made merely on the basis of general observations derived

from a third-party investigation report without confronting the assessee with such material. It is a settled principle of law that suspicion, however strong, cannot take the place of proof. The Hon'ble Supreme Court in **Omar Salay Mohamed Sait v. CIT [1959] 37 ITR 151 (SC)** and **Umacharan Shaw & Bros. v. CIT [1959] 37 ITR 271 (SC)** has held that additions cannot be made merely on conjectures and surmises. Similarly, in **CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 (SC)**, the Hon'ble Apex Court held that the onus to prove that the apparent is not real lies on the party who so alleges, and such onus must be discharged by bringing cogent evidence on record. While passing the order, Hon'ble SC made the following observations:

"The onus to prove that the apparent is not the real is on the party who claims it to be so. As it was the department which claimed that the amount of fixed deposit receipt belonged to the respondent firm even though the receipt had been issued in the name of B, the burden laid on the department to prove that the respondent was the owner of the amount despite the fact that the receipt was in the name of B. A simple way of discharging the onus and resolving the controversy was to trace the source and origin of the amount and find out its ultimate destination. So far as the source was concerned, there was no material on the record to show that the amount came from the coffers of the respondent-firm or that it was tendered in B Calcutta branch of the Central Bank, on behalf of the respondent. As regards the destination of the amount, there was nothing to show that it went to the coffers of the respondent. On the contrary, there was positive evidence that the amount was received by B. It would thus follow that both as regards the source as well as the destination of the amount, the material on the record gave no support to the claim of the department."

6.1. In **Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC)**, it was further held that assessment cannot be made on the basis of suspicion and surmise.

6.2. Applying these judicial principles, we find that the Assessing Officer has failed to discharge his burden of proving that the assessee's recorded transactions were sham or non-genuine. Further, the Hon'ble Gujarat High Court in **CIT v. Vishal Exports Overseas Ltd., Tax Appeal No. 2471 of 2009 (decided on 03.07.2012)**, has clearly held that once a transaction has been recorded as part of sales in the profit and loss account and income has been offered to tax accordingly, the same cannot be added again under section 68 of the Act, as it would result in double taxation of the same income. In the present case, the sales in question have been duly recorded in the books of the assessee and offered to tax. Therefore, separate addition of the same amount under section 68 is wholly unjustified. We also note that the Assessing Officer did not reject the books of account of the assessee nor pointed out any specific defect therein. In such a situation, the book results cannot be disregarded, and the sales recorded therein cannot be treated as bogus merely on the basis of third-party information without corroboration. The Hon'ble Apex Court in the case of **Pr. CIT v. Shapoorji Pallonji and Co. Ltd.**[2022] 141 taxmann.com 509/288 Taxman 661 held that merely on suspicion bases on information received from sales Tax authority, assessing officer could not make addition on account of bogus purchases without carrying out independent enquiry and affording opportunity to Assessee to convert statements made by seller. The Bombay High Court in the case of **Principal Commissioner of Income-tax v. Vaman International (P.) Ltd.** [2020] 422 ITR 520 (Bom) deleted the addition made by the Assessing Officer in the absence of any inquiry made by him to bring on record any evidence to prove his allegation of bogus purchase and held that the mere reliance by the Assessing Officer on the statement of two persons made before the sale tax department to cross examine whom opportunity was not

provided to the assessee was not sufficient to make the addition. The court held that if the Assessing Officer doubted the purchases, the Assessing Officer was required to make further enquiry, which he did not make. The High Court in the above case, referred to the judgment of Gujarat High Court in the case of it **Krishna Textiles v. CIT [2008] 174 Taxman 372/[2009] 310 ITR 227** to observe that in that case it was held that the onus was on the revenue to prove that the income belongs to the assessee. Considering the totality of the facts and the legal position discussed above, we find that the CIT(Appeals) has rightly appreciated the evidence on record and deleted the addition of Rs. 63,84,998/- made under section 68 of the Act. We see no infirmity in the order passed by the CIT(Appeals).

7. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 30/10/2025 at Ahmedabad.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 30/10/2025
टी. सी. नायर, व. नि. स. /T.C. NAIR, Sr. PS

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

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

आदेशानुसार/ BY ORDER,

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