

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 6364/Mum/2024
(Assessment Year: 2010-11)**

Income Tax Officer 41(2)(1), Mumbai 833, Kautilya Bhavan, Bandra Kurla Complex, Bandra East, Mumbai- 400051	Vs.	Ashokkumar Kothari 3/1, Navjeevan Nagar, Nr Shiv Sena Shakha, Hariyali Village, Vikhroli (East), Mumbai- 400083
PAN/GIR No. AACPK5205D		
(Applicant)		(Respondent)

Assessee by	None
Revenue by	Shri Surendra Mohan, SR. DR

Date of Hearing	19.01.2026
Date of Pronouncement	22.01.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

This appeal is filed by the Revenue against the order dated 09.10.2024 passed by the learned Commissioner of Income Tax (Appeals), Addl./JCIT(A)-1, Coimbatore [hereinafter referred to as “CIT(A)”], under section 250 of the Income-tax Act,

1961[hereinafter referred to as “the Act”], for the assessment year 2010–11.

Facts of the case

2. The assessee is an individual engaged in the business of trading in plywood, timber and laminate sheets. The assessee filed his return of income for A.Y. 2010–11 on 28.09.2010, declaring total income of Rs. 54,73,590/-.The return was processed under section 143(1) of the Act. Subsequently, the case was selected for scrutiny and an assessment was completed under section 143(3) vide order dated 30.01.2013, determining total income at Rs. 54,73,590/-.Thereafter, on the basis of information received from the Directorate of Income Tax (Investigation), Mumbai, the assessment was reopened under section 147 of the Act. An assessment order under section 143(3) read with section 148, dated 03.03.2014, was passed, assessing the total income at Rs. 58,68,037/-.

3. Subsequently, based on further information indicating that the assessee was a beneficiary of accommodation entries in the nature of bogus purchases from hawala operators, the assessment was again completed under section 143(3) read with section 147 vide order dated 17.03.2016, passed by the Assistant Commissioner of Income Tax, Circle–29(1), Mumbai [hereinafter referred to as “Assessing Officer”].

4. In the said assessment order, the Assessing Officer recorded that information was received from the DGIT (Investigation), Mumbai, that the assessee had obtained bogus purchase bills aggregating to Rs. 9,26,170/- from the following parties:

- i. M/s Kwaliti Enterprises – Rs. 3,24,788/-
- ii. M/s Supreme Sales – Rs. 2,06,395/-
- iii. M/s Dezens Associates – Rs. 3,94,447/-

5. The Assessing Officer noted that the TINs of the said parties were found to be cancelled by the Sales Tax Department, Maharashtra, and that statements of the said parties recorded by the Sales Tax authorities revealed that they were engaged in providing accommodation entries without actual supply of goods.

6. During the assessment proceedings, the assessee was called upon to substantiate the genuineness of the purchases by furnishing documentary evidence such as delivery challans, transport receipts, octroi receipts, stock records, etc. The assessee submitted that payments were made through banking channels. The Assessing Officer, however, held that mere payment through banking channels does not establish genuineness of purchases and relied upon the judgment in CIT v. Precision Finance Pvt. Ltd. (208 ITR 465).

7. The Assessing Officer further noted that purchases from M/s Dezens Associates amounting to Rs. 3,94,447/- had already

been subjected to addition in an earlier reassessment order dated 03.03.2014. In respect of the remaining two parties, namely M/s Kwality Enterprises and M/s Supreme Sales, aggregating to Rs. 5,31,723/-, the Assessing Officer treated the same as non-genuine purchases and made an addition of Rs. 5,31,723/- under section 69C of the Act. The total income was thus assessed at Rs. 63,99,760/-.

8. Aggrieved, the assessee preferred an appeal before the CIT(A). The appeal was originally filed manually on 08.07.2016 and was subsequently migrated to the e-Appeals Scheme, 2023. The CIT(A) issued several notices fixing the appeal for hearing over a period of time. However, the assessee neither appeared nor filed any written submissions or evidences before the CIT(A), despite repeated opportunities. The CIT(A), therefore, proceeded to decide the appeal on merits based on the material available on record. The CIT(A) noted that the Assessing Officer had not disputed the sales effected by the assessee and that once sales are accepted, corresponding purchases cannot be disallowed in entirety.

9. Relying upon judicial precedents, including the principle laid down by the Hon'ble Gujarat High Court in cases dealing with bogus purchases, the CIT(A) held that only the profit element embedded in such purchases could be brought to tax. Accordingly, the CIT(A) directed the Assessing Officer to restrict the addition to 20 percent of the alleged bogus purchases of Rs.

5,31,723/-, which worked out to Rs. 1,06,345/-, and granted relief for the balance amount. The appeal was thus partly allowed vide order dated 09.10.2024.

10. Aggrieved by the order of the CIT(A), the Revenue is in appeal before us raising following grounds of appeal:

1. *“Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in restricting the disallowance of bogus purchases to 20% as against 100% by the Assessing Officer in order u/s 143(3) r.w.s. 147 of the I.T. Act?”*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in overlooking the explicit finding of the Directorate of Investigation, Mumbai that the assessee has undertaken various transactions with 2 parties who were either listed as Hawala Dealer or were fictitious and non traceable.*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in restricting the disallowance to 20% by not considering the fact that the assessee also failed to prove the identity and genuineness of the transactions/parties during the Assessment proceedings?*
4. *Whether on the facts and circumstances of the case the Ld. CIT(A) has erred in not appreciating the fact that the Human Probability Test applied in this case and false claims of the assessee cannot sustain before the test of Human Probability.*
5. *The appellant craves leave to add, amend, alter substitute or modify any of the above grounds or add a fresh ground as and when found necessary either before or at the time of hearing.”*

11. The appeal came up for hearing before us on several occasions. As recorded in the order-sheet entries, this was the 13th hearing before us. Despite repeated opportunities, none appeared on behalf of the assessee. On earlier dates also, notices issued to the assessee were returned unserved with the postal remark “Left”, and directions were issued to serve notice through RPAD as well as through the learned Departmental

Representative. Even thereafter, there was no appearance or representation on behalf of the assessee, nor was any request for adjournment made.

12. The learned Departmental Representative submitted that the learned CIT(A) erred in restricting the disallowance of alleged bogus purchases to 20 percent instead of confirming the 100 percent disallowance made by the Assessing Officer. He submitted that the addition was made on the basis of specific information from the Directorate of Investigation identifying the suppliers as hawala dealers or non-existent parties. It was contended that the assessee failed to establish the identity and genuineness of the purchase transactions, and that mere payment through banking channels was insufficient. The learned DR relied upon the order of the Assessing Officer and prayed that the same be restored.

13. We have carefully considered the said contention in the light of the facts on record.

14. In the present case, the Assessing Officer has proceeded on the footing that the purchase parties were accommodation entry providers. However, it is equally evident from the assessment order that the sales declared by the assessee have not been doubted, nor has the Assessing Officer recorded any adverse finding with regard to the quantitative details, stock consumption, or realization of sale proceeds. There is also no

finding that the sales were fictitious or that the assessee had introduced unaccounted stock into the books.

15. The case of the Revenue, therefore, is not that the assessee did not carry on any trading activity or that no goods were purchased at all, but that the assessee obtained purchase bills from non-genuine parties to regularize purchases made from other sources. Once this factual position is accepted, the legal consequence cannot be the disallowance of the entire purchase amount, as that would result in taxing the gross receipts rather than the real income of the assessee.

16. It is a settled principle that when sales are accepted as genuine, corresponding purchases cannot be treated as entirely non-existent. In such cases, the only reasonable inference is that the assessee has made purchases from the open or grey market and has obtained accommodation bills to account for the same. The benefit derived by the assessee in such transactions is limited to suppression of profit or savings on taxes and margins, and not the entire purchase value.

17. The learned CIT(A) has appreciated this factual matrix and has recorded a clear finding that the purchases themselves were not bogus, but that the identity of the suppliers was not genuine. On these facts, the learned CIT(A) has restricted the addition to the profit element embedded in the impugned purchases, estimated at 20 percent, which, having regard to the nature of

business and surrounding circumstances, cannot be said to be excessive or unreasonable.

18. The Revenue has not brought any material on record to demonstrate that the assessee had not effected purchases at all or that the estimation adopted by the learned CIT(A) is arbitrary or perverse. In the absence of such material, the contention of the learned DR that the facts warrant 100 percent disallowance cannot be accepted.

19. Accordingly, we find no infirmity in the approach adopted by the learned CIT(A) in restricting the addition to the profit element embedded in the alleged non-genuine purchases, and the same does not call for interference.

20. In the result, the appeal filed by the Revenue is dismissed, and the order of the learned CIT(A) is affirmed.

Order pronounced in the open court on 22.01.2026.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 22/01/2026
Disha Raut, Stenographer

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai