

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

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 580/MUM/2025
Assessment Year: 2007-08**

ACIT-CC-7(3) Room No. 655, Floor 6 th , Aayakar Bhavan, M. K. Road, Mumbai-400020.	Vs.	Dhiraj Parbat Gothi 302, Encore Bldg, 26 Swami Samarth road, Andheri West, Mumbai-400058. PAN: AESPG5029D
(Appellant)		(Respondent)

Present for:

Assessee : Shri. Sanket Dashpute, CA
Revenue : Shri. Rajesh Meshram, Sr. DR

Date of Hearing : 25.03.2025
Date of Pronouncement : 30.05.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the revenue is against the order of Ld. CIT (A) 49, Mumbai, vide order no. ITBA/APL/S/250/2024-25/1070772734(1) dated 29.11.2024 passed against the assessment order by Income Tax Officer, 24(1)(5), Mumbai, u/s. 143(3) r.w.s.147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 19.03.2015 for Assessment Year 2007-08.

2. Grounds taken by the Revenue are reproduced as under:

“1. "On facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition from 12.5% to 4% of the total purchases of Rs 3,33,69,047/- which comes to Rs 13,34,761/- Without considering the facts

that the assessee has failed to produce the confirmation letters of the purchase from the parties."

2. "On facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition from 12.5% to 4% of the total purchases of Rs 3,33,69,047/- which comes to Rs 13,34,761/- Without considering the facts that the assessee had failed to produce the parties from which the assessee had acquired bogus purchase bills so that they could be cross examined."

3. "On facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition from 12.5% to 4% of the total purchases of Rs 3,33,69,047/- which comes to Rs 13,34,761/- Without considering the facts that the assessee had failed to controvert finding recorded by Income Tax Authorities and statement of Mr. Pravin Kumar Jain."

4. "On facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition from 12.5% to 4% of the total purchases of Rs 3,33,69,047/- which comes to Rs 13,34,761/- Without considering the fact that the AO is a quasi-judicial authority and affidavit is not an evidence before him either in his capacity as a judicial authority or an investigating authority."

5 "On facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition from 12.5% to 4% of the total purchases of Rs 3,33,69,047/- which comes to Rs 13,34,761/- Without considering the section 3 of Evidence Act, 1872."

6. "The appellant craves leave to add to alter, amend, modify and/or delete any or all of the above said grounds of appeal. The appellant reserves its right to file further submission in the appeal."."

3. Revenue has raised an additional ground vide application dated 24.03.2025 placed on record. Ground raised vide this application is reproduced:

"1. On facts and circumstances of the case and in law, the decision of the Hon'ble Bombay High Court in the case of Pr. Commissioner of Income Tax-5, Mumbai us. Kanak Impex (India) Ltd. (ITA No. 791 of 2021) is applicable in this case wherein the Hon'ble Bombay High Court upheld 100% addition made by the Assessing Officer on account of Non-genuine purchases."

2. The appellant craves leave to add to alter, amend, modify and/or delete any or all of the above said grounds of appeal. The appellant reserves its right to file further submission in the appeal."

4. By taking this additional ground revenue has contested to uphold 100% addition on account of alleged non-genuine purchases as against 12.5% made by the Ld.AO while completing the assessment which was

reduce to 4% by the Ld.CIT(A) at the First Appellate Stage. There being no objection from the other side on admission of this additional grounds, the same is admitted for adjudication.

5. Brief facts of the case as culled out from records are that assessee filed his original return of income on 25.10.2007 reporting total income at Rs.5,95,740/-. Case of the assessee was reopened by issuing notice u/s. 148 of the Act dated 27.03.2014, for the reason that information was received from DGIT (Investigation) vide letter dated 07.03.2014, that during the course of search action in the case of Mr. Pravin Kumar Jain Group, it was found that assessee had acquired bogus purchase bills amounting to Rs.3,33,69,047/- from various parties controlled and managed by Mr. Pravin Kumar Jain. The details of alleged bogus purchase transaction are tabulated below:

Sr. No.	Name	Amount (RS)
1	JPK Trading(I) Pvt. Ltd.	79,32,118/-
2	Newplanet Trading Co. Pvt. Ltd.	93,90,185/-
3	Ostwal Trading(I) Pvt. Ltd.	1,49,66,328/-
4	Ostwal Trading(I) Pvt. Ltd.	10,80,416/-
	Total	3,33,69,047/-

6. Ld. AO called for details and explanation along with documentary evidences in respect of these alleged bogus purchase transactions from the aforesaid tabulated parties. Assessee made the submissions on various dates which included the following as noted by Ld.AO in his order:

1) Copy of return of income for A. Yr. 2006-07 and 2007-08

2) Copy of capital account/ balance sheet for last two year

3) Copy of purchase bills ledger accounts of above-mentioned party of Mr. Pravin Kumar Jain and bank statements showing payments made to the above parties

4) Copy of affidavit by Sh. Praveen Kumar Jain stating the statement recorded by him were false and erroneous that were recorded under coercion &

environment of pressure and threat by Income tax authorities at Mumbai. In the said affidavit, Sh. Pravin Kumar Jain has retracted his statement

5) Financials of three alleged concerns of Pravin Kumar Jain

6) Copies of bills/invoices in respect of purchase parties, ledger account along with Bank statement

7) Stock register of the assessee for the period. 01.04.2006 to 31.03.2007

8) MCA documents showing change of name in respect of three alleged concerns of Pravin Kumar Jain.

9) Copy of sales bills for F. Yr. 2006-07

10) Details of Sales register for FY 2007-08

11) Copy of sales Bills for FY 2007-08

7. Ld. AO drew an adverse view since assessee could not produce the parties for cross-examination. He also disregarded the copy of affidavit filed by the assessee of Mr. Pravin Jain by considering it as a self-serving document. He thus, concluded that 12.5% of the total amount of alleged bogus purchases of Rs.3,33,69,047/- which comes to Rs.41,71,131/- was taken as non-genuine purchase and added to the total income of the assessee. For this he opined that profit margin of this industry comes to around 12.5%. Further Ld. AO in para 13 described about his understating of the nature of bogus transaction under taken for the purpose of deriving benefits. The said para 13 is reproduce for ease of reference:

“13. It is pertinent to note here that without receiving the material the corresponding production/sales would not have been possible i.e. the material has been received by the assessee from the sources best known to him. At the same time, it is also possible that assessee purchased goods from some other suppliers and received bill from someone else which is commonly known as grey market and this is so; the assessee has been benefited by providing margin of grey markets. Such purchases in this line of business cannot be denied as per the prevailing practice of the market. By recording the bogus purchase at a higher level, the assessee managed to siphon off the profit to the extent of difference between the actual purchases and bogus purchases. Any person indulging in the practice of purchasing the goods from the grey market and obtaining bogus bills of some of the parties would do so for getting some benefits.”

8. In the first appeal before the Ld.CIT(A), submissions made at the assessment stage were reiterated. It was also submitted that Ld.AO has disregarded all the evidence produced and explanation provided. It was also submitted that addition was made without granting copies of statement of alleged bogus suppliers and also no opportunity granted for cross-examining Mr. Pravin Kumar Jain before taking an adverse view. Assessee also contented that Ld.AO did not doubt the sales made and books of accounts and the results reported in its audited financial statement and the return so filed. Before the Ld.CIT(A), assessee also made a submission without prejudice that declared gross profit is 8.51% which is higher than the average gross profit of 8.47% of last three years. Thus, there is no question of offering less gross profit on the alleged purchases. On these factual position, without prejudice, assessee submitted that addition be restricted to the extent of 2% of the alleged purchases. While concluding, Ld. CIT(A) observed that addition of gross profit @ 12.5% has increased the effective gross profit to 21% which according to the assessee is unjustifiable and not in line with the industry standard. By taking into consideration the submissions made without prejudice of restricting the addition to the extent of 2% of the alleged purchases, Ld.CIT(A) held that addition made by the Ld.AO @ 12.5% is on a higher side and thus, restricted it to 4% of the total alleged bogus purchases. For this he noted that percent of 12.5% was worked out based on sale tax rate of state of Gujarat. However, average sales tax rate in the state of Maharashtra for the period under considerations ranges from 3% to 6% as available on the web site of Maharashtra Goods and Service Tax. Thus, the appeal of was partly allowed.

9. Revenue is in appeal before the Tribunal for the relief granted by Ld. CIT(A) by reducing the gross profit rate from 12.5% added by Ld. AO to 4%. By way of additional ground, it is now contested by the revenue

to uphold addition of 100% of the alleged bogus purchases in view of decision of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs Kanak Impex (India) Ltd. [2025] 172 taxmann.com 283 (Bom).

10. We have heard both the parties and perused the material available on record. The facts narrated above and elaborate decision made thereon are not in dispute. Assessee has furnished all the relevant explanation along with documentary evidences, details of which are listed above in the course of assessment proceeding as well as first appellate stage to establish the genuineness of the purchase made by it. Ld. AO could not find any defect in the submissions so made nor could he disprove the documents and evidences furnished by the assessee. On the mere apprehension of parties being not produced for cross-examination, Ld. AO has resorted to adopting the profit margin of 12.5% on the total alleged bogus purchases to make an addition in the hands of the assessee. Ld. CIT(A) after taking into account, the VAT rate which according to him is the driving force to obtain benefit by entering into alleged bogus purchase transaction, reduced the addition from 12.5% to 4%. Assessee has also furnished the details of the three parties from whom purchases made have been alleged as bogus, by furnishing the details from the MCA website. It was stated by the assessee that names of these parties have undergone a change, details of which is tabulated as below:

Sr. No.	Original Name	New Name
1	JPK Trading (I) Pvt. Ltd.	Duke Business Pvt. Ltd.
2	New Planet Trading Co. Pvt. Ltd.	Ansh Merchandise Pvt. Ltd.
3	Ostwal Trading (I) Pvt. Ltd.	Casper Enterprise Pvt. Ltd.

11. Assessee provided details in relation to these three parties which included their TIN details, screen shot of master data from MCA website,

list of signatories, certificate of incorporation. From these details, it was pointed out that Mr. Pravin Kumar Jain is not a director in any of these supplier companies from whom assessee had made purchases. Thus, it was strongly asserted by the assessee that Ld.AO is not justified in making the addition on the basis of statement given by third party without corroborating evidences and providing an opportunity of cross-examining.

12. We also take note of the additional ground raised by the revenue for which Ld.SR DR referred to the decision of Hon'ble Jurisdictional High Court of Bombay in the case of Kanak Impex (India) Ltd. (supra). We have perused the said judgment. For the reliance placed by Ld. SR DR on the decision of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs Kanak Impex (India) Ltd (supra) calling for addition of 100% of the alleged bogus purchases as against 25% made by the Ld.AO and confirmed by Ld. CIT(A), we have perused this aforesaid judgment. We observe that in para 4, Hon'ble Court noted the factual position that assessee did not appear before the Ld.AO during the course of assessment proceedings and failed to prove the genuineness of the purchase. The said assessment was completed ex-parte u/s. 144 r.w.s 147 of the Act. Hon'ble Court also observed in para 17 about the non-appearance of assessee before the Ld.AO for which there is no justification. Again, it noted in para 29 that the assessee chose not to attend the reassessment proceedings even though the notices were sent by post, email and affixture. Accordingly, in para 13, Hon'ble Court concluded that assessee having not joined the reassessment proceedings, the contention raised by the assessee are to be rejected. Observation of the Hon'ble Court while rejecting the contention of the assessee are:

“30. We fail to understand that the respondent-assessee having consciously and intentionally decided not to join the investigation, cannot now contend that the appellant-revenue should have given them all the details before making the addition. In our view, such a conduct of the respondent-assessee cannot be accepted. It was incumbent upon the respondent-assessee to have joined the re-assessment proceedings, discharge the initial onus of proving the purchases and seek details, if any.”

13. In the present set of facts, elaborately discussed above and in view of the submissions made by the assessee which have not been disproved or controverted by bringing any cogent material on record, judgement of Hon’ble Jurisdictional High Court of Bombay in the case of Kanak Impex (India) Limited (supra) is distinguishable and hence not applicable. Accordingly, additional ground raised by the revenue by relying on the said judgment is dismissed.

14. In the present set of facts, we draw force from the decision of Hon’ble Jurisdictional High Court of Bombay in the case of Nikunj Eximp Enterprises Pvt Ltd. vs. CIT(A) in [2015] 372 ITR 619 (Bom) wherein it has been held as under:

“1. The respondent assessee having been filed letters of confirmation of suppliers, copies of bank statement showing entries of payment through account payee cheques to the suppliers, copies of invoices for purchases and stock statement i.e. stock reconciliation statement giving complete details with regard to opening stock, purchases, sales and closing stock and no fault with regard to it being found and the books of accounts not being rejected and the sales not being doubted, the purchases cannot be treated as bogus and be disallowed merely on the basis of suspicion. One cannot conclude that the purchases were not made by the respondent assessee merely because the parties were not produced, when there are materials on record to prove otherwise.”

15. Further, considering the detailed submissions and documentary evidences placed on record which have been duly considered by Ld. CIT(A) for granting relief to the assessee by reducing the addition from 12.5% to 4% based on the alternate plea raised by the assessee, we do not find any reason to interfere with the same. Accordingly, finding

arrived at Ld. CIT(A) is up held. Accordingly, grounds raised by the revenue in this respect are dismissed.

16. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on 30th May, 2025

Sd/-
(Pawan Singh)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 30th May, 2025

Divya R. Nandgaonkar
Stenographer

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai