

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"G" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.5564/MUM/2024**  
**(Assessment Year 2016-17)**

**M/s. Shah Traders,**

DW-6251, Bharat Diamond Bourse,  
Bandra Kurla Complex, G-Block,  
Bandra East Mumbai – 400051  
PAN : AABFS6536J

..... Appellant

v/s

**DCIT, Circle – 19(3),**

Piramal Chamber, Lalbaug Parel,  
Mumbai - 400012

..... Respondent

Assessee by : Shri Amit Jhaveri

Shri Dharmil Jhaveri

Revenue by : Shri Pushkaraj Bhangepatil, Sr.DR

Date of Hearing – 02/01/2025

Date of Order - 07/01/2025

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The assessee has filed the present appeal challenging the impugned order dated 04/09/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2016-17.

2. In this appeal, the assessee has raised the following grounds: –

*"1. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) (CIT)" erred in not adjudicating the grounds raised by appellant and pertaining to (a) retraction of statement of Bijal Ashok Shah recorded during the course of survey and (b) the Assessing Officer ("AO") disregarding the order of the Hon. ITAT passed in the case of Bijal Ashok Shah. The CIT further erred in confirming the action of the AO to re-open the assessment by issuing notice u/s. 148 of the Income tax Act, 1961 ("the Act").*

*2. On the facts and in the circumstances of the case and in law, the CIT erred in confirming the addition of Rs. 3,62,45,000/- made by the AO under section 69C of the Act by stating that the transactions are only paper transactions that the appellant has taken accommodation entries, by merely relying on the information received from investigation wing and without conducting any independent enquiry. The Learned CIT further erred in not considering the decisions of various High Courts and Tribunals cited by the appellant.*

*3. On the facts and in the circumstances of the case and in law, the CIT failed to appreciate the fact that if the sales of the vendor are not proven to be bogus, then the corresponding purchases of the appellant cannot be considered as bogus and also that if sales in the appellant's own case are accepted, the purchases made by the appellant could not be considered as bogus. As such no addition can be made under Sec 69C of the Act."*

3. The brief facts of the case are that the assessee is a firm and for the year under consideration filed its return of income on 13/10/2016 declaring a total income of INR 3,73,69,980. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, the information was received from the Investigation Wing, Mumbai regarding survey action under section 133A of the Act conducted in the case of M/s Swastik Corporation, during which statement of the proprietor of the aforesaid concern was recorded, wherein he admitted that he had done cash transactions with some parties. As per the information received, the proprietor of the aforesaid concern, Mr. Bijal Ashok Shah, explained the modus operandi and stated that he raised the sale bill in the name of the customer, but he did not deliver the gold to the customer and retained it with him on behalf of the customer.

Subsequently, upon the instruction of the customer, the gold was sold in cash to some other customer and cash was transferred to the original customer after retaining a certain margin commission on the amount. On going through the documents forwarded by the Investigation Wing, it was noticed that the above concern had shown bogus sales to the assessee in its books of account. Accordingly, on the basis that the assessee has obtained accommodation entry of bogus purchases from M/s Swastik Corporation, reassessment proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued to the assessee. During the reassessment proceedings, the assessee submitted a copy of purchase invoices, details of bank accounts, details of transactions with M/s Swastik Corporation, ledger account of M/s Swastik Corporation, etc. As regards the query with respect to documentation for delivery of goods and bill from M/s Swastik Corporation, the assessee submitted that it purchased gold from M/s Swastik Corporation and it is a general industry practice to only receive tax invoice at the time of delivery of goods. Further, as regards the proof of consumption/sale of goods, the assessee submitted that gold is the raw material used for the final saleable product, i.e. jewellery. Accordingly, the gold purchased from M/s Swastik Corporation was utilised for making the jewellery. It was further submitted that gold as a standardised raw material loses its identity in the final stage itself and considering the huge quantum, it is not practically possible to track the utilisation of a particular stock of gold purchased from a particular vendor. In support of its submission, the assessee furnished the quantity details of stock in the tax audit report in Form 3CD. Further, in reply to the show cause notice, the assessee also submitted that the vendor Mr. Bijal Ashok Shah, after

the conclusion of the survey on 17/01/2017, immediately filed an affidavit on 24/01/2017 for retraction of the statement given by him during the survey. Accordingly, the assessee submitted that the statement recorded during the survey has been retracted, therefore it loses its evidentiary value and the same cannot be used for initiating any tax proceedings.

4. The Assessing Officer ("AO") vide order dated 27/05/2023 passed under section 147 read with section 144B of the Act disagreed with the submissions of the assessee and made an addition of INR 3,62,45,000 under section 69C read with section 115BBE of the Act, by observing as follows: –

*"4.5. Pointwise rebuttal of reply of the assessee including analysis if any case laws relied upon.*

*4.5(i). As far as the rebuttal of the statement of the vendor is concerned, it may be noted that the statements during the survey u/s 133A are recorded on oath.*

*Therefore, any rebuttal at the later stage is only an afterthought.*

*4.5(ii) in the case of vendor the ITAT has given relief in some different years and not in A.Y. 2016-17. It is true that the Hon'ble ITAT has mentioned survey u/s 133A dated 14.01.2017 in its order for AY. 2010-11. However it may be noted that the ITAT has allowed the appeal because of the smallness of the revenue involved. Further it may be noted that the assessee has not provided any Such order for A.Y. 2016-17.*

*4.5(iii) It is argued that no addition has been made in the hands of vendor for bogus sales. The assessee also claims that no addition in his hand for bogus purchase may be made. However, it may be noted that the assessee is not able to prove its case beyond doubt.*

*4.5 (iv). The assessee has also stated that no copy of the statement of the vendor has been provide to him. However surprisingly the assessee has submitted an affidavit from the Vendor on this issue therefore, matter been contradictory on facts. No copy of statement of vendor is being provided to the assessee at this stage as the assessee is already aware of the facts of the case.*

*4.5(v). the assessee has also requested for cross examination of the vendor. However, this request cannot be accepted as assessee and the*

*vendor are trying to play sale-purchase game with the department. Hence, cross examination is not considered at this stage.*

*4.5(vi). The assessee has relied upon several case laws which have been gone through carefully. However, the facts of the cases so quoted have been found to be different from that of the instant case hence no benefit in this case can be provided to the assessee. It may be further noted dated statement on oath of certain responsible person where recorded at the time of survey u/s 133A. therefore any affidavit contradicting the statement at the time of survey is only and after thought and only a device to deviate from the core issue."*

5. The learned CIT(A), vide impugned order, upheld the initiation of reassessment proceedings under section 147 of the Act. Further, the learned CIT(A), also upheld the addition made by the AO under section 69C read with section 115BBE of the Act, by observing as follows: –

*"5.3 I have considered the assessment order and the submissions of the appellant including the case laws cited. The AO in the assessment order held that during the course of search evidences were found persons were examined on oath which established that Sri BijalAshok Shah, Proprietor of M/s. Swastic Corporation, using to give accommodation entries in the nature of bogus purchase to various beneficiaries. During the course of appellate proceedings, the appellant had filed the following documents which were already submitted before the AO to prove the genuineness of the transactions –*

*(a) details of transactions made with the swastika corporation and copy of purchase invoices pertaining to transactions with swastic corporation.*

*(b) ledger of swastic corporation in the books of the appellant and ledger of appellant in the books of swastic corporation.*

*(c) copy of ledger of relevant bank account for F.Y. 2015-16 from the books of appellant highlighting the relevant payments made to swastic corporation.*

*(d) copy of relevant bank statement of swastic corporation highlighting the relevant receipts form the appellant towards sale of goods.*

*(e) copy of stock register showing receipt of goods purchased from swastic corporation.*

*5.3.1 The appellant produced bank account statement, purchase bills, etc., to prove the genuineness of the purchases. It is seen that merely documenting transaction do not render them genuine, more so in the face*

*of overwhelming findings and that they have been and are established to be make-believe. A taxing authority has always to give precedence of substance over form, and is not bound to recognise a transaction merely because it may have been rooted through a negotiable instrument in a bank. In this case, the substance proves that the transaction were bogus and the form given to them was a receipt. Reliance is placed on the judicial precedent of Karanpura Development Co. Ltd Vs CIT(SC) 44 ITR 362. During the assessment proceedings the AO made aware the assessee that the other party to transaction is paper concern only and no goods have exchanged actually. The transaction has been evidenced on paper trail only. Hence, the onus of proving the transaction to be a genuine one squarely lies on the assessee. The assessee was asked to file confirmations of the said transactions and to demonstrate and correlate that the said purchases resulted in genuine sales.*

*5.3.2 A statement of Sri Bijal Ashok Shah, proprietor of M/s Swatic corporation was recorded on oath, in which he admitted that he has done cash transaction with some parties. As per modus operandi explained, he stated that he raises sale bill in the name of a customer, but he does not deliver gold to the customer and retains it with him on behalf of customer. Such transactions are accommodation entries without any corresponding buying or selling of stock and are entered in tally accounts by mentioning E in reference case of sale. Applicant firm has not been able to provide any supporting evidences/documents in support of actual receipts of the delivery of the gold and also not provided supporting evidence/ documents to prove the consumptions/sale of said purchased gold.*

*5.3.3 Further, considering the tax evasion in the instant case, it is pertinent to refer to ratio of the decision of the Hon'ble Supreme court in case of Rajendran Chingaravelu Vs R K Mishra (320 ITR1), in which the Hon'ble Apex court noted with great concern that rampant circulation of un accounted money destroying the economy of our country. Further, the ratio of the decision of the Hon'ble Supreme court in the case of Mc Dowell Vs CTO (154 ITR 148) is also relied upon. In this landmark decision the Hon'ble Apex court noted with concern the colourable devices of tax planning. Therefore, information available with the department found to be genuine in view of that the onus of proof be genuineness of the transaction was on the assessee which it has failed to discharge. It clearly proves that these transactions are only paper transactions and hence helping only in accommodation entries.*

*5.3.4 During the course of appellate proceedings, the appellant filed a copy of the transactions made with Swatic Corporation. As per the statement, the appellant had purchased gold bars from M/s Swatic corporation in 26 instances around 64,008.80 gms of gold worth of Rs. 17,04,51,239/-. However, it is seen from the statement recorded on oath from Sr. Bijal Ashok Shah, he confessed only three transactions are non-genuine which were stated to be Dt:27.01.2015 31.07.2015 & 02.02.2016. During the course of assessment proceedings also the appellant with regard to the documentation of delivery of goods and bills, it is submitted that it is a general industry practice to only receive tax-invoice at the time of delivery*

*of goods. The appellant has taken the accommodation entries in the guise of processing the raw gold into the jewellery. Considering the gamut of issues dealt with in the assessment order with which the under signed concurs, the decision of the assessing officer is upheld and ground no's 3 to 5 in the appeal are hereby dismissed."*

Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. In the present case, on the basis of the information received from the Investigation Wing, Mumbai regarding the survey action conducted in the case of M/s Swastik Corporation, wherein the statement of the proprietor was recorded on oath, who admitted that he was engaged in providing accommodation entries of bogus purchases without supplying the gold, reassessment proceedings under section 147 of the Act were initiated in the case of the assessee as from the documents forwarded by Investigation Wing it was noticed that M/s Swastik Corporation has shown sales to the assessee in its books of accounts.

7. In the present case, it is undisputed that the original return of income filed by the assessee was not selected for scrutiny and the same was only processed vide intimation issued under section 143(1) of the Act. Therefore, we are of the considered view that the information received from the Investigation Wing, Mumbai constitutes new and tangible material for initiating the reassessment proceedings in the case of the assessee. In ACIT v/s Rajesh Jhaveri Stock Brokers (P.) Ltd, reported in [2007] 291 ITR 500 (SC), the Hon'ble Supreme Court held that if there is relevant material on the basis of which a reasonable person can form a requisite belief that income chargeable to tax has escaped assessment, then proceedings under section



147 of the Act can be validly initiated. Further, it is also well settled that the sufficiency or correctness of the material is not a thing to be considered at the stage of recording the reasons. As a result, we find no infirmity in the reassessment proceedings initiated by the AO under section 147 of the Act.

8. It is evident from the record that during the appellate proceedings before the learned CIT(A), the assessee filed a copy of transactions made with M/s Swastik Corporation, wherein the assessee admitted that it purchased 64,008.80 gms of gold worth INR 17,51,239 from M/s Swastik Corporation in 26 instances. However, in the statement recorded during the course of survey action, Mr. Bijal Ashok Shah confessed that only 3 transactions are non-genuine, details of which are as follows: –

<i>Sr. No.</i>	<i>Date of Entry</i>	<i>Amount (in INR)</i>
1.	27/01/2015	1,03,40,000
2.	31/07/2015	74,25,000
3.	02/02/2016	1,84,80,000
	<i>Total</i>	<i>3,62,45,000</i>

9. At the outset it is evident that the first transaction on 27/01/2015 of INR 1,03,40,000 pertains to the financial year 2014-15, therefore, we are of the considered view that no addition in respect of the aforesaid transaction can be made in the year under consideration. As regards the other two transactions on 31/07/2015 and 02/02/2016, which fall in the year under consideration, it is evident from the record that during the assessment proceedings, the assessee was asked to furnish documentation regarding the delivery of goods and bills. However, the assessee submitted that the tax invoices were received only at the time of delivery of goods as per the general



industry practice. We find that even in the appellate proceedings before the learned CIT(A), the assessee could not furnish documents to prove the delivery of goods by M/s Swastik Corporation to the assessee. On the contrary, the assessee claimed that the gold purchased from M/s Swastik Corporation was utilised for making the jewellery and therefore at the first stage itself the gold as a standardised raw material loses identity. Thus, it is the plea of the assessee that it is practically not possible to track the utilisation of a particular stock of gold purchased from a particular vendor. However, the assessee furnished the quantitative details of stock as furnished in the tax audit report during the assessment proceedings.

10. During the hearing, the learned AR by placing reliance upon the decision of the coordinate bench of the Tribunal in the case of Mr. Bijal Ashok Shah submitted that the addition made in the hands of Mr. Bijal Ashok Shah was deleted by the Tribunal. Thus, it was submitted that purchases in the hands of the assessee cannot be doubted and disallowed. From the perusal of the decisions of the Tribunal in the case of Mr. Bijal Ashok Shah, forming part of the paper book on pages 06-18, we find that the same pertains to the assessment year 2011-12, 2012-13, 2013-14 and 2017-18. Thus, at the outset, it is evident that the said decisions do not pertain to the year under consideration. As regards the assessment year under consideration, the learned AR submitted that the return of income filed by Mr. Bijal Ashok Shah was only processed vide intimation issued under section 143(1) of the Act. Thus, it is evident that the transaction between M/s Swastik Corporation and the assessee, during the year under consideration, was not examined and

therefore, we do not concur with the submission of the learned AR that since the sales by M/s Swastik Corporation has not been doubted, the purchases made by the assessee during the year cannot be doubted and disallowed.

11. It is evident from the record that the assessee failed to produce any document to substantiate the mode of receipt of the gold from M/s Swastik Corporation and to establish that the assessee has received actual delivery of gold from M/s Swastik Corporation in respect of the aforesaid two transactions. Further, the assessee could not coordinate the purchases with the corresponding sales. However, it is evident that in the present case, the AO only doubted the purchases from M/s Swastik Corporation in the absence of documentary evidence and the entire sales are not in dispute. Even before us, no such details as mentioned above are available on record. Therefore, from the material available on record it is evident that the assessee has failed to prove the genuineness of the aforementioned two purchases made from M/s Swastik Corporation. Thus, it appears to be a case of bogus bills arranged from the aforesaid entities and materials purchased from somewhere else at a lower cost. Thus, we are of the considered view that a reasonable disallowance of the purchases would meet the possibility of revenue leakage.

12. As regards the quantification of the profit element embedded in making such bogus/unsubstantiated purchases by the assessee, we find that the Hon'ble Jurisdictional High Court in PCIT v/s M. Haji Adam & Co. (ITA number 1004 of 2016 dated 11/2/2019) held that the addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases. Thus,

respectfully following the aforesaid decision of the Hon'ble Jurisdictional High Court in M. Haji Adam & Co. (supra), we set aside the impugned order passed by the learned CIT(A) and restore the matter to the file of the jurisdictional AO with the direction to restrict the addition as regard the afore-noted two bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchase. We further direct that if the gross profit rate on bogus purchases is higher than the other genuine purchases and the same has already been offered to tax by the assessee then no further addition be made. No order shall be passed without affording the assessee a reasonable opportunity of hearing. Accordingly, the impugned order is set aside and the grounds raised in the assessee's appeal are decided in terms of our aforesaid directions.

13. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 07 /01/2025

**Sd/-**  
**NARENDRA KUMAR BILLAIYA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 07/01/2025**  
*Prabhat*

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar  
ITAT, Mumbai