IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 791 OF 2021

Pr. Commissioner of Income Tax-5, Mumbai
Aaykar Bhavan, Maharshi Karve Road,
Mumbai-400020 …Appellant

Versus

Kanak Impex (India) Ltd.
32/40, Krishna Baug,
Shop No.6, 2nd Parshiwada,
Mumbai-400004. …Respondent

Mr Suresh Kumar, for the Petitioner/Appellant.

Mr. Subramaniam a/w Mr. V. S. Hadade for the Respondent.

CORAM : **M. S. Sonak &**
Jitendra Jain, JJ.

RESERVED ON : **26 February 2025**

PRONOUNCED ON : **3 March 2025**

JUDGMENT (Per Jitendra Jain J):-

1. The appellant-revenue has instituted this appeal for the assessment year 2009-10, challenging the order of the Income Tax Appellate Tribunal ('Tribunal') dated 26 June 2019.

2. On 22 January 2025, this Court admitted the appellant-revenue's appeal on the following substantial questions of law under Section 260A of the Income Tax Act ('the Act').

"SUBSTANTIAL QUESTIONS OF LAW

(i) Whether the Tribunal after accepting that this is a case of bogus purchases, could have proceeded to determine profit rate without confirming the disallowance of purchases, without considering the provisions of Section 69C of the Income Tax Act, 1961 and without

considering the decision of the Gujarat High Court in the case of ***N.K. Industries Ltd. Vs. Deputy Commissioner of Income Tax,*** (2016) 72 taxmann.com 289 *since the Special Leave Petition against the said decision was dismissed by the Hon'ble Supreme Court in case of* ***N. K. Protiens Ltd. Vs. Deputy Commissioner of Income Tax,*** *on 16 January 2017, (2017) 84 taxmann.com 195 (SC) ?*

(ii) On the facts and circumstances of the case and in law, the ITAT has erred in restricting the disallowance to profit margin on unproven purchases without considering the position of law established by the Hon'ble Apex Court in the case of N. K. Protiens Ltd, that 100 % disallowances on bogus purchases is upheld ?

Brief facts :-

Regular Assessment :

3. The respondent-assessee is a company engaged in the business of trading in Iron and Steel. The respondent-assessee returned income of Rs.2,84,700/- while filing its returns of income under Section 139 of the Act. The original assessment was completed under Section 143(3) of the Act on 13 December 2011 determining total income at Rs.3,86,250/-.

Reassessment Proceedings :

4. Subsequently, the case of the respondent-assessee was reopened under Section 147 of the Act on the basis of an intimation received from Director General of Income Tax (Inv.), Mumbai/Sales Tax Department regarding bogus purchases made from havala givers by the respondent-assessee to the tune of Rs.20,06,80,150/-. The notice under Section 148 of the Act was served by email at the email address mentioned in the return of income since the notice sent by the postal authorities was returned as "unserved." The notice was also served by affixture by the Ward Inspector. Thereafter, the appellant-revenue made various unsuccessful attempts to serve a notice under sub-section (1) of Section 142 of the Act and ultimately the said notice was affixed on the front door of the office premises. There was no compliance

of any of the notices either sent by email or by affixture, and hence an order under Section 144 read with Section 147 of the Act came to be passed. In the said order, Rs.20,06,80,150/- was added on account of bogus purchases since the genuineness of the purchases could not be verified. The Assessing Officer (AO) issued notices under Section 133(6) of the Act at the address of the persons from whom the respondent-assessee had purchased the goods but same were returned "unserved". The details of these suppliers were made available by the Sales Tax Department. Since the respondent-assessee did not appear before the AO during the course of the reassessment proceedings and the respondent-assessee failed to prove genuineness of the purchases, the AO made the additions of Rs.20,06,80,150/- on account of bogus purchases.

Proceedings before CIT (A) :

5. The respondent-assessee filed an appeal before the Commissioner of Income-tax [CIT(A)] against the order passed under Section 144 read with Section 147 of the Act. It is important to note that the address mentioned in the assessment order of the respondent-assessee by the AO is the same address which the respondent-assessee has mentioned in his Form No.35 which is a Form for filing of an appeal to the CIT(A).

6. On 28 August 2016, the CIT(A) upheld initiation of the reassessment proceedings by rejecting the contention of the respondent-assessee that no notice was served on them. The CIT(A) observed in paragraph 4.2.1 that there was no change of address of the appellant and the address mentioned in the assessment order and the address mentioned in the appeal memo was same and, therefore, the CIT(A) observed that there could be deliberate intention not to accept the statutory notices sent by the

AO. Further, the CIT(A) observed that the notice sent by the email did not bounce and also considered various notices served by affixture for rejecting the contention of non-service of the notices. Therefore, the CIT(A) rejected the contention of the respondent-assessee on the issue of validity of the reassessment proceedings by holding that the notice was validly issued and served.

7. Concerning the ground relating to the addition of Rs.20,06,80,150/- on account of bogus purchases from the parties mentioned in the assessment order, the CIT(A) in paragraph 5.2.1 of his order upheld the reasoning and the approach of the AO in making the additions. The CIT(A) further observed that the activities of the accommodation entries in the trading community are not unheard of and further stated that the investigation by the Sales Tax Department concerning VAT violations cannot be lost sight of more particularly since the names of the bogus sellers supplied by the Sales Tax Department are appearing in the books of respondent-assessee and, therefore, the link of involvement of the respondent-assessee in getting bogus bills is established. However, after giving the findings on the bogus purchases, the CIT (A), without any further reasoning, straight away referred to the decision of the Gujarat High Court in the case of ***CIT Vs. Simit P. Sheth***[1] and estimated 12.5.% of the bogus purchases as the additions to be made instead of confirming entire bogus purchases.

8. We may note that CIT(A) 's observation in paragraph 5.2 concerns the Tribunal's decision regarding other assesses, not the present respondent-assessee. This observation was in support of the CIT(A) findings that only 12.5% of the bogus purchases should be added.

1 (2013) 356 ITR 451

Proceedings before the Tribunal:-

9. Being aggrieved by the order of the CIT(A), the appellant-revenue and the respondent-assessee both, filed cross-appeals before the Tribunal, which were heard on 13 June 2019 and the impugned order was pronounced on 26 June 2019. The revenue before the Tribunal took a specific ground that the CIT(A) erred in considering the GP at 12.5% on alleged bogus purchases instead of adding 100% as the AO did. The assessee challenged the findings of the CIT(A) on whether the addition of 12.5% could at all be made.

10. In paragraph 6 of its order, the Tribunal merely relied upon the decision of the Co-ordinate Bench of this Court in the case of ***Pr. CIT-17 Vs Mohammad Haji Adam & Co.***[2] and dismissed the revenue's appeal. It directed the AO to restrict the additions to the extent of bringing the GP rate of disputed purchases to the same rate as that of other genuine purchasers. Against this backdrop, the appellant-revenue is in appeal before this Court. The respondent-assessee has not challenged the order of the Tribunal by filing any appeal before this Court.

Submissions of the appellant-revenue :

11. Mr. Suresh Kumar, learned counsel for the appellant-revenue submitted that the respondent-assessee failed to prove the genuineness of the purchases and, therefore, the additions made in the assessment order were justified. He submits that the onus was on the respondent-assessee to prove the genuineness of the purchases, and having failed to do so, the additions were justified. He further relied upon Section 69C of the Act and the proviso to said Section in support of his submission. He submitted that the

2 (2019) 103 taxmann.com 459 (Bom.)

decisions relied upon by the Appellate Authorities are distinguishable and not applicable to the facts of the present case, and in any case, the decisions have not considered the provisions of Section 69C of the Act, which are squarely applicable to the facts of the present case. He, therefore, submitted that the additions made by the AO be restored to the extent of 100% of the bogus purchases and the orders of the Appellate Authorities be reversed. He relied upon the decision of the Gujarat High Court in the case of ***N.K. Industries Ltd. Vs. DCIT***[3], and its dismissal of SLP by the Supreme Court[4]. Mr Suresh Kumar also relied upon the decision of the Calcutta High Court in the case of ***Principal Commissioner of Income Tax vs. Mrs. Premlata Tekriwal***[5] in support of his submissions.

Submissions of the respondent-assessee :

12. Mr. Subramaniam, learned counsel for the respondent-assessee admitted that the respondent-assessee did not appear before the AO. However, he submitted that in the statement of facts filed before the CIT(A) challenging the re-assessment order, he has stated that during the course of original assessment proceedings under section 143(3) of the Act, the respondent-assessee had filed details of sundry debtors and creditors with pan number and confirmation. He submitted that these details were filed before the CIT(A) also in the present proceedings. He submitted that the AO has not given any details in the course of the assessment proceedings before making any addition. He submitted that profit will be exponential high if purchases are disallowed. He, therefore, defended the orders passed by the Appellate Authorities. Mr. Subramaniam relied upon the decision in the case of

3 (2016) 72 taxmann.com 289
4 (2017) 84 taxmann.com 185
5 (2022) 143 taxmann.com 173

Commissioner of Income Tax vs. Odeon Builders Pvt Ltd.[6], ***Principal Commissioner of Income-tax vs. Shapoorji Pallonji & Co. Ltd.***[7] and ***Pr. Commissioner of Income Tax-21 vs. Pravin U. Parmar (Jain)***[8] of this very bench. Mr. Subramaniam, learned counsel for the respondent-assessee did not make any other submissions other than what is recorded hereinabove.

Analysis & Conclusion:-

13. The short issue which requires adjudication in this appeal is whether additions of Rs.20,06,80,150/- made by the AO on account of the failure of the respondent-assessee to prove the genuineness of the purchases can be said to be valid.

14. Before we adjudicate the issue, it is relevant to understand the concept of accommodation entry by an example. Mr. A has unaccounted cash, which he uses to buy goods for selling. However, the sales are made by cheque. Since the goods are purchased with unaccounted money, they cannot be recorded in the books of account. Therefore, the *modus operandi* to bring such purchases into the books of account is that Mr A will contact Mr B, an accommodation entry provider. Mr B would issue a paper invoice in the name of Mr A, and Mr A would issue a cheque to Mr B to show that the purchases have been made by cheque from Mr B. After deducting certain commission, Mr B would then withdraw the money from his bank account and return the cash so withdrawn to Mr A. By this process, the purchases made by Mr. A by unaccounted cash enter the books of account as if the purchases are made from Mr. B. However, what has actually happened is that the unaccounted money of Mr. A is shown to have entered the

6 (2019) 418 ITR 315 (SC)
7 (2020) 117 taxmann.com 625 (Bombay)
8 ITXA No.1015 2018 dtd. 9 January 2025

books of account by such a *modus operandi* and Mr. A gets back his unaccounted cash from Mr. B.

15. The source of such unaccounted cash, which was utilised by Mr. A to buy goods originally, must be examined. Mr. B is only a paper entry provider. Therefore, the purchases are made from someone else, but through Mr. B they get formalised in the books of account so that sales can be made and recorded in the books of account. However, what needs to be examined is how he financed the original purchases. If such financing is out of unaccounted income, then the same has to be brought to tax, and if it is out of accounted income, it cannot be brought to tax. The onus is on Mr A to show the source of financing for the original purchase and to give the correct details from whom he has purchased the goods originally. This is the simplest model of accommodation entry. However, various complex models are adopted to avoid tracing the flow of money. This menace is harmful to the country's economy, and it amounts to routing unaccounted cash into the formal economy without the original unaccounted income being taxed.

16. The genuineness of the purchases would *inter alia* also include explanation with regard to the source for paying for such purchases. Explaining the source of purchases would be one of the prime considerations for concluding whether the purchases have been made from accounted or unaccounted sources and to test the veracity of transaction being only accommodation entry. It is well settled and undisputed that the onus of proving any genuineness of the expenditure claimed as deduction is on the assessee. The primary onus is on the assessee to discharge his burden to prove the purchases, which an assessee has claimed as a deduction under the Income Tax Act for arriving at the taxable income.

17. In the instant case before us, admittedly, the respondent-assessee did not appear before the AO during the reassessment proceedings to prove the deduction claimed for purchases amounting to Rs.20,06,80,150/-. There is no justification for non-appearance before the AO to establish the purchases. The plea of the respondent-assessee that they were not served with the notices has been negatived by the Appellate Authority and the same has not been challenged. Therefore, the respondent-assessee in the present case has failed to prove the purchases of which the claim for deduction was made before the AO.

18. The CIT(A) has also given a finding against the respondent-assessee in paragraph 5.2.1, stating that the respondent-assessee failed to prove the genuineness and source of the purchases and confirmed its involvement in the *modus operandi*. In our view, CIT(A) was not justified after giving such a finding that the additions should be restricted only to 12.5% of such purchases and not entire purchases. The issue before the CIT(A) was not whether the profit disclosed by the respondent-assessee was low so as to justify the estimation of the profit of 12.5%. The issue before CIT(A) was whether the purchases had been proved and the CIT(A), having observed against the respondent-assessee on this issue, ought to have confirmed the additions of the entire purchases. In our view, the CIT(A) misdirected himself by estimating a profit of 12.5%.

19. It was nobody's case that both the sales and purchases are unaccounted. If that be so and the purchases have been recorded in books of account by accommodation entry, then same gets automatically reflected in the books of account. In the instant case, since the purchases are recorded by accommodation entry in the books of account and sales have not been disputed, the CIT(A) was

not justified in estimating the profit, when the basis of addition was not low profit.

20. The Tribunal also misdirected itself by approaching the issue with the erroneous belief that it was estimating profit. In fact, the issue before the Tribunal was whether the CIT(A) was justified in not confirming entire purchase additions. Therefore, to that extent, the Tribunal too misdirected itself by approaching the issue solely based on estimating profit.

21. In our view, both the Appellate Authorities ought to have appreciated that the issue before them was whether the respondent-assessee had proved the purchases of which the claim for deduction was made. The respondent-assessee, having failed to discharge its onus on this issue before all three authorities, in our view, the additions made in the assessment order by the AO was justified.

22. If the approach of the Appellate Authorities of estimating the profit on such purchases is to be accepted, then, in effect, the consequence would be that even if respondent-assessee has failed to prove its claim of deduction of purchases, still by estimating profit, impliedly deduction of purchases is given. For example, if the purchases by accommodation entries are Rs.100/- and a profit of 10% is estimated, then to the extent of Rs.90/- deduction on account of purchases is deemed to have been given by the Appellate Authorities. This approach would not be correct since it is nobody's case that the respondent-assessee has made sales out of books by purchasing the goods out of books.

23. If the approach of the Appellate Authorities is accepted, then the provision of Section 69C, which is an enabling provision, would

become redundant. Section 69C provides that where an assessee has incurred any expenditure and offers no explanation about the source of expenditure or the explanation offered is not in the opinion of the AO satisfactory, then the amount of expenditure may be deemed to be the income of the assessee and such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income. In our view, if the approach of the CIT(A) and the Tribunal is accepted, then it would amount to endorsing outright conduct of illegality, contrary to the express provisions of Section 69C of the Act, which the Appellate Authorities have entirely ignored. In the above example, by estimating 10% and thereby impliedly giving a deduction of Rs.90/-, in the teeth of the provisions of Section 69C of the Act, which expressly bars the allowability of unexplained expenditure.

24. Mr. Suresh Kumar, learned counsel for the appellant-revenue, is justified in relying upon the decision of the Gujarat High Court in the case of ***N.K. Industries Ltd. (supra)***. The Gujarat High Court observed that estimating a certain percentage of the bogus claim is against the principles of Sections 68 and 69C of the Act, and if the purchases are bogus, then it is not incumbent upon the Tribunal to restrict the disallowance only to confirm certain percentage of such purchases. In the instant case before us, the respondent-assessee has failed to prove the purchases including source of expenditure by not offering any explanation in the course of the re-assessment proceedings, thereby accepting the purchase have not been proved and in the absence of any explanation of the source of expenditure, provisions of Section 69C are clearly attracted and, therefore, the AO was justified in making the addition of Rs.20,06,80,150/-.

25. Mr. Suresh Kumar learned counsel for the appellant-revenue is justified in relying upon the decision in the case of ***Mrs. Premlata Tekriwal (supra)***. In the said decision, a specific question was raised on the provisions of Section 69C of the Act as to whether the addition on account of bogus purchases should have been made of the entire expenses or only a certain percentage of the bogus purchases. The AO disallowed certain percentage of the bogus purchases in the assessment order. This order was revised by the PCIT under Section 263 of the Act and the PCIT held that the entire expenses has to be disallowed as bogus purchases. On an appeal against the order under Section 263 of the Act, the Tribunal stated that only 2% of the bogus purchases may be added to the total income. Being aggrieved by the Tribunal's order, the revenue filed an appeal to the Calcutta High Court.

26. The Calcutta High Court observed that in spite of the AO having allowed the assessee to explain the transaction the assessee did not produce any document but stated that 2% of the bogus purchases may be added to the total income. Based on this, the High Court held that the purport of this admission would be that the assessee had accepted the allegation against them and precisely for that reason, they offered that 2% of the bogus purchases may be added to the total income. The High Court further observed if that was the factual position it was incumbent upon the AO to take the proceedings to their logical end and having not done so, the PCIT was fully justified in exercising jurisdiction under Section 263 of the Act by which the entire expenses was to be disallowed as bogus purchases. The decision of the Allahabad High Court in the case of ***Assistant Commissioner of Income Tax vs. Shanti Jain***[9] also takes similar view.

9 (2015) 55 taxmann.com 378

27. We may also observe that the views expressed by us in the present appeal is also supported by the decision of the Co-ordinate Bench of this Court in the case ***Shoreline Hotel (P.) Ltd. Vs. Commissioner of Income Tax***[10]***.*** In that case based on information received from the Sales Tax Department, the purchases made by the assessee were held to be non-genuine purchases even though the assessee had filed the documentary evidence. However, the AO based on the submissions made by the assessee added only 15% of such purchases as income. The CIT(A) invoked revisional jurisdiction under Section 263 of the Act and observed that the entire purchases ought to have been added and not only 15%. This finding and the revisional order of the CIT(A) was confirmed by the Tribunal. On an appeal by the assessee before this Court, the Co-ordinate Bench of this Court observed that the reasons assigned by the CIT(A) are cogent and satisfactory. The Court further observed that once the assessee could not produce any material nor he could ensure the presence of the suppliers before the AO, citing difficulties and agreeing to the additions of gross profit of the purchases would mean that the AO was expected to complete the exercise in accordance with law and there was no reason for the AO to accommodate the assessee in the manner done. The Hon'ble High Court therefore approved the reasoning of the CIT(A) that in case where the purchases are not proved, the entire purchases should have been added and not certain percentage of such purchases. In our view, in the instant case also, the respondent-assessee as observed above has failed to prove the purchases and therefore there was no justification for CIT(A) and the Tribunal to confirm the additions only to the extent of 12.5%. In our view, both the Appellate Authorities ought to have confirmed the entire purchases in line with the decision of this

10 (2018) 98 taxmann.com 234

Court.

28. Mr. Subramaniam, learned counsel for the respondent-assessee relied upon the details of sundry debtors and sundry creditors filed during the original assessment proceedings under Section 143(3) of the Act to contend that the details of purchases have been furnished. In our view, these details were furnished in the course of the original assessment proceedings under section 143(3) and not during the re-assessment proceedings. This fact has been admitted by the counsel for the respondent-assessee. After the original assessment order under Section 143(3), the appellant-revenue, on the basis of the information received from the DGIT (Inv.)/Sales Tax Department, reopened the case on the ground that the purchases made by the respondent-assessee are from hawala operator. Therefore, the details of sundry debtors and creditors filed in the original assessment proceedings do not absolve the respondent-assessee from proving the source of the purchases in the course of the re-assessment proceedings. On the contrary, on account of reasons for which case was reopened, the onus was more to prove purchases which respondent-assessee has totally failed.

29. The re-assessment proceedings were initiated for this very reason that the purchases which were accepted in the original assessment proceedings are non-genuine after the passing of the assessment order. The respondent-assessee chose not to attend the re-assessment proceedings even though the notices were sent to the respondent-assessee by post, email and affixture. The CIT(A) has given a finding that the address of the petitioner mentioned in the assessment order and in Form No.35, which is an appeal filed by the respondent-assessee, is same and the respondent-assessee

intentionally did not accept notice sent by post. The CIT(A) has also given a finding that notices sent by email have not bounced back and there is no rebuttal to the affixture of notice on the office of the respondent-assessee.

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. Having not joined the re-assessment proceedings, the contentions raised by the respondent-assessee on this issue are to be rejected.

31. The submission of Mr.Subramaniam, learned counsel for respondent-assessee that if this addition made by the AO is sustained, then profit rate would be exorbitant and therefore addition should be deleted is to be rejected. The fallacy of this argument is that the AO has not made the addition because of low profit. The addition was made because the respondent-assessee failed to prove genuineness of purchases because of allegation of purchases by accommodation entries as explained above. If contention of learned counsel is accepted, then every addition would have to be deleted if related to business deduction. In our view, such a submission is to be rejected outright.

32. Mr. Subramaniam, learned counsel for the respondent-assessee relied upon the decision in the case of ***Odeon Builders Pvt Ltd. (supra)***. This decision does not apply to the facts of the

present case. In that case, the assessee had joined the investigation and sought a copy of the statements relied upon by the AO and requested for cross-examination after discharging the initial burden of substantiating the purchases. In the present case, the respondent- assessee has not discharged the initial onus cast upon them since the respondent-assessee never attended the re-assessment proceedings. Therefore, in our view, the respondent-assessee, having not discharged their initial onus of proving the purchases during the course of re-assessment proceedings and having never joined the re-assessment proceedings, cannot rely upon the said decision which is distinguishable on facts. Similarly, the decision of the Coordinate Bench of this Court in the case of ***Shapoorji Pallonji and Co. Ltd. (supra)*** is distinguishable on facts since, in that case also, the assessee had discharged the initial onus cast upon it and had participated in the assessment proceedings which is not the position in the present case before us.

33. Mr. Subramaniam, learned counsel for the respondent-assessee, also relied upon the decision of this Bench in the case of ***Pravin U. Parmar (supra)***. This Bench, in the case of Pravin Parmar, did not admit the appeal of the revenue based on the findings of facts of the Tribunal in that case, which are reproduced in paragraph 6 of Pravin Parmar's case. In that case, there was participation by the assessee and discharge of the initial onus by the assessee, and the only issue was the estimation of the gross profit. In the present case before us, we are not at the stage of admission of the appeal but of the final hearing. Furthermore, as observed above, in the present case, the respondent-assessee has not participated in the re-assessment proceedings and has also not discharged the onus.

34. We may observe that CIT(A) in paragraph 5.2.1 has given a clear finding of fact that the respondent-assessee was involved in getting bogus bills. This finding has not been challenged by the respondent-assessee before the Tribunal, and only submission made before the Tribunal was on the estimation of gross profit by relying upon the decision in the case of ***Mohammad Haji Adam & Co. (supra)***.

35. In our view, the Tribunal was not justified in relying upon the decision in the case of ***Mohammad Haji Adam & Co. (supra)***. In that case, the assessee had participated in the assessment proceedings, and CIT(A) compared the purchases and sales statement, and there was a finding that the purchases cannot be rejected since there was a correlation between purchases and sales. The Coordinate Bench proceeded on this finding of fact recorded by the authorities and dismissed the revenue's appeal on the ground that no substantial question of law arises. The issue in the present appeal is on failure of discharging onus by the respondent as to purchases including the source of the purchases made by the respondent-assessee and which source has not been explained by the respondent-assessee.

36. The question of law admitted in this appeal states explicitly that neither of the Appellate Authorities has considered the provisions of Section 69C of the Act. Even the decision in the case of ***Mohammad Haji Adam & Co. (supra)*** is not a decision on the applicability of Section 69C of the Act, which is the case before us. The only reference of Section 69C in the case of ***Mohammad Haji Adam & Co. (supra)*** is where there is an extraction of the Gujarat High Court decision in the case of ***N. K. Industries limited (supra)***. There was no question framed on Section 69C before the Coordinate Bench of this Court in the case of ***Mohammad Haji***

Adam & Co. (supra). We have already observed above, how provisions of Section 69C of the Act are attracted in the present case.

37. The learned counsel for the respondent-assessee has not made any submissions on the provisions of Section 69C of the Act, although the same were explicitly framed in the admission order and relied upon by the counsel for the appellant-revenue in the course of the hearing. Therefore, the only conclusion that can be arrived at is that the respondent-assessee does not dispute the applicability of the provisions of Section 69C of the Act to its facts.

38. In our view, in the instant case, the respondent-assessee has offered no explanation of the source of the expenditure incurred on account of purchases of Rs.20,06,80,150/- and, therefore, the AO was justified in making an addition of the said amount and the Appellate Authorities were not justified in estimating the profit rate and thereby impliedly grant deduction of such unexplained expenditure which is contrary to the express provision of Section 69C of the Act.

39. In the instant case before us, the respondent-assessee has not appeared in the re-assessment proceedings to discharge its onus on proving purchase transactions under consideration. Before the CIT(A) for the first time, scanty details of sundry debtors, creditors and stocks were given. The CIT(A) gave a finding of the respondent-assessee's involvement in bogus transaction. Therefore, the finding of the AO on the genuineness of the purchases was confirmed by the CIT(A). Before the Tribunal, the respondent-assessee has not canvassed any submission on the genuineness of the purchases but only pleaded for an estimation of a certain percentage of such bogus purchases to be added. Therefore, before

all three authorities, the respondent-assessee has not proved the genuineness of the purchases, which *inter alia* include the source of making the payment for such purchases. In the light of these factual findings by three authorities, today before this Court, the respondent-assessee's submissions that they have discharged the onus cast upon them to prove the genuineness of the purchases, including the source cannot be accepted.

40. In view of the above, the appeal of the appellant-revenue is allowed by answering the question in favour of the appellant-revenue and against the respondent-assessee. Consequently, the order of the AO dated 19 March 2015 is restored, and the order passed by CIT(A) and the Tribunal is reversed. However, we make it clear that the aggregate addition after considering the CIT(A) and the Tribunal's order should not exceed Rs.20,06,80,150/-.

41. The appeal is allowed in the above terms.

42. No order for costs.

(Jitendra Jain, J) (M.S. Sonak, J)