

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3097/MUM/2025
Assessment Year: 2012-13**

Ankit Gems Private Limited (As successor to M/s. Ankit Gems) DW 6251/52, D Tower, G Block, Bharat Diamond Bourse, Bandra Kurla Complex, Mumbai - 400051 (PAN: AABFA2540E)	Vs.	Circle 5(1)(1), Mumbai
 (Appellant)		(Respondent)

Present for:

assessee : Shri Rahul Sarda, Advocate

Revenue : Shri Aditya M. Rai, Sr. DR

Date of Hearing : 18.06.2025

Date of Pronouncement : 28.08.2025

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-51, Mumbai vide order no. ITBA/APL/S/250/2023-24/1058630314(1), dated 11.12.2023 passed against the assessment order by ACIT, Circle19(1), Mumbai, u/s. 143(3) r.w.s 147 of the Income-tax Act (hereinafter referred to as the “Act”), dated 15.12.2019 for Assessment Year 2012-13.

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

"1) The NFAC failed to appreciate that since the Appellant did not make any purchases or any other transaction from the entity 'Millenium Concern', the question of making the addition in the hands of the Appellant did not arise.

2) The NFAC erred in observing that the Appellant was one of the real importers on whose behalf diamonds were imported by the Bhanwarlal Jain group and diamonds were handed over out of books to the Appellant.

3) The NFAC erred in upholding the order of the AO on the basis of conjecture & surmise and without any material to show that the Appellant had made any purchases out of its books. Therefore, the addition is bad in law.

4) The NFAC failed to appreciate that the Appellant cannot be required to prove a negative that it did not purchase any goods from the Bhanwarlal Jain group, and hence, in the absence of material to show that the Appellant had in fact done so, no addition could be made in the hands of the Appellant. The Appellant states that the above Grounds of Appeal are in addition to, in the alternative and without prejudice to each other and further craves leave to add, amend, delete or alter any Grounds of Appeal."

2.1. Assessee has raised as many as four grounds, all of which pertain to addition made in respect of alleged bogus purchases from one entity called Millennium Concern, for which the claim of the assessee is that it has never made any purchase of any goods from this entity in the year under consideration and hence, assessee cannot be made to prove a negative.

3. At the outset, we take note of the fact that there is a delay of 427 days in filing the present appeal before the Tribunal, for which petition for condonation of delay along with affidavit is placed on record. From the perusal of the application for condonation of delay, it is brought out that one of the employee of the assessee, Shri Nikunj Dinesh Sawadiya was operating the email account which was registered for the purpose of income tax compliances. Owing to certain medical issues at the end of the employee, the email which was received, inadvertently got missed to be taken care of, for the purpose of filing the appeal. Later, when the penalty notice for imposition of penalty u/s. 271(1)(c) was issued, assessee came to know about the passing of the impugned first

appellate order and thereafter, took all the requisite steps to comply with the same and filed the appeal with the aforesaid delay. Assessee has placed on record an affidavit of the employee along with his medical records.

3.1. Assessee has also placed on record the notice which was issued for the purpose of imposition of penalty to justify the submission made by it. We have perused the material and given our thoughtful consideration to the same. It is a settled principle of law that ordinarily a litigant does not gain anything by delaying the filing of an appeal. In the present case also, assessee does not gain any advantage by delaying the filing of this present appeal. It is also a settled principle of law that an adjudication on merits which decides the issue substantively ought to be preferred over a rejection of appeal on technical grounds. Also, no loss shall be caused to the revenue, if the delay in filing the present appeal is condoned and it is decided on merits. According to the assessee, it will suffer an irreparable harm and injury, if the delay in filing the present appeal is not condoned.

3.2. Case of the assessee is fortified by the decision of Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag and others vs. Master, Katiji and others, [1987] SCR-2 387 (SC). Considering the overall factual matrix and the decision of the Hon'ble Supreme Court as well as the settled principle of law as stated above, we find it appropriate to condone the delay in filing the present appeal and take it up for adjudication on merits.

4. Brief facts of the case are that assessee was a partnership firm carrying on business of import, manufacturing, trading of cut and polished diamonds during the year under consideration. Assessee filed

its return of income on 28.11.2012, reporting total income at Rs.2,40,31,330/- . Assessee in the state of partnership firm existed only from 01.04.2011 to 26.04.2011 after which it got converted into a private limited company. Documentary evidences in respect of conversion of status of assessee from a partnership firm into a private limited company are placed on record in the form of incorporation issued by the Registrar of Companies, Mumbai, Maharashtra dated 27.04.2011. Also, placed on record is a deed of dissolution of partnership which also mentions about the date of dissolution as 26.04.2011.

4.1. By making a reference to search and survey action conducted in the case of Shri Bhanwarlal Jain Group on 03.10.2013 by the Investigation Wing, Mumbai, ld. Assessing Officer observed that assessee had taken accommodation entries of purchase from one M/s. Millennium Concern, amounting to Rs.38,68,049/- . Owing to this information, case of the assessee was reopened u/s. 147 by issuing a notice u/s.148 dated 13.03.2019. In response to notice u/s.148, assessee filed its return of income reporting the same total income as done in the original return filed u/s. 139. In response to notice issued u/s.142(1), assessee filed its reply dated 02.11.2019 by categorically stating that assessee had not entered into any transaction of purchase with Millennium Concern/Star as mentioned in the reasons for reopening the assessment as well as in notice u/s.142(1). Along with this reply assessee enclosed copy of purchases done at Mumbai and Surat for the year under consideration.

4.2. Ld. Assessing Officer required the assessee to prove the genuineness of the alleged purchase made from Millennium Concern/Star, being part of the Bhanwarlal Jain group. However, stand

of the assessee all throughout the proceeding had been that it had never entered into any transaction of purchase with the said concern during the year under consideration. In the assessment order, 1d. Assessing Officer elaborated the modus operandi undertaken by the Bhanwarlal Jain group in providing accommodation entries. Thereafter, 1d. Assessing Officer concluded in Para 10 by stating that based on circumstantial evidences collected and corroborative evidence in the form of statements of the commission agents through which bogus bills were collected, the assessee is indulged in inflating the purchases through bogus bills. He, thus concluded in Para 11 that assessee has manipulated its books of accounts and thus, rejecting the claim of the assessee, made the addition towards purchases from Millennium Concern amounting to Rs.38,68,049/- by invoking the provisions of Section 69C.

5. Before the 1d. CIT(A), assessee reiterated with elaborate explanations that no purchases were made from Millennium Concern/Star during the period partnership firm was in existence as well as during the period when it got converted into a private limited company. Reference was made to Para 7 of the impugned assessment order, wherein 1d. Assessing Officer has noted that assessee has filed its submissions which were perused and as per the submissions of the assessee it had purchased the diamonds from Bhanwarlal Jain Concerns. On this statement made by 1d. Assessing Officer in Para 7, assessee strongly submitted that such a statement is an incorrect fact as no purchases were made from Millennium Concern/Star during the year. Assessee furnished copy of purchase register and tax audit report to corroborate its assertion. According to the assessee, 1d. Assessing Officer had simply relied on the report of the Investigation Wing and has not applied his mind on the records made available. According to the

assessee, 1d. Assessing Officer has applied the theory of bogus purchases which is based on a search conducted in the year 2013 and has taken up the matter in the year 2019 without looking into the facts of the case, corroborated by documentary evidences. From the perusal of the order of 1d. CIT(A), in Para 7.3, he has categorically noted from the purchase register that it indeed shows fact about no purchase having made by the assessee from Millennium Concern/Star, during the relevant period.

5.1. However, despite these factual observations, 1d. CIT(A), in Para 7.4 enunciated his own theory about booking of bogus stock in the name of some benami concerns of the Bhanwarlal Jain group. He stated that assessee is one such real importer on behalf of whom the diamonds were imported by the Bhanwarlal Jain group and the diamonds were handed over out of books to the assessee because of which the amount of Rs.38,68,049/- appears in the database of Bhanwarlal Jain group while there is no corresponding entry of purchase in the books of the assessee. Based on this theory propounded by 1d. CIT(A), he concluded that assessee has not been able to furnish any confirmation of its claim from Millennium Concern/Star either before him or before the 1d. Assessing Officer and thus, concluded that this amount represents out of books purchase made by the assessee from Millennium Concern/Star to uphold the addition made by 1d. Assessing Officer u/s. 69C of the Act.

6. We have given our thoughtful consideration to the submissions made before us by both the parties and perused the material on record in the paper book containing 99 pages. It is noted that assessee has furnished purchase register for both the status, when it was a partnership firm and also for the period when its status was a private

limited company. In the status of private limited company, also a return of income has been filed on 28.11.2012 with total income reported at Rs. 35,20,79,030/-. We have perused the purchase register for the entire year which is split between the two status in the form of a partnership firm and a private limited company and note that there is no entry of purchase made by the assessee from Millennium Concern. Assessee has all along the entire proceedings has always denied making any purchase from the said party. There is nothing cogent on record which is made available by the authorities below to demonstrate purchase made by the assessee from the said concern except for certain finding which became available in the course of search and survey action in the year 2013 in the case of Bhanwarlal Jain Group. What the 1d. Assessing Officer has mentioned in Para 10 is only in respect of circumstantial evidences and statement recorded during the course of search survey action in the case of Bhanwarlal Jain Group to allege about assessee making bogus accommodation entry for purchase. Assessee has been made to prove negative that it has not made the purchases from the alleged concern Millennium Concern/Star. It is a trite law that one cannot be made to prove negative.

6.1. Hon'ble Supreme Court in the case of K P Varghese vs. ITO [1981] 131 ITR 597 (SC) observed in Para 4 that it is a well settled rule of law that the onus of establishing the conditions of taxability are fulfilled, is always on the revenue. To throw the burden of showing that there is no understatement of consideration on the assessee would be to cast an almost impossible burden upon him to establish the negative, namely that he did not receive any consideration beyond that declared by him. Thus, Hon'ble Supreme Court laid the burden on the revenue to establish the conditions for bringing to charge any income in the hands of the assessee.

7. Accordingly, in the given set of facts as narrated above, we are of considered view that assessee cannot be made to prove the negative stance for which has been taken by it, right from the very first hearing by bringing on record all the corroborative documentary evidence in respect of its actual and real purchase made by it, forming part of the books of accounts.

8. Contrary to this, 1d. Assessing Officer and Ld. CIT(A) have not been able to bring anything cogent to negate the claim of the assessee and demonstrate effectively and evidently that assessee had in fact made a bogus purchase transaction from Millennium Concern as alleged for invoking the reopening proceedings. We, thus delete the addition so made by the 1d. Assessing Officer. Grounds raised by the assessee in this respect are allowed.

9. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 28 August, 2025

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28 August, 2025

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai