

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/130/2025
IA NO: GA/1/2025
GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
GANESH STEEL AND ALLOYS LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE: 22ND JULY, 2025

Appearance:
Mr. Tilak Mitra, Adv.
Mr. Amit Sharma, Adv.
...for Appellant

Mr. Pratyush Jhunjhunwala, Adv.
Ms. Sruti Datta, Adv.
Ms. Sakshi Singhi, Adv.
..for Respondent

The Court : This appeal filed by the appellant/revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated June 11, 2024 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata, in ITA No.929/Kol/2023 for the assessment year 2012-13.

The revenue has raised the following substantial questions of law for consideration:

- "i) *Whether on the facts and circumstances of the case, the Learned Tribunal was justified in law to delete the addition of Rs.47,03,192/- made under Section 69C of the Income Tax Act, 1961 on account of bogus purchases by holding that application*

of Section 69C of the Income Tax Act, 1961 is incorrect in a case of bogus purchase which was found to be made from unverifiable sources based on credible investigation?

- ii) *Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law in deciding the issue of application of Section 69C of the Income Tax Act, 1961 only without considering the findings of the Assessing Officer as well as the CIT(A) on merit?*
- iii) *Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law in not considering and appreciating that primary onus of proving the actual source of the transactions and genuineness of the transactions with cogent evidence as well as identity and creditworthiness of the supplier was on the assessee but the assessee failed to discharge its onus?"*

We have heard Mr. Tilak Mitra, learned Advocate assisted by Mr. Amit Sharma, learned standing Counsel appearing for the appellant/revenue and Mr. Pratyush Jhunjhunwala, learned Advocate appearing for the respondent/assessee.

There is a delay of 69 days in filing the appeal. As the delay has been properly explained and the same being not inordinate, we are persuaded to exercise our discretion in the matter and condone the delay in filing this appeal. Accordingly, the application for condonation of delay being IA No: GA/1/2025 is allowed.

The appellant/revenue is aggrieved by the impugned order passed by the learned Tribunal by which the order passed by the CIT(A)-NFAC, Delhi dated

24.8.2023 was set aside. The assessee filed the return of income on 28.9.2012 declaring the total income of rupees Nil. The return was processed under Section 143(1) and thereafter, the case was reopened under Section 147 of the Act on the ground of bogus billing in the guise of purchases to the tune of Rs.38,75,000/- from M/s. Chakradhari Industries. The assessee responded to the notice issued under Section 148 of the Act and filed their return of income. The re-assessment proceedings were concluded by order dated November 27, 2019 making an addition under Section 69C of the Act on account of bogus expenditure to the tune of Rs.47,03,192/-. The appeal filed by the assessee before the Commissioner of Income Tax (Appeals), [CIT(A)] was dismissed. The assessee carried the appeal before the learned Tribunal.

The learned Tribunal has first taken up the issue as to whether the reopening of the assessment was legally valid. In this appeal we are not required to go into this aspect since the substantial questions of law which have been raised by the revenue only pertain to the addition under Section 69C of the Act. The learned Tribunal in the impugned order has held that the provision of Section 69C will not be attracted as the assessee has duly disclosed the total purchases in their books of accounts and the payments made to M/s. Chakradhari Industries were also from and out of the books of accounts with explained sources and, therefore, the source of expenditure was also found. That apart, the source of expenditure was also fully explained and, therefore, the addition made by the Assessing Officer under section 69C of the Act cannot be sustained. Section 69C of the Act states that where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the 52 [Assessing] Officer, satisfactory, the amount covered by such

expenditure or part thereof, as the case made be, may be deemed to be the income of the assessee for such financial year. It is evidently clear that the said section 69C would stand attracted if the source of expenditure is not satisfactorily explained by the assessee before the Assessing Officer and only then it will be deemed to be income of the assessee. The Assessing Officer alleged the purchases to be bogus. However, the Assessing Officer did not dispute the source of expenditure to be not genuine. The assessee also took a stand that the purchases made from the said Industries were genuine purchases of raw materials which were further consumed in the production of finished goods and the assessee is assessed under the Act for several years and they have been added under section 44AB of the Act and on perusal of which it is clear that the assessee maintains purchase register and stock register as it is a manufacturing concern. The specific stand of the assessee was that the goods purchased had been used for manufacturing of finished goods and this aspect was not disputed by the Assessing Officer. Furthermore, the assessee was able to prove that the goods purchased is sold and the sale price is duly received and recorded in the books and, therefore, the irresistible conclusion would be that the purchase is automatically proved. Furthermore, the assessee demonstrated by producing Annexure VII to the TAR which shows the quantitative details of the principal items of raw materials and finished goods and on comparing the gross profit as well as the notional profit ratio, it can be observed that the same is in line with the earlier years. Furthermore, the assessee was able to prove the purchases by producing the stock register which shows that the purchase is on a day to day basis and the production of the finished goods was supported by RG-23A and RG-23C register regularly maintained which has been verified by the Auditor and is also available in Annexure IV of the TAR. Therefore, the

assessee was fully justified in contending that the sales are accepted, purchase cannot be treated as bogus. The CIT(A) was of the view that the notices issued under section 133(6) of the Act to the other party remained non-complied and the inspector deputed from the department for verification has reported that the said party is not found. Admittedly, this fact was never brought to the notice of the assessee and the assessee came to know of it only from the assessment order. That apart, the transaction was done about seven years back and the address given by the other party was about seven years back and there is every possibility that the party may change their address. These factual details were never disputed by the Assessing Officer. Therefore, we are of the view that the learned Tribunal was right in holding that section 69C would not stand admitted in the facts of the case.

Thus, we find no question of law, much less substantial questions of law arises for consideration in this appeal. Accordingly, the appeal fails and the same is dismissed.

Consequently, the stay petition (GA/2/2025) also stands dismissed.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

sm/pkd.