Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

PRESENT :
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
And
THE HON'BLE JUSTICE SUDIP DEB

ITAT/209/2026
IA NO: GA/1/2026
PRINCIPAL COMMISSIONER OF INCOME TAX SILIGURI
VS
BINOY AGARWAL

For Appellant : Mr. Siddhartha Lahiri, Advocate
Mr. Kuntal Kumar Goswami, Advocate

For Respondent : Mr. Subash Agarwal, Advocate
Ms. Susmita Mukherjee, Advocate
Mr. Amit Shaw, Advocate

Heard on : September 29, 2026

Judgment (Dictated in Court) on : September 29, 2026

SUDIP DEB, J. :

1. This instant appeal is directed against an order dated 2nd January, 2026 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA/1584/Kol/2024 for the assessment year 2021-22 at the behest of the revenue. The revenue has proposed the following substantial questions of law :

"a) Whether the Order of the Income Tax Appellate Tribunal (ITAT) is perverse and suffers from illegality in deleting the addition of Rs. 4,38,61,650/- made by the Assessing Officer on account of unexplained purchases, despite the assessee's failure to discharge the initial onus of proving the identity, of the suppliers and genuineness of such purchases claimed during the course of assessment proceedings?

b) Whether the Ld. Tribunal erred in deleting the addition of Rs. 4,38,61,650/- made by the Assessing Officer on account of disallowance of bogus purchases despite the fact that upon field enquiries the suppliers could not be located and the assessee failed to furnish list of suppliers with PAN and complete address despite several opportunities?

c) Whether the Ld. Tribunal erred in law and on facts by deleting the addition on account of non-genuine purchases, by ignoring the specific factual findings of the Assessing Officer that the suppliers were non-filers, non-existent, or non-responsive to notices issued under Section 133(6) of the Act?"

d) Whether the Ld. Tribunal erred in law by allowing the appeal of the assessee when the assessee failed to produce primary documentary evidence (such as transport receipts, transporter bills, stock register entries, and quantitative tally etc.) to prove that the material was physically received from the non-filing suppliers?

e) Whether the Ld. Tribunal erred in deleting the addition of Rs. 93,88,930/- made by the Assessing Officer on account of disallowance of expenses in respect of contract and commission despite the fact that the assessee has failed to establish that the expenditure is incurred wholly and exclusively for the business despite several opportunities?

f) Whether the interference by the Ld. Tribunal in respect of the addition made by the AO is wholly perverse and on grounds that are extraneous to settled principles of law?

g) Whether the forums below while interfering against the addition made by the AO have failed to appreciating the decision of Hon'ble court in the case of M/s N. K. Proteins Ltd. Vs. DCIT (TIOL-23-SC-IT) dated 16th January, 2017 vide SLP NO.769 of 2017; wherein the decision of High Court for addition of entire income on account of bogus purchase had been confirmed?"

2. At the outset, we have asked the learned counsel appearing for the revenue to satisfy us as to whether the substantial questions of law proposed by the appellant are at all substantial questions of law or not.

3. The learned counsel for the appellant submits that the order of the Income Tax Appellate Tribunal was perverse and suffers from illegality in deleting the addition of Rs.4,38,61,650/- made by the Assessing Officer on account of unexplained purchases, despite the assessee's failure to discharge the initial onus of proving the identity of the suppliers and genuineness of such purchases claimed during the course of assessment proceedings. He further submits that the learned Tribunal also erred in deleting the addition of Rs.4,38,61,650 made by the Assessing Officer on account of disallowance of bogus purchases despite the fact that upon field enquiries the suppliers could not be located and the assessee failed to furnish the list of suppliers with PAN and complete address despite several opportunities.

4. He submits that in the given facts and circumstances of the instant case the learned Tribunal erred in law and on facts by deleting the addition on account of non-genuine purchase by ignoring the specific factual findings of the Assessing Officer that the suppliers were non-filers, non-existent or non-responsive to notices issued under Section 133(6) of the Income Tax Act.

5. He further submits that the learned Tribunal also erred in law in deleting the addition of Rs.93,88,930/- made by the Assessing Officer on account of disallowance of expenses in respect of contract and commission despite the fact

that the assessee had failed to establish that the expenditure is incurred wholly and exclusively for the business purpose despite several opportunities.

6. We have not called upon the learned advocate for the respondent to address us since we are deciding as to whether the questions proposed by the revenue are at all substantial questions of law or not.

7. Before deciding this issue, it is important to discuss the facts of the instant case, which are narrated hereinbelow.

8. The respondent/assessee had filed his return of income for the assessment year 2021-22 on 1st March, 2022, declaring the return income of Rs.1,33,64,769/-. The case was selected for scrutiny under the CASS due to the information of substantial purchases were made from suppliers who were non-filers, filed non-business returns (ITR 1, 2), or reported a substantially lower turnover in their ITRs. The Assessing Officer conducted field enquiries through a verification unit regarding the major supplies shown in the GST database. The findings revealed that several key suppliers did not exist or denied the transaction.

9. The Assessing Officer recorded that during the assessment proceedings, the respondent/assessee did not furnish any list of the suppliers along with their PAN and complete address from which such huge purchase transactions were made. It was also recorded that in response to the show cause notice issued by the Assessing Officer, the assessee firstly admitted that he had made purchase transactions of Rs.2,25,00,000/- from Madegowda Vijay Kumar. The respondent/assessee also claimed that this purchase party was the proprietor of

M/s. Fast Deal Corporation situated at Narela, Delhi. But enquiries made by the verification unit revealed that the PAN holder M Vijay Kumar having PAN : AGRPV0819P resides in Mysore, Karnataka and it was further revealed during enquiry conducted by the verification unit that M Vijay Kumar works as a Zomato delivery boy, he did know the respondent/assessee and he has not made any transaction of such huge amount with the respondent/assessee nor had registered with any GST authority. This apart, with regard to the purchase transactions of Rs.1,94,33,085/- made with Subodh Kumar, enquires made at the registered database address Sonipat, Haryana, revealed that no such person existed at that location. Similarly, in respect of purchase of Rs.19,28,565/- made with Kamal Bajaj, enquiries revealed, no such person/business was traceable at the registered address in Model Town, Delhi. The respondent/assessee filed separate affidavits denying any transactions with these parties. However, the Assessing Officer rejected the affidavits filed because according to the Assessing Officer the assessee could not explain why this transaction appeared in his GSTR-1, nor did he provide any revised returns or a full purchase register during the assessment proceedings.

10. Additionally, the respondent/assessee had booked commission and contract payments to related parties (including Ayush Agarwal, Deoraj Agarwal, Suresh & Company, and his own HUF – Binoy Agarwal & Sons). All of these entries were made on the last day of the financial year i.e. 31.03.2021. The Assessing Officer held that the respondent/assessee failed to establish the commercial

expediency, the nature of services rendered, the qualification/expertise of the individuals, or how these payments were incurred 'wholly or exclusively' for the business.

11. On the basis of this, the Assessing Officer completed the assessment of the respondent/assessee under Section 143(3)/144B of the Income Tax Act, 1961 [hereinafter referred to as the said 'Act'] vide order dated 27th December, 2022 where disallowance was made to the tune of Rs.4,38,61,650/- on account of bogus purchases under Section 37 along with Rs.93,88,980/- in respect of disallowance of related party contract and commission expenses under Section 37 of the said Act. Based on this, the Assessing Officer determined the assessed income of the assessee at Rs.6,66,15,349/-. While doing so the Assessing Officer had also taken into consideration that the income as per Return filed was 1,33,64,769/-.

12. This apart, the penalty proceedings under Section 270A were also initiated for underreporting of income in consequence of misreporting in respect of the disallowance of Rs.4,38,61,650/- and Rs.93,88,980/-made under Section 37 of the said Act. The Assessing Officer held that prima facie this was a case of misrepresentation of facts, claim of expenditure not substantiated and also recorded false entry in the books of account which attracts clause (a) (c) and (d) of Section 270A(9) of the said Act. The penalty proceedings under Section 271AAD were also initiated in respect of the said amount of Rs.4,38,61,650/- on the basis of this prima facie view.

13. Challenging the said order, the respondent/assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and the National Faceless Appeal Centre (NFAC). The Commissioner of Income Tax (Appeals) and the National Faceless Appeal Centre (NFAC) by an order dated 3rd July, 2024 allowed the appeal of the respondent/assessee by deleting the additions made by the Assessing Officer. While deleting the addition, the Commissioner of Income Tax (Appeals) specifically held that the respondent/assessee had filed a consolidated reply before the Assessing Officer for non-purchase of any goods from the said Subodh Kumar and Kamal Bajaj and the fact that the Assessing Officer had not intimated the assessee the evidences with him for supply of goods by the said Subodh Kumar and Kamal Bajaj in spite of the request of the assessee. The Commissioner of Income Tax (Appeals) had also held that respondent/assessee had sold the goods to semi-Government Department, the Gorkha Hill Council, Darjeeling out of purchases made from the other suppliers. Consequently, the addition made for Rs.4,38,61,650/- was deleted and it was held that the addition made by the Assessing Officer was without application of mind. This apart, the Commissioner of Income Tax (Appeals) had also held that the Assessing Officer had not been able to bring anything on record to prove that the above payments were bogus. The Commissioner of Income Tax (Appeals) had recorded that the respondent/assessee being the appellant before the Commissioner of Income Tax (Appeals) had filed Adhar Car, IT Acknowledgment, Computation of income, Statements, Identity of contractor/supplier and also submitted copies of TDS

returns to the Assessing Officer. The Commissioner of Income Tax (Appeals) had further held that if the payments had been made, such payments were reflected in the ITR of the parties and necessary TDS had been deducted and identity established, then the onus of the respondent/assessee was over. Consequently, the Commissioner of Income Tax (Appeals) had also allowed the prayer of deletion of Rs.93,88,930/-. With the aforesaid observations, the Commissioner of Income Tax (Appeals) had allowed the appeal of the respondent/assessee partly.

14. Challenging the said order, the revenue had preferred an appeal before the Income Tax Appellate Tribunal, "B" Bench, Kolkata. The learned Tribunal by an order dated 2nd January, 2026 has dismissed the appeal of the revenue.

15. Challenging the said order of the Income Tax Appellate Tribunal, "B" Bench, Kolkata, this instant appeal has been preferred by the revenue.

16. We have gone through the impugned order. We find from the impugned order that the Appellate Tribunal has categorically recorded while upholding the order of the Commissioner of Income Tax (Appeals) that the respondent/assessee had filed all the details before the Assessing Officer as well as before the Commissioner of Income Tax (Appeals). It has also been recorded that the details of the recipients, commission paid and contractual payment were also furnished along with the addresses, PAN number, balance-sheet, confirmation of their ITRs along with bank statements and the respondent/assessee had proved that these are the regular payments made by the respondent/assessee to these parties.

17. While passing the impugned order, the learned Appellate Tribunal has also held that the Commissioner of Income Tax (Appeals) had rightly noted that the Assessing Officer had failed to bring on record any material to prove that these payments were bogus or unreasonable. It has also been recorded that recipients had duly shown these payments/commission in their returns of income and offered the income to tax. While dismissing the appeal the Appellate Tribunal has also recorded that it is not the case that the payments made were abnormally and reasonably high vis-a-vis the comparable prices in the market.

18. It has also been recorded by the Appellate Tribunal that the Commissioner of Income Tax had specifically recorded in the order that the goods purchased by the respondent/assessee were supplied and sold to semi-government department (The Gorkha Hill Council, Darjeeling) and since the sales were not doubted and books and accounts were not rejected by the learned Assessing Officer, therefore, no disallowance of bogus purchase could come out. It has also been noted by the Appellate Tribunal while upholding the order of the Commissioner of Appeal that the Assessee had furnished the cash book, evidences of payments through bank account, ledger account for payment of commission and also furnished e-way bills, list of suppliers and confirmation etc. before the learned Commissioner as well as before the learned Assessing Officer. It is the specific finding of the Appellate Tribunal that based on these the Commissioner of Income Tax had come to this finding that the aforesaid figures

should be deleted. By making the aforesaid observations, the Appellate Tribunal has dismissed the appeal of the revenue.

19. In our view, the Appellate Tribunal has correctly arrived at the finding that the findings of the Commissioner of Income Tax was correct. In our view, the Appellate Tribunal's finding relating to the fact that the since sales/documents were not doubted and books and accounts were not rejected, therefore, there was no question for disallowance on the ground of bogus purchase is also correct based on contemporaneous documents.

20. This Court in the matter of Principal Commissioner of Income Tax–18, Kolkata Versus Pravesh Kumar Jaiswal has held that if the purchases are bogus, it would be impossible for the assessee to complete the business transaction and that if the purchase is bogus, the corresponding sale also must be bogus or else the transaction would be impossible to complete and as a necessary corollary, unless the corresponding sale is held to be bogus, the purchase also cannot be held to be bogus, rather it would be a case of purchase from bogus entity/purchase.

21. We are of the considered view that the ratio of the said judgment squarely applies in the instant case. Here sales were not doubted after examining the books and accounts and accordingly, the question of disbelieving the purchase does not and cannot arise. Therefore, the finding of the Tribunal on this issue upholding the order of the Commissioner of Income Tax does not suffer from any infirmity. We also hold that there is no illegality or perversity in the order of the Appellate Tribunal dated 2nd January, 2026. We are of the considered view

that the Appellate Tribunal being the last fact finding authority has correctly arrived at such finding. According to us, there are no substantial questions of law involved in the matter as these are all questions of fact which the Tribunal has dealt with correctly.

22. In view of such facts and circumstances, we are of the considered view that there are no substantial questions of law involved in the instant appeal and accordingly, the appeal is dismissed.

23. Consequently, GA No. 1 of 2026 which is an application for stay is also dismissed.

24. There will be no order as to costs.

25. Urgent certified photocopy of this order, if applied for, shall be given to the parties subject to compliance with all requisite formalities.

I agree.

(RAJARSHI BHARADWAJ, J.) (SUDIP DEB, J.)

sd/sp.