

IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
AND
SHRI OMKARESHWAR CHIDARA (ACCOUNTANT MEMBER)
I.T.A. No. 3870/Mum/2024
Assessment Year: 2010-11

DCIT, Circle-41(3)(1), Mumbai	Vs.	Deepak Shah 3/C/309 Vrindavan Raheja Township Malad (East) Mumbai - 400097 PAN: AHAPS1283N
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Bhagirath Ramawat, Sr. D/R
Date of Hearing	06.11.2025
Date of Pronouncement	24.11.2025

ORDER

Per: Smt. Beena Pillai, J.M.:

The present appeal filed by the revenue arises out of the order dated 21/06/2024 passed by NFAC, Delhi [hereinafter ‘Ld. CIT(A)’] for assessment year 2010-11.

2. At the outset, we find that the appeal was fixed for hearing on multiple dates. The order-sheet reflects that the matter was listed more than ten times. Despite repeated notices through RPAD and e-mail, none appeared for the assessee at any stage.

2.1. No adjournment request was filed either. It is also observed from the e-mail dated 06/03/2025 from ACIT -41(3)(1), Mumbai, who attempted to deliver the notice of hearing to the assessee physically. However, it is submitted that, the assessee has sold the

Flat at 3/C/309, Vrindavan Raheja Township, Malad (E), Mumbai, and the current owner is unaware about the assessee.

2.2. Subsequently, the assessee on 18/09/2025 filed request from adjournment as he was under some medical treatment due to eye surgery. Considering the medical condition of assessee, the appeal was adjourned to 15/10/2025. However, on 15/10/2025 and thereafter on 03/11/2025, none appeared on behalf of the assessee

2.3. We are, therefore, satisfied that the assessee is not interested in prosecuting the matter. Accordingly, the appeal is being disposed of ex-parte qua the assessee, after hearing the learned DR.

3. Brief facts of the Case:-

3.1. The assessee is engaged in the business of Building & Developing properties and filed his return of income on 09/10/2010 declaring income of ₹9,89,590/-. Based on information received from ADIT(Inv.), Unit-7(3), Mumbai and Maharashtra Sales Tax Department, the Assessing Officer ("AO") reopened the assessment u/s 147 on the finding that the assessee made purchases of ₹26,49,280/- from flowing five *hawala* dealers, all of whom were listed as non-genuine and untraceable:-

Sr. No.	Name of the Hawala Dealer	Tin of Dealer	F.Y. 2009-10 (in Rs.)
1	V3 Enterprises	27860613194	5,00,000/-
2	S K Trading Co.	26860065179	6,17,188/-
3	Ace International	27420614600	5,07,010/-
4	Liberty Trading Corporation	27290663802	5,12,720/-
5	Deep Enterprises	27750595164	5,11,862/-
	Total		26,49,280/-

3.2. Summons u/s 131 and notices u/s 133(6) issued to all five parties were returned unserved. The assessee also failed to produce the parties. In statement u/s 131, the assessee admitted that the parties were *hawala* dealers. The assessee also submitted that it had not undertaken any transaction with S.K. Trading Co. The Ld. AO treated the purchases as non-genuine and made 100% disallowance of ₹26,49,280/- u/s 37(1), assessing total income at ₹36,38,870/-.

Aggrieved the assessee carried the matter in appeal before the Ld. CIT(A).

4. The Ld. CIT(A) accepted that the parties were listed as *hawala* operators but held that entire purchases could not be disallowed since the sales were not doubted. The CIT(A) restricted disallowance at 15% of bogus purchases and further directed the Ld. AO to verify the alleged purchase from SK Trading Co., granting part relief to the assessee.

Aggrieved by the order of the Ld. CIT(A), the revenue is in appeal before this *Tribunal*.

5. Before us, the Ld. DR challenged the action of the Ld. CIT(A) in restricting the disallowance to 15% especially when there were categorical findings of Investigation Wing and Sales Tax Department followed by non-service of notices u/s 133(6) of the Act. The revenue further contends that the assessee failed to prove

identity and genuineness of all parties, and has also admitted in his own statement u/s 131 that they were bogus purchases.

5.1. The Ld. DR supported the assessment order and submitted that the Ld. CIT(A) ignored conclusive evidence from Sales Tax Department identifying the four suppliers as *hawala* dealers and also the fact that the assessee neither produced any of the parties nor any evidence to establish the genuineness of the transaction. He submitted that the Ld. CIT(A) granted relief mechanically without rebutting Ld. AO's findings. He prayed that the assessment order be restored in full by placing reliance on the following decisions of *Hon'ble Bombay High Court*:-

- *Pr. Commissioner of Income Tax-5, Mumbai vs. Kanak Impex (India) Ltd. in Income Tax Appeal No. 791 of 2021; judgment dated 03/03/2025*
- *Pr. Commissioner of Income Tax-12, Mumbai vs. M/s. Drisha Impex Pvt. Ltd. in Income Tax Appeal No. 1240 of 2018 with 2087 of 2018; judgment dated 07/04/2025*

We have heard the ld. DR in light of the records placed before us. There is no rebuttal from the assessee.

6. The undisputed facts that emerge in the present facts of the case are that all five purchase parties were identified as hawala dealers by Sales Tax Department and DGIT(Inv). The notices u/s 133(6) and summons u/s 131 returned unserved. Further the assessee neither produced the parties and nor any evidence in respect of the purchase from the four parties like transportation or delivery of goods, was furnished. Further, the assessee himself admitted during his statement u/s 131 that no material was

supplied by these parties. The assessee also submitted that he did not have any transaction with S.K. Traders Co.. On these facts, the Ld. AO was justified in holding that the purchases from four parties excluding S.K. Traders to be entirely bogus that represented accommodation entries. The Ld. CIT(A) disregarded the specific findings of the Ld. AO and Investigation Wing and mechanically applied general case laws for profit estimation without there being any evidence to support the genuineness of the purchases. We find that, in cases where purchases are found completely non-genuine, the estimation theory does not apply. It is well settled that where purchases are sham and not merely unverifiable, entire addition is warranted.

6.1. Ld. DR is relying upon the ratio of the decision in the case of *Kanak Impex (supra)* wherein *Hon'ble Bombay High Court* examined identical issue in paragraphs 13 to 39 and confirmed the disallowance of the whole of the purchases. It is noted that *Hon'ble Bombay High Court* in the case of *Kanak Impex (supra)* observed that the assessee therein did not co-operate with the revenue, which was one reason for confirming the disallowance. Identical is the situation in the present facts of the case. We have also examined the legal position on this issue based on the findings of the Ld. CIT(A) and note that the ratio in the case of *Kanak Impex (supra)*, squarely applies to the facts of the present case before us.

6.2. It is noted that, in the present facts assessee has not been able to place on record, any information regarding the purchases citing convenient inabilities. The documents and paperwork that would have invariably accompanied genuine transactions were missing or the assessee expressed inability to produce them.

Therefore, no case is made out to distinguish the present facts from *Kanak Impex (supra)* or the principles therein.

6.3. In the present case, the Ld. AO established complete non-existence of suppliers while demonstrating the sham nature of transactions based on assessee's admission. While doing so, the Ld. AO has discharged the burden of proving the bogus purchases. In contrast, the assessee furnished no evidence before us, and remained absent despite several opportunities. However, the statement of the assessee that it did not have any transaction with S.K. Traders Co., cannot be ignored as assessee's admission cannot be accepted in piecemeal. We, therefore, are of the opinion that alleged transaction with S.K. Traders Co., is to be ignored.

6.4. For all the above reasons, we reverse the order passed by the Ld. CIT(A) and restore the addition made in the assessment order by the Ld. AO in respect of the following four parties:-

Sr.	Name of the Hawala Dealer
1	V3 Enterprises
2	Ace International
3	Liberty Trading Corporation
4	Deep Enterprises

Accordingly, Grounds raised by the revenue stand partly allowed.

In the result, appeal of the Revenue stands partly allowed.

Order pronounced in the open court on 24/11/2025

Sd/-

**(OMKARESHWAR CHIDARA)
Accountant Member**

Sd/-

**(BEENA PILLAI)
Judicial Member**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

(Asstt. Registrar)
ITAT, Mumbai