

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA Nos.1469 & 1470/KOL/2025
(Assessment Years: 2019-20 & 2020-21)**

**M/s Diach Chemicals &
Pigments Pvt. Ltd.**
NH-6, Jaladhulagori,
DhulagarhIndustrial park,
Howrah-711302, West Bengal

(Appellant)

DCIT, Central Circle 4(2)
Aaykar Bhawan Poorva,
110, Shantipally, E.M. Bypass,
Kolkata-700107, West Bengal

Vs.

(Respondent)

PAN No. AACCD1101A

**ITA No. 1979/KOL/2024
(Assessment Year:2018-19)**

DCIT, Central Circle 4(2)
Aaykar Bhawan Poorva,
110, Shantipally, E.M. Bypass,
Kolkata-700107, West Bengal

(Appellant)

Vs.

**M/s Diach Chemicals &
Pigments Pvt. Ltd.**
NH-6, Jaladhulagori,
DhulagarhIndustrial park,
Howrah-711302, West Bengal

(Respondent)

Assessee by : S/Shri S.M. Surana &
Sunil Surana, ARs
Revenue by : Shri Raja Sengupta &
Ms. Ruchika Sharma, DRs

Date of hearing: 20.05.2026
Date of pronouncement: 21.05.2026

ORDER

Per Rajesh Kumar, AM:

These are appeals by the assessee and Revenue against the orders of the Commissioner of Income-tax (Appeals), Kolkata-27 (hereinafter referred to as the "Ld. CIT(A)") dated

29.06.2024 & 09.06.2025 for the AYs 2018-19, 2019-20, 2020-21.

ITA No. 1979/KOL/2024

2. At the outset, we observe from the appeal folder that there is a delay of 23 days in filing the appeal by the department and in support of this a condonation petition was filed. It was stated in the condonation petition that the delay has occurred due to obtaining the administrative approval from the competent authorities, which took quite a long time and other hand, did not oppose the condonation of delay. Considering the reasons cited before us to be bonafide and genuine, we are inclined to condone the delay and admit the appeal for hearing.
3. The Revenue has challenged the order of Id. CIT (A) deleting the addition of ₹9,49,08,558/- as made by the Id. AO u/s 69C of the Income-tax Act, 1961 (hereinafter referred to as "the Act") as unexplained cash credit in respect of bogus purchases.
4. At the outset, the counsel of the assessee brought to our notice that the Cross Appeal in this case filed by the assessee in ITA No. 1642/KOL/2024 for A.Y. 2018-19, and submitted that the same has been disposed off by the co-ordinate Bench vide order dated 20.12.2024 and others, wherein while disposing of the grounds no.1 to 4, in which the assessee raised the legal issues of validity of assessment proceedings issued, was decided in favour of the assessee by quashing the reassessment proceedings as well as the consequent order

passed. The Id. AR therefore prayed that the appeal by the Revenue become infructuous and may kindly be dismissed.

5. The DR on the other hand submitted that admittedly the cross appeal by the assessee as stated above by the Id. AR has been disposed off wherein the reopening proceedings as well as the consequent assessment framed were quashed by the co-ordinate bench, however, the facts remains that the appeal of the Revenue has not been clubbed and decided together with the assessee appeal.
6. After hearing the rival contentions and perusing the materials available on record, we find that the appeal of the assessee in ITA No. 1642/KOL/2024 for A.Y. 2018-19 and others was disposed off vide order dated 20.12.2024, wherein the reopening of assessment as well as the consequent assessment were quashed as under:-

"08. Finally, the addition was made of ₹9,68,45,467/- in respect of purchases made from non-filing of IT return. In our view, the very initiation of proceedings u/s 148B of the Act are itself flawed and full of infirmities and the issue for which the notice was issued were not carried into the order passed u/s 148A(d) of the Act on 31st.03.2022 as is apparent from the above. We note that in Para 6 of the order issued u/s 148A(d) of the Act, the Id. AO noted that the assessee has taken accommodation entry for bogus billing amounting to ₹1,69,43,316/- and accordingly, the income has escaped assessment. In our opinion, the casualness in issuance of notice u/s 148A(b) of the Act and then passing the order u/s 148A(d) of the Act is apparent from the above. Therefore, re-assessment proceeding is flawed and cannot be stayed. The case of the assessee find force from the decision of Hon'ble Delhi High Court in the case of Banyan Real Estate Fund Mauritius Vs. ACIT in WP(c) 10485/2023, CM Appeal, 40640/2023 (Direction) & C Appl 40642/2023, wherein similar issue has been decided in favour of the assessee. Similarly, Hon'ble Karnataka High at Bengaluru Bench in case of Smt. Vasanthi Ramdas Pai Vs. ITO in W.P. No. 8797/2022 has held as under:-

"(iii) A perusal of the impugned orders issued under Section 148A(d) clearly shows that these contentions of the assessee have not been addressed at all. In fact, at paragraph 6 of the order, non-disclosure of

the said transactions has been noted as one reason for re-opening. It is also found that there is a definitive finding that the entire scheme of demergers, merger and amalgamation is done with a sole intention of avoiding tax liability and that the transactions were independently verified to be nothing but 'round trip financing lacking commercial substance and not for bonafide purposes'. This finding is clearly well beyond what is contained in the notice issued under Section 148A(b) and could not have been rendered without giving the petitioners adequate opportunity to rebut the assertion. In fact, coming to a definitive conclusion that there is avoidance of tax liability through independent verification but not disclosing the reasons or materials based on which such findings could be rendered and without giving an opportunity to the petitioners to put their case clearly. Thus, there is a gross violation of the principles of natural justice.

(iv) It hardly needs to be stated that the order to be passed under Section 148A(d) cannot transcend the scope of proposal notice under Section 148A(b) inasmuch as such a notice happens to be the foundation on the basis of which such an order can be passed, and not otherwise. That is how the statutory scheme is devised. Definitive conclusions as to grounds that are not indicated in the proposal notice cannot be said to be in line with the scheme and purpose of Section 148A. This apart, non-consideration of the reply relating to Section 56 and Section 47 would make the order also violative of the mandatory requirements of Section 148A. This view is supported by the latest Division Bench decision of Calcutta High Court in SOMNATH DEALTRADE PRIVATE LIMITED. VERSUS UNION OF INDIA & ORS [2023] 455 ITR 720 (Cal) wherein it has been observed as under:

"...The assessing officer no doubt has referred to the assessee's reply dated 9th April, 2022 but there is no discussion as to the objection raised by the assessee in their reply. There is no discussion on the documents, which were placed by the assessee along with the reply with soft copies uploaded in the e-proceeding. Though the assessing officer states that "in the light of the discussion and material available on record he was of the opinion that income chargeable to tax has escaped assessment", there is no discussion on any of the materials, which were placed by the assessee along with the reply dated 9th April, 2022. Thus, it can be safely held that the order dated 13th April, 2022 passed under Section 148A(d) of the Act is not sustainable and liable to be set aside.'

A bit earlier, similar view has been taken by the Division Bench decision of Gujarat High Court in SHRENIK SUDHIRVIMAWALA vs. ACIT, 2022 (5) TMI 528 - GUJARAT HIGH COURT.

(v) It is true that the Statements of Objections have been filed in these petitions and they are supported by affidavits. Several

contentions have been taken up by the respondents supportive of the impugned notices & orders. However, that would not come to their rescue. It hardly needs to be reiterated that the validity of the orders made by the statutory authorities has to be adjudged on the basis of the reasons contained in the womb of these orders; such reasons cannot be supplemented by way of affidavit or otherwise. What the Apex Court said in COMMISSIONER OF POLICE vs. GORDHANDAS BHANJI AIR 1952 SC 16, wherein it was observed as under:

"We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself." Referring to said decision, Krishna Iyer J., in MOHINDER GILL supra, has wittily observed: 'Orders are not like old wine becoming better as they grow older.

" (I) AS TO WHETHER MATTER MERITS REMAND OR CLOSURE HERE ITSELF:

(i) Both the sides having argued at length have also filed the Written Submissions touching merits of the matter that would belong to the domain of Assessing Officer. There is no need for this court to undertake a deeper examination of the aspects argued at the Bar namely whether the transactions in question amounted to transfer at all in view of section 47(vid) of the 1961 Act which enacts a fiction as to what is not a 'transfer' which otherwise in common parlance would have amounted to. Similarly, it was also debated at the Bar that as to whether the transactions in question were chargeable to income tax under the head 'income from other sources' under section 56(2). In addition, it was also fiercely argued as to whether the subject transactions amounted to short term or long term capital gains.

(ii) All the above aspects do not merit consideration in view of this court specifically faltering the impugned notices & orders, inter alia on the ground of lack of jurisdictional facts. For the same reason, the matter does not warrant remand; the lis should attain finality at the hands of this court itself, all contentions having been argued at the Bar, have duly been considered on merits. Even otherwise, the remand would prove futile.

In the above circumstances, these Writ Petitions having been allowed, a Writ of Certiorari issues quashing the impugned orders both dated 31.3.2022 under Section 148A and also the two impugned notices both dated 31.3.2022 issued by the answering respondent under Section 148 of the Income Tax Act, 1961. Costs made easy."

03. Accordingly, we quash the notices issued re-assessment proceedings as well as the consequent order passed. The appeal of the assessee is allowed."

7. Therefore, considering the above decision of the coordinate bench, appeal filed by the Revenue becomes infructuous and is dismissed accordingly.
8. The appeal of the Revenue is dismissed.

ITA Nos. 1469 /KOL/2025 A.Y. 2019-20

9. The only issue raised by the assessee is against the part conformation of addition of ₹62,48,680/- in respect of purchases from seven suppliers by the Id. CIT(A) as against the addition made by the AO of ₹ 1,20,56,748/- by applying a GP rate of 6%.
10. The facts in brief are that the assessee filed the return of income on 12.01.2019, declaring total income of ₹1,98,96,269/-, which was processed u/s 143(3) on 30.04.2020, assessing income at ₹2,04,31,080/-. A search action u/s 132 of the Act was conducted on M/s Diach Chemicals & Pigments Pvt. Ltd. on 07.12.2021. The assessee was also covered under the said search. The assessee is a manufacturer and suppliers of pure lead and lead alloys such as Antimonial Lead Alloy, Calcium Lead Alloy, High Tin lead Alloy, lead Oxide, High Antimonial Lead and Lead Tin Alloy. The company is supplier of lead and lead alloys to M/s Exide Industries Ltd. Consequently, the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act. The Id. AO found that assessee has shown purchases of ₹40,05,56,388/- from seven suppliers which are non-existent.



The assessee has been maintaining regular books of accounts including purchase and sale register, stock register and production records etc. The books of accounts of the assessee were also audited under Companies Act, 2013, under the Income Tax Act and under cost audit framework and also under VAT and GST laws and no adverse interference was drawn by the auditors. The assessee also filed before the Id. AO the books of accounts, the copies of accounts in the suppliers, records relating to the assessee tax invoices, e-way bills, lorry receipts, weighment slips and photographs of the delivery vehicle taken at the factory gate, GST registration certificate, GSTR-1 & GSTR-3B returns filed by the suppliers and trade licenses and professional tax registrations of the suppliers. The Id. AO also issued notices u/s 133(6) of the Act to these suppliers which were also duly served on the suppliers who also confirmed the transactions with the assessee by furnishing all the details and evidences qua the sales made to the assessee. However, the Id. AO relied heavily on the deposition of the assessee taken during the course of search that assessee has taken bogus bills from the parties other than the parties from whom the purchases were made in the regular course of business. The Id. AO noted that the assessee has already offered a GP rate of 2.99% and also stated the correctness and completeness of the books of account of the assessee were doubtful and bogus and consequently the books were rejected u/s 145(3) of the Act and the GP Rate of 6% was applied on the bogus purchases. The Id. AO, after allowing the GP declared by the assessee of

2.99%, added the remaining amount of 3.01% which comes to 1,20,56,748/- to the income of the assessee.

11. In the appellate proceedings, the Id. CIT (A) partly allowed the appeal of the assessee by observing and holding as under:-

"7.2.5. In the above judgement, the Hon'ble ITAT in para no.586, in the assessee's own case, had categorically held to calculate N.P. rate @ 2% brushing aside the declared NP rate lower than that. As the issue before the undersigned is identical with the decision of the Hon'ble ITAT, Kolkata that is why the same is being respectfully applied to decide the issue. Thus, in view of the proposition laid down by the Hon'ble ITAT, Kolkata, I direct the AO to calculate the net profit at 2% on the bogus purchases which may be calculated as follows:

Bogus purchase has been worked out at Rs.80,11,128/- (hereinafter referred to as 'a') (i.e.. 2% of purchases of Rs.40,05,56,388/-). It is stated in the asst. order that the assessee itself offered GP at the rate of 2.99% and NP at the rate of 0.44% on the aforesaid purchase made by it of Rs.40,05,56,388/- in the return filed by it, in response to the notice u/s 148 of the Act, which comes to Rs. 17,62,448/- (hereinafter referred to as 'b') as undisclosed income of the assessee on the said bogus purchase. Hence, the difference of 'a' & 'b' i.e., Rs.62,48,680/- is liable to be treated as assessee's undisclosed income for the subjected AY in view of the decision of the Hon'ble Jurisdictional ITAT, Kolkata, Bench-B in ITA No.99/Kol/2021 in respect of AY 2016-17 in the case of assessee itself. Hence, the addition made by the AO of Rs.62,48,680/- is confirmed and Rs.58,08,068/- is deleted (Rs.1,20,56,748/- minus Rs.62,48,680/-). Accordingly, these grounds of appeal raised by the assessee is partly allowed."

11.1. After hearing the rival contentions and perusing the materials available on record, we find that that the assessee is undisputedly manufacturer and supplier of lead items and has been supplying material to the Exide Industries Ltd. During the year the assessee has been maintaining the regular books of accounts and including the purchase register, sale register, stock register, production records. The assessee is a manufacturing company maintaining regular books of account, including purchase register, sales register, stock register and



production records. Financial statements are prepared in compliance with the Accounting Standards notified under the Companies Act, 2013, and the method of accounting has remained unchanged. The books of account were audited under (1) the Companies Act, 2013, (ii) section 44AB of the Income-tax Act, 1961, (ii) the Cost Audit framework, and (iv) the VAT/GST laws, and there is no adverse observation in any of these audit reports.

11.2. We note that during the assessment proceedings, the assessee filed, inter alia, the Audit Report, Tax Audit Report, Cost Audit Report, party-wise details of trade receivables, trade payables, purchases and sales, and a comparative chart of Gross Profit and Net Profit ratios for FY 2016-17 to FY 2020-21, reproduced below:

Financial Year	Assessment Year	Gross Profit (%)	Net Profit (%)
2016-17	2017-18	3.52	0.99
2017-18	2018-19	3.35	0.82
2018-19	2019-20	2.99	0.44
2019-20	2020-21	4.15	0.97
2020-21	2021-22	3.96	0.91

11.3. The Gross Profit ratio of 3.96% and Net Profit ratio of 0.91% for the year under consideration were entirely consistent with the assessee's profitability track record, and rule out any inflation of purchases.

11.4. We note that the Ld. AO issued notices under section 133(6) to all the six suppliers in question. The notices were duly served on, and complied with by, every supplier directly confirming the transaction with the assessee and furnishing the details, documents and evidences called for by



the Ld. AO. In response to the Show Cause Notices, the assessee placed on record comprehensive documentary evidence in respect of each suppliers, including (1) ledger of the supplier in the books of the assessee, (ii) reciprocal ledger of the assessee in the books of the supplier, (iii) tax invoices, e-way bills, lorry receipts, weighment slips and photographs of the delivery vehicle taken at the factory gate, (iv) GST Registration Certificate, GSTR-1 and GSTR-3B returns filed by the supplier, and (v) trade license and professional tax registration action of the supplier. The paper-book references are tabulated below:

Supplier	Ledger	Invoice with E-way Bill, LR, Weighment Slip & Vehicle Photo	Ledger in supplier's books	GSTR- 1	GSTR- 3B	Trade Licence	Prof. Tax
Jagdamba Traders	1-4	5-1529	1530- 1533	1535- 1579	-	-	1534
NV Aluminium Cast Pvt. Ltd.	1580	1581-1847	1580	-	-	1848	-
New Kumar Battery Industries	1849- 1850	1851-2493	2494- 2495	2496- 2555	2556- 2579	2580	2581
NewMK Traders	2582- 2583	2584-3361	3362- 3364	3365- 3384	3385- 3391	3392	3393
Om Traders	3394- 3395	3396-3705	3706- 3707	3708- 3767	3768- 3792	3793	3794
Utkarsh LED	3795	3796-3806	3807	3808- 3812	3813- 3814	-	-

11.5. We note that each supplier also holds a valid PAN, GST registration, trade licence and professional tax certificate. The suppliers have regularly filed their GST returns, which stand accepted by the GST authorities, and the corresponding input tax credit has been duly allowed to the assessee. All payments to the suppliers have been routed through banking channels. The assessee also placed on record its complete manufacturing process along with details of receipt and

consumption of raw material, production of finished goods and corresponding sales. The actual production for the year was marginally higher than the standard yield, demonstrating that the raw material so purchased had been actually consumed in the manufacturing process.

11.6. We also note that the impugned purchases were supported by audited books of account, third-party confirmations obtained directly under section 133(6), exhaustive primary documentation, a yield reconciliation against standard norms, and a GP/NP profile consistent with the assessee's own history and AO had not pointed out any discrepancy or defect in the books of accounts. Therefore as made by the AO and sustained by the Id. CIT(A) is wrong and can not be sustained. Considering facts and circumstances, we are of the view that the addition cannot be made merely on the ground of suspicion as the assessee has already accounted for purchases which had gone into the production of the finished goods which were sold to the supplier Exide Industries Ltd. In our opinion, the addition sustained by the Id. CIT (A) is only on the basis of estimation and surmises and there is no substantive basis for the same. Similarly, the Id. AO made the addition on the basis of statement recorded during the course of search of the assessee. Under these circumstances, we are of the view that the order of Id. CIT (A) is not correct and accordingly, we set aside the same and direct the Id. AO to delete the addition.

12. Coming to ITA No. 1470/KOL/2025 for A.Y. 2020-21 the issue raised in this appeal is similar to one as decided by us in ITA



No. 1469/KOL/2025. Accordingly, our decision would, mutatis mutandis, apply to this appeal of assessee in ITA No. 1470/KOL/2025. Hence, the appeal of assessee is allowed.

13. In the result, the appeals of the assessee are allowed and the appeal of the Revenue is dismissed.

Order pronounced on 21.05.2026.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 21.05.2026

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Asst. Registrar
Income Tax Appellate Tribunal,
Kolkata