

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 5289/DEL/2017 [A.Y 2012-13]

The A.C.I.T.
Circle - 53(1)
New Delhi

Vs.

M/s Jain Jewellery
103, Yashwant Palace
Chanakyapuri, New Delhi

PAN: AAEFJ 0678 H

ITA No. 4571/DEL/2017 [A.Y 2012-13]

M/s Jain Jewellery
103, Yashwant Palace
Chanakyapuri, New Delhi

Vs.

The A.C.I.T.
Circle - 53(1)
New Delhi

[Appellant]

[Respondent]

Assessee by : Shri Vipin Jain, CA
Revenue by : Ms. Kirti Sankratyayan, Sr. DR

Date of Hearing : 05.04.2021

Date of Pronouncement : 07.04.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above two cross appeals by the revenue and assessee are preferred against the order of the Commissioner of Income Tax (Appeals) - 18, New Delhi dated 08.05.2017 pertaining to Assessment Year 2012-13. Since both these appeals were heard together, these are being disposed of by this common order for the sake of convenience and brevity.

2. The solitary grievance of the Revenue is that the Id. CIT(A) erred in restricting the addition of Rs. 2,04,95,150/- to Rs. 51,23,787/- and the solitary grievance of the assessee is towards restriction of addition of Rs. 51,23,787/-. Since both the appeals relate to same set of facts, we deem it fit to consider the facts for disposal of the captioned appeals.

3. Briefly stated, the facts on record show that search and seizure action u/s 132 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] was conducted in the case of Shri Bhanwarlal Jain on 03.10.2013 by the Investigation Wing, Mumbai. During the course of

search action, it came to notice that Shri Bhanwarlal Jain, alongwith his sons Shri Rajesh Bhanwarlal and Shri Manish Bhanwarlal, were operating and managing large number of benami concerns in the name of their employees through which they provided accommodation entries for bogus purchases to various beneficiaries.

4. As per the list provided, one of the beneficiaries is M/s Jain Jewellery, the assessee, in the present appeal. According to the information, the assessee has entered into bogus purchases of Rs. 2,00,21,150/- and Rs. 4,74,000 during the F.Y. 2011-12 from M/s Parvati Exports and M/s Mukti Exports.

5. During the course of scrutiny assessment proceedings, the Assessing Officer asked the assessee to furnish details in respect of purchases made from these two concerns. The assessee furnished requisite details. The Assessing Officer issued notices u/s 133(6) of the Act to both the concerns and replies were received from both the parties making adverse comments on the handwriting on the envelopes. The Assessing Officer

came to the conclusion that both the replies have come from the same person.

6. Proceeding further, the Assessing Officer issued commissions u/s 131 of the Act to the ACIT, Circle 3(1) and Circle 2(3), Surat, In response to the commission, the ACIT, Circle 3(1) vide letter dated 16.02.2015 stated that the premises was closed for a long time and there was nobody to receive the summons/notices. Further, the Income Tax Officer, Ward 2(3)(8), Surat stated that the assessee might have shifted somewhere else.

7. Based on the reports submitted by ACIT, Circle 3(1) and 2(3)(8), the Assessing Officer came to the conclusion that the purchases made from Parvati Exports and Mukti Exports are bogus purchases. The Assessing Officer further observed that the assessee has failed to provide any proof whatsoever regarding the receipt of such purchases. According to the Assessing Officer, no documentary evidence like train/travel tickets and bills for hotels etc have been produced to prove that the employee had actually travelled from Delhi to Surat. The Assessing

Officer concluded the assessment proceedings by making an addition of Rs. 2,04,95,150/-.

8. The assessee assailed the assessment order before the Id. CIT(A) and reiterated its contention that all the purchases were genuine and duly recorded in its books of account which were subject to audit. No adverse inference has been drawn in so far as sales made out of alleged bogus purchases is concerned.

9. During the course of appellate proceedings, the partner of M/s Parvati Exports, Shri Abhishek Lodha appeared before the Id. CIT(A) whose statement was recorded. The statement of Shri Abhishek Lodha is exhibited at pages 11 to 13 of the order of the first appellate authority. In his statement, Shri Abhishek Lodha categorically confirmed the transaction with the assessee.

10. After considering the facts and submissions, the Id. CIT(A) was of the opinion that actual purchases have been made from grey market in cash and such grey market purchases have been supported by purchase

bills from Parvati Exports and Mukti Exports. The ld. CIT(A) was of the opinion that 25% of the total addition should have been made, as 25% of the alleged bogus purchases would be embedded profit that is liable for addition. Accordingly, the ld. CIT(A) restricted the addition to Rs. 51,23,787/-. Hence these cross appeals.

11. Before us, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

12. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and the ld. CIT(A).

13. We have given thoughtful consideration to the orders of the authorities below. Vide letter dated 31.08.2016, addressed to the ld. CIT(A)-18, New Delhi, the ACIT, Circle 53(1), New Delhi categorically stated that the Assessing Officer had not raised any specific written query regarding proof of physical delivery of goods. This letter is exhibited at pages 159 and 160 of the paper book. We further find that vide letter dated 23.02.2015, Income Tax Officer, Ward 2(3)(8) Surat addressed to the ACIT, Circle 53(1), New Delhi has categorically stated that M/s

Parvati Exports might have shifted somewhere else and further that due to centralization of search cases, Parvati Exports case has been transferred to ACIT, Circle 1(3), Mumbai. This letter is exhibited at page 161 of the paper book.

14. There is no denying that before the first appellate authority on 21.10.2016, the partner of Parvati Exports appeared and whose statement has been recorded by the first appellate authority. A perusal of the statement clearly shows that the partner has categorically admitted the transaction with M/s Jain Jewellery. When the bills were shown to the partner, the partner admitted that these bills have been signed by himself. Shri Lodha also explained the mode of payment received from the assessee. Since the purchases with M/s Parvati exports have been duly verified, we do not find any reason why addition should have been made in this respect. We, accordingly, direct the Assessing Officer to delete the addition on account of purchases made from M/s Parvati Exports.

15. In so far as purchases made from Mukti exports is concerned, we find that the appellant has submitted flight/air tickets copy from Delhi to Surat. We also find that sales made out of purchases have been duly accepted by the Assessing Officer. Notice issued u/s 133(6) of the Act was fully served and replied by M/s Mukti Exports though the Assessing Officer has dismissed the reply stating that the envelopes have same handwriting but we do not find any force in this finding of the Assessing Officer as he is not a Forensic expert.

16. Entire addition has been made solely on the statement of Shri Bhanwar Lal Jain, whose statement was never confronted to the assessee nor any opportunity of cross examination was given. We, therefore, do not find any merit in this addition also. Considering the facts of the case in totality, appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

17. In the result the appeal of the assessee in ITA No.7653/DEL/2019 is allowed and that of the Revenue in ITA No. 9451/DEL/2019 is dismissed.

The order is pronounced in the open court on 07.04.2021.

Sd/-

[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 07th April, 2021.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	