

IN THE INCOME TAX APPELLATE TRIBUNNAL  
MUMBAI BENCH "D", MUMBAI  
BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)  
AND  
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)

I.T.A.No.7310/Mum/2016 - AY 2008-09  
I.T.A.No.7311/Mum/2016 - AY 2010-11  
I.T.A.No.7312/Mum/2016 - AY 2011-12  
I.T.A.No.7313/Mum/2016 - AY 2012-13  
I.T.A.No.7314/Mum/2016 - AY 2013-14

M/s Dhadda Gems Ltd 2208, Panchratna Opera House, Mumbai-4		ITO 5(1)(3), Mumbai
PAN : AABCD2150N		
<b>Appellant</b>		<b>Respondent</b>

Appellant by	Shri Vimal Punmiya
Respondent by	Shri Purushottam Kumar (Sr AR)

Date of hearing	20.4.2017
Date of order	19.05.2017

**ORDER**

**Per Ashwani Taneja, AM:-**

These appeals have been filed by the assessee for different years involving identical issues pertaining to same assessee; therefore, these appeals were heard together and are disposed of by this common order.

2. First, we shall take up appeal for AY 2008-09 filed by assessee against the common order passed by Commissioner of Income-tax (Appeals)-10, Mumbai [hereinafter called CIT(A)] dated 28-09-2016 for AYs 2008-09, 2010-11, 2011-12, 2012-13, 2013-14 passed against the assessment orders passed u/s 143(3), all 29-01-2016, filed on the following grounds:-

**“ADDITION ON THE POINT OF BOGUS PURCHASES OF RS.11,66,646/-”**

*The Ld. Commissioner of Income-tax (Appeals) erred in restricting the addition on the point of bogus purchases to 8% of total purchase amounting to Rs.1,45,82,956/- i.e. Rs.11,66,636/- instead of deleting it in toto. Hence we request your honour to delete the addition and oblige.”*

3. The brief background of the case is that during the year the assessee company was engaged in the business of trading in diamonds. The AO reopened the case on the basis of an intimation received from the office of the Commissioner of Income-tax wherein it was informed that assessee company had done transactions of bogus purchases from M/s Sun Diam aggregating to Rs.58,47,496. Accordingly, the case of the assessee was reopened u/s 147. During the course of assessment proceedings, the AO informed the assessee that there are purchases from various other parties also which were controlled and managed by one Mr. Rajendra Jain in whose case search and seizure action was carried out by the Investigation Wing of the department and his statement was recorded u/s 131 of the Income-tax Act in which it was admitted that he was involved in the activities of providing accommodation entries through various concerns. In response, during the course of assessment proceedings, the assessee submitted that purchases made by the assessee were genuine and in support of its claim, the assessee submitted details of purchases and corresponding sales of the goods purchased, copies of bills, invoices, other

evidences and stock register also showing quantitative reconciliation of goods purchased and sold. It was submitted by the assessee before the AO that though the purchases were not bogus but with a view to curtail the litigation the AO can make an addition which may be restricted to 8 % of the purchases shown from the impugned parties. Resultantly, though, the AO agreed with the offer of the assessee in principle, but with regard to the rate of addition, the AO increased it to 12.5% of bogus purchases. Accordingly in the assessment order, addition was made @ 12.5% of the alleged bogus purchases of Rs.1,45,82,956/- which worked about to Rs.18,22,870/-.

4. Being aggrieved, the assessee filed appeal before CIT(A) wherein detailed submission were made. It was submitted that complete detailed and evidences were furnished to show that purchases were genuine. It was also submitted that the statement made by Mr. Rajendra Jain was made under pressure and therefore, the same was subsequently retracted. However, Ld. CIT(A) did not agree with the submissions of the assessee fully on the ground that assessee had himself made the offer to make addition of the profit element embedded in the amount of bogus purchases. But he reduced the rate of addition from 12.5% to 8%. And thus gave part relief by observing as under:

*“As there is strength in the arguments of both the sides, as the issue of accommodation entries is a reality, to arrest such rampant malpractices a restraint is always inevitable as we cannot encourage such malpractice of obtaining accommodation entries to avoid the impact of levies and defrauding revenue. We can find such a restraint advised by the Hon’ble Gujarat High Court in the case of Simit P Seth (supra) without which avoiding payment of levies and defrauding revenue will continue unabated. However, in the present case the decision of Simit P Seth is not applicable in a cash-iron straight-jacket way except the theory of restraint laid down by them since the nature of business in the case before them was different from the present case. Therefore, 12.5% GP cannot be adopted in the present case which is into diamond business. Since the*

*appellant itself has agreed before the AO to adopt 8% as GP instead of 12.5% as proposed by him during the course of assessment proceedings, I find it appropriate to accept the proposal of the appellant at the rate of 8% for all the years under consideration. The AO is directed accordingly. In view of this the ground is partly allowed.”*

5. Still not satisfied, the assessee carried the matter before the Tribunal. During the course of hearing, Ld. Counsel of the assessee vehemently contested the addition made in the hands of the assessee. It was submitted by him that offer to make addition given to AO was under extreme circumstances due to undue pressure felt by the assessee and was made only to reduce litigation. However, the purchases are genuine. In support of his claim detailed submissions were made by him and brief notes were also submitted. The arguments were made by him in support of his claim that purchases are genuine can be summarized as under:

1. *Asses see has all bills of purchases.*
2. *All payment made thought account payee cheque.*
3. *Supplier provided all identity to bank following KYC Norms.*
4. *Assessee has stock register and all quantity is recorded in stock register.*
5. *All sales of assessee were accepted.*
6. *Without Purchases sales cannot take place.*
7. *Assessee accounts duly Audited by Tax Auditor as well statutory Audit as well VAT Auditor.*
8. *The statement given by Rajendra Jain has been retracted by Him.*
9. *There is no evidence than cash received back by assessee.*
10. *Assessing officer made allegation that assessee reduced true profit though Alleged purchases. If the assessing officer contention is accepted than it will be lead unexpected OP which*

*will be unpractical.*

11. *Assessing officer relied on merely on statement of Rajendra Jain which is already retracted by him.*

12. *Sample of Bills payment thought banking channels.*

*Bill at page 54 and payment at page 71*

*Bill at page 48 and payment at page 69 “*

In support of aforesaid arguments, Ld. Counsel relied upon various judgments wherein it was held that no addition could be made solely on the basis of third party's statement.

6. In addition to the above, the Ld. Counsel made an alternative submission that in case addition was to be sustained on the basis of offer made by the assessee, then the addition should be computed in a fair and justified manner. The assessee had proposed to make addition @ of 8%; however, the profit already disclosed by the assessee should be reduced therefrom. In support of justification of this contention, he relied upon the decision of the Tribunal in the case of Sri Madhukant Gandhi v. ITO (1950/M/2009) for AY 2005-06, dated 23/2/2010. It was submitted that the addition made by the AO and sustained by the Ld. CIT(A) @ 8% has led to exorbitant amount of profit which is not possible in this line of business. Therefore, in the interest of justice and fair play, the addition should be computed in fair and justified manner.

7. Per contra, Ld. DR relied upon the orders of lower authorities and requested for upholding the order of Ld. CIT(A).

8. We have gone through the facts and circumstances of the case and orders of the lower authorities and also submissions made by both the sides before us. It is noted that in this case, the assessee himself has

offered the addition to be made keeping in view the peculiar facts and circumstances of the case. However, the alternative prayer before us is that the addition should be computed in fair and justified manner. Therefore, after taking into the totality of facts and circumstances of the case, we find that the first prayer of the assessee cannot be accepted and thus the addition made on account of bogus purchases cannot be deleted fully. Next question that arises before us is that how much addition should be made. Ld. CIT(A) has sustained the addition @ 8% The revenue is not in appeal before us. Therefore, the addition is sustained at 8% as has been done by Ld. CIT(A). However, the only grievance of the assessee which is now left is that the amount of profit which is already disclosed by the assessee should be deducted; otherwise it will lead to excessive addition. We have carefully considered in the facts of this case and find that the peculiar facts and circumstances of the case demand that proportionate amount of gross profit already disclosed by the assessee corresponding to the amount of bogus purchases should be deducted from the addition made. The assessee emphatically stated before us that if this issue is sent back to the file of the AO then, the assessee shall be able to match the amount of the sales with the corresponding amount of alleged bogus purchases and therefore the exact amount of profit disclosed on these purchases can be factually worked out. This issue is accordingly sent back to the file of the AO where the assessee shall submit requisite details and evidences to show the corresponding amounts of sales against the impugned bogus purchases and then the amount of addition sustained @ 8% by the Ld. CIT(A) shall be further reduced by the amount of gross profit actually shown on these purchases. The addition shall be sustained on the balance amount. The AO shall give adequate opportunity to the assessee

before deciding this ground afresh. Thus, assessee would get part relief. This ground may be treated as allowed for statistical purposes.

**9.** It has been jointly stated by both the parties that the facts involved in other appeals i.e. for AY 2010-11 (ITA No.7311/M/16), AY 2011-12 (ITA No. 7312/M/16), AY 2012-13 (ITA No. 7313/M/16) and AY 2013-14 (ITA No. 7314/M/16) involve identical facts and circumstances. Therefore, following the directions for AY 2008-09, the grounds raised in these appeals may also be treated as allowed for statistical purpose. The AO is directed to follow our order for AY 2008-09.

**10.** In the result, all the appeals filed by the assessee are treated as partly allowed.

*Order was pronounced in the open court at the conclusion of the hearing in the presence of representatives of both the parties.*

Sd/-

sd/-

(SAKTIJIT DEY)	(ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt: 19.05.2017

pk/-

Copy to :

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, "D", Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES