

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI B.R.BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No 4443 to 4445/MUM/2012  
Assessment Year: 2006-07, 2008-09 & 2009-10**

The ACIT, Central Circle 33, Room No.32(2), Ground floor, Aayakar Bhavan, M.K.Road, Marine Lines, Mumbai-400020.	<b>Vs.</b>	M/s. Ronak Gems Pvt. Ltd. Shop No. 05, Gr. Floor, 311, Mehta Bhavan, Hinduja College Lane, Opera House, Mumbai- 400004.  PAN : AABCR7550G
<b>(Appellant)</b>		<b>(Respondent)</b>

&

**CO No 18/MUM/2015  
(ITA NO.4443/MUM/2012)  
Assessment Year: 2006-07**

M/s. Ronak Gems Pvt. Ltd. Shop No. 05, Gr. Floor, 311, Mehta Bhavan, Hinduja College Lane, Opera House , Mumbai- 400004.  PAN : AABCR7550G	<b>Vs.</b>	The ACIT, Central Circle 33, Room No.32(2), Ground floor, Aayakar Bhavan, M.K.Road, Marine Lines, Mumbai-400020.
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by : Ms. Rupinder Brar  
Respondent by : Shri. Dharmesh Shah

Date of Hearing: 23/02/2016  
Date of Pronouncement: 29/02/2016

## **ORDER**

### **PER RAM LAL NEGI, JM**

These appeals/cross objections pertain to the assessee M/s. Ronak Gems P. Ltd. for the Asst. year 2006-07, 2008-09 & 2009-10. ITA 4443/M/2010 is the departmental appeal against the order of the CIT(A)-41 Mumbai dt. 23/04/2012 for the A.Y. 2006-07. The assessee has filed the Cross Objection no. 18/Mum/2015. ITA 4444 & 4445/M/12 are departmental appeals against common order dt. 20/04/2012 passed by the Ld. CIT(A) for the A.Y.2008-09 & 2009-10. Since all the appeals / Cross objection pertain to the same assessee, the same were heard together and are being disposed of by this common order for the sake of convenience.

### **2. ITA No. 4443/Mum/2012 A.Y. 2006-07 & CO 18/Mum/2015.**

2.1 The department has challenged the impugned order dated 23/04/2012 passed by the Ld. CIT(A) for the A.Y. 2006-07 on the following effective grounds:-

1. (a) *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in holding that business income of the assessee cannot be estimated when CIT(A) himself has upheld the action of the Assessing Officer in framing assessment under section 144 as assessee has not furnished necessary details during assessment proceedings.*

*(b) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in holding that estimation of business income by the assessing officer is not justified when it is a fact that assessee has not files any details in assessment proceedings and this forced the Assessing Officer to estimate the income of the assessee.*

*(c) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in upholding the estimation of business income of the assessee when Assessing Officer has made the estimate on comparable cases.”*

2.2 At the outset, it is noticed that the tax involved in this case does not exceed Rs.10,00,000/-. As per the CBDT Circular No. 21 of 2015, dated 10<sup>th</sup> December, 2015, new guidelines of monetary limit for filing of appeals by the Department has been issued, whereby the tax effect for filing of appeal before the ITAT has been prescribed as amount exceeding Rs. 10 lakhs. In the said Circular, it has been specifically clarified that the said instruction will apply retrospectively to all the pending appeals. Accordingly, the appeal filed by the revenue is not maintainable and is dismissed *in limine*.

3. So far as the Cross Objection of the assessee is concerned, since we have dismissed the appeal filed by the department on the ground of jurisdiction/maintainability of the appeal in terms of the CBDT Circular dt. 10<sup>th</sup> December, 2015, in our considered view there is no need to adjudicate the grounds raised by the assessee in Cross objection. The assessee also did not pursue the same. Therefore, the cross objection petition filed by the assessee is also dismissed.

4. In the result, the appeal filed by the department as well as Cross Objection filed by the assessee for the A.Y. 2006-07 are dismissed.

**ITA No. 4444/Mum/2012 for A.Y. 2008-09**

The department has challenged the impugned order dt. 20/04/2012 passed by the Ld. CIT(A)-41 Mumbai for the assessment year 2008-09 on the following effective grounds:-

1. (a) *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in holding that purchase of diamond worth Rs. 62,98,980/- from Shri. Mohan S. Dhama are genuine only on the ground that payments are made by banking channels and there are bills and vouchers in respect of purchases made ignoring other evidences which show that purchases are not genuine.*

*(b) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in holding that purchase of diamond worth Rs. 62,98,980/- from Shri. Mohan S. Dhama are genuine purchases without appreciating that Shri. Mohan S. Dhama could not produce evidence to show that he was in possession of diamonds and the same are not reflected in the financial accounts of the person.*

*(c) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in holding that since there are corresponding sales, purchases cannot be held genuine ignoring the decision of jurisdictional bench of ITAT in the case of Lifeline Drugs and Intermediate Limited in 5535/Mum/2007 wherein it was held that onus of proving genuineness of purchases even if there are corresponding sales is on the assessee and if this burden is not discharged deduction for purchases cannot be allowed.”*

2. Brief facts of the case are that the assessee company Ronak Gems Pvt. Ltd. is engaged in business of trading in rough cut and polished diamonds, gold bars, and jewellery. The company is managed by the three directors Mr. Jayendra P. Jhaveri, Mr. Yogin Jhaveri and Mr. Vishal J. Jhaveri. Survey action u/s 133A was conducted on 13/08/2008 at the business premises of M/s. Ronak Gems P. Ltd. at shop no. 5, and its office.

3. The assessee filed its return of income declaring the total income of Rs. 28,41,187/- on 30.9.2008. In response to the notice issued u/s 153A of the Income tax Act, 1961 (in short 'the Act'), the assessee filed its return of income along with statutory audit report, audit report u/s 44AB of the Act, Balance Sheet and Profit and loss Account etc. In response to the notice dated 3.8.2010 and 3.9.2010 the assessee further filed ledger of Fixed Assets, Details of Import and Export related transactions and Working of exchange Rate Fluctuation Gain/Loss.

4. Apart from the other disallowances, the Assessing made an addition of Rs. 62,98,980/- to the income of the assessee treating the transaction of purchase of cut and polished diamond by the assessee during the relevant period as not genuine.

5. Feeling aggrieved by the assessment order the assessee filed 1<sup>st</sup> appeal before the appellate authority. One of the grounds of appeal was that the Ld. Assessing Officer had erred in making disallowance of Rs. 62,98,980/- on the ground that the purchase bill of Mr. Mohan S. Dama is fictitious, without appreciating the fact that Mr. Mohan S. Dama is a walk-in-customer from whom the diamonds were purchased for monetary consideration and the consideration was paid by payees account cheque against delivery of the diamonds.

6. Before us the Ld. DR heavily relying upon the assessment order submitted that the Ld. CIT(A) has wrongly deleted the addition made by the AO because the assessee had failed to establish the genuineness of the transaction of purchase of diamond before the assessing officer and that the impugned order is not based on the settled principles of law therefore, the same liable to be set aside.

7. On the other hand the Ld. counsel for the assessee submitted that The Assessing Officer has verified the quantitative tally stock register during the assessment proceeding and has not pointed out a single mistake therein. The Assessing Officer has accepted the sales in respective of purchases made from the four walk-in-customers and the payments were made by payees account cheques which were encashed through the bankers. Ld. Counsel further

submitted that purchases made from the walk-in-customers were sold and the provisions of tax under Maharashtra Value Added Tax Act, 2002 were complied with. During assessment proceedings the summons were served upon all the walk-in customers and some of them appeared before the Assessing Officer and filed the details called for hence there is no reason to treat the purchases as non genuine. The Ld. counsel relying on the decisions passed by the ITAT Mumbai in Ganpatraj Sanghvi ITA No 2826/M/2013, Shri Hiralal Chunilal Jain ITA No 4547/M/2014 and the decision of the Hon'ble jurisdictional High Court passed in CIT v. Nikunj Exim Enterprises Pvt Ltd. 372 ITR submitted that the case of the assessee is covered in favour of the assessee by the said decisions.

8. We have heard the rival submissions in the light of the decisions/judgments relied upon and the documents placed before us including the orders of the authorities below. The Ld. CIT(A) has allowed this ground of the appeal of the assessee observing as under:-

*“Keeping in view the facts and circumstances, the facts of the present case are squarely covered by the decision of Hon’ble Courts where it is held that since the payment was made by account payee cheque and was encashed through bankers, the disallowance was not called for. The Hon’ble Jaipur and Ahmedabad Tribunal has also dealt with the cases of similar facts where it is held that the purchases made by the assessee were duly recorded in the books of account and supported by authenticated purchase bills/vouchers for which payment was made through banking channels and sales against these purchases was not doubted. The addition u/s 69 was not justified merely because suppliers could not be located and were*

*not produced for examination. The Hon'ble Mumbai Tribunal in the above said case has also held that when sales is accepted for the purpose of taxation, purchases related thereto cannot be held to be not genuine because if there is no purchases how there can be sales possible. In view of the decision of Hon'ble Courts and the facts of the present case, it is held that the trade of the assessee company is such that it cannot have regular customers and all transactions are made through walk-in-customers. The necessary documents, i.e. identity, PAN, ledger account, bank statement and payment made through account payee cheques were submitted before the Assessing Officer and even the quantity was duly reflected in the stock register and against all these purchases, the sales have been made and duly reflected in the stock register and the ledger account. Therefore, merely because the parties were not produced in response to the summons, the addition cannot be made in view of the decisions of Hon'ble Courts relied on the AR of the appellant. In totality of facts and circumstances, it is held that the facts of the present case are squarely covered by the decisions of Hon'ble Courts, therefore, the addition made on account of bogus purchases is deleted and the ground of appeal is allowed."*

9. Admittedly, in the present case the assessee has produced ledger account of Shri Mohan S. Dama for the year ending 31.03.2008, Extract of the stock register, Quantitative details of Stock maintained by the assessee, Extract of Statement of Bank account of the assessee showing payment of purchase amount by cheques, Copy of ITR acknowledgement of Sh. Mohan S. Dama for the A.Y. 2008-09, Copy of computation of total income of Sh. Mohan S. Dama

for the relevant period reflecting the income from sale of cut and polished diamonds etc. before the Assessing Officer during the assessment proceedings. Perusal of the said documents, available in the paper book filed by the assessee, prima facie establishes that the transactions in question are not bogus and in the absence of any cogent evidence to demolish the version of the assessee it cannot be concluded that the transactions in question are bogus. In *CIT vs. Nikunj Exim enterprises P. Ltd.*(2015 372 ITR 619) Mumbai, the Hon'ble Jurisdiction High court of Mumbai has dismissed the appeal of the revenue holding as under:

*“We have considered the submission on behalf of the revenue. However, from the order of the Tribunal dated 30.04.2010, we find that the Tribunal has deleted the additions on account of bogus purchases not only on the basis of stock statement i.e. reconciliation statement, but also in view of the other facts. The Tribunal records that the Books of Accounts of the respondent-assessee have not been rejected. Similarly, the sales have not been doubted and it is an admitted position that substantial amount of sales have been made to the Government Department i.e. Defence Research and Development Laboratory, Hyderabad. Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were infact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the respondent-assessee. The Assessing Officer as well as CIT(A) have disallowed the deduction of Rs.1.33 crores on account of*

*purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of the Tribunal is well a reasoned order taking into account all the facts before concluding that the purchases of Rs.1.33 crores was not bogus. No fault can be found with the order dated 30.04.2010 of the Tribunal.”*

10. We are of the view the facts of the present case are similar to the facts of the cases discussed above and the issues involved in this case is covered by the ratio laid down in the aforesaid said case. In the light of the decisions of the Mumbai ITAT referred above and the decision of the Hon’ble Bombay High Court passed in Nikunj Exim Enterprises Ltd.(supra), the order passed by the Ld. CIT (A) is in accordance with the law and the same does not suffer from any legal infirmity. We, therefore, do not find any reason to interfere with the findings of the Ld. CIT(A). Accordingly, we uphold the impugned order passed by the Ld. CIT(A) and dismiss the grounds raised by the department.

11. In the result, the appeal filed by the department is dismissed.

**ITA 4445/Mum/2012 for A.Y. 2009-10**

The department has challenged the impugned order dt. 20/04/2012 passed by the Ld. CIT(A)-41 Mumbai for the assessment year 2009-10 on the following effective grounds:-

1. *“(a) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in holding that purchase of diamond*

*worth Rs. 1,41,224/- from Shri Mohan S. Dhama, Shri Priyank Parmar, Shrimati Ritu Diwan and from Shri Devaditya Makhecha are genuine only on the ground that payments are made by banking channels and there are billd and vouchers in respect of purchases made ignoring other evidences which show that purchases are not genuine.*

*(b)Whether, on facts and in the circumstances of the case and in law, CIT(A) has erred in holding that purchases of Rs. 17,80,880/- made from Shri Mohan. S. Dhama are genuine purchases without appreciating that Shri Mohan S. Dhama could not produce evidence to show that he was on possession of diamonds and the same are not reflected in the financial accounts of the person.”*

*(c)Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in holding that purchases of Rs. 20,47,875/- made from Shri Priyank Parmar are genuine purchases without appreciating that Shri Priyank Parmar could not produce evidence to show that he was in possession of diamonds and the same are also not reflected in the financial accounts of the persons.*

*(d) Whether on the facts and in the circumstances of the case in law, CIT(A) has erred in holding that the purchases of Rs. 13,55,90/- made from Shri. Ritu Diwan and purchases of Rs. 9,45,582/- made from Shri. Devaditya Makhecha are genuine purchases without appreciating that assessee could not produce these person in response to summons issued and assessee has also*

*not explained to the Assessing Officer the reason for not producing these persons and hence purchases remain substantiated.*

*(e) Whether on the facts and in the circumstances of the case in law, CIT(A) has erred in holding that since there are corresponding sales, purchases cannot be held genuine ignoring the decision of jurisdictional bench of ITAT in the case of Lifeline Drugs and intermediate Ltd. in 5535/M/07 wherein it was held that onus of proving genuineness of purchases even if there are corresponding sales is on the assessee and if this burden is not discharged deduction for purchases cannot be allowed”*

2. Since the basic facts of the case discussed in appeal pertaining to A.Y. 2008-09 are similar (except the number of transactions and the amount involved), to the facts of this case, we do not find it necessary to mention the same. However, it is necessary to mention here that as pointed out by the Ld. Counsel for the assessee that the AO has wrongly mentioned the amount of alleged bogus purchase during the assessment year 2009-10 as Rs. 1,41,14,22/- in place of total Rs, 61,30,317/- i.e., purchase from Mr Mohan S. Dama Rs. 17,80,880/-, from Mr. Priyank H. Parmar Rs. 20,47,875/-, from Mrs. Ritu Devan Rs. 13,55,980/)& from Mr.s Devadita R. Makecha Rs. 9,45,582/-. The Ld. CIT(A) has allowed the appeal of the assessee for the assessment year 2008-09 and 2009-10 on the same grounds as the facts of case as well as the evidence available in both the cases are similar. Since the issues in question involved in this case are identical to the issue involved in the case pertaining to the assessment year 2008-09 and we have dismissed the appeal of the department for the assessment year 2008-09, we dismiss the

all the grounds of appeal of the department filed against the order of the Ld. CIT(A) for the assessment year 2009-10.

3. In the result, the appeal filed by the department is dismissed

Order pronounced in the open court on 29<sup>th</sup> February, 2016

Sd/- (B.R.BASKARAN)	Sd/- (RAM LAL NEGI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 29/02/2016

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Pramila