

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

ITA NO.5799/MUM/2016 (A.Y: 2011-12)

ITA NO.5800/MUM/2016 (A.Y: 2012-13)

ITA NO.5801/MUM/2016 (A.Y: 2010-11)

Amy Diam Vega Jewellery Pvt. Ltd Unit No.1108, II Floor, A Wing, The Capital, G Block Plotl 70 Bharat Nagar, Bandra (E) Mumbai – 400 051	v.	DCIT 13(3)(2) Aayakar Bhavan, Church Gate, Mumbai-400 021
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PAN: AAHCA 1784 B

(Appellant)

(Respondent)

Assessee by : Shri Vijay Biyani

Department by : Ms. Arju Garodia

Date of Hearing : 27.09.2017

Date of Pronouncement : 28.09.2017

ORDER

PER C.N. PRASAD (JM)

1. These three appeals are filed by the assessee against various orders of the learned Commissioner of Income Tax (Appeals)-21, Mumbai for the Assessment Years 2010-11, 2011-12 and 2012-13 arising out of the Assessment Orders passed u/s. 143(3) r.w.s. 147 of the Act.

2. The only grievance of the assessee in all these appeals is that Ld.CIT(A) erred in confirming the addition at 4% of the purchases as against 8% of the purchases treated as non-genuine/bogus by the Assessing Officer.

3. Briefly stated facts are that, the assessments for all these three Assessment Years were reopened u/s. 147 of the Act based on the information received from the DGIT(Investigations), Mumbai that the assessee company is beneficiary of bogus purchases made from the entities operated/managed by Shri Bhanwarlal Jain and Shri Praveen Kuman Jain Group. During the course of search in the case of Shri Bhanwarlal Jain and Shri Praveen Kumar Jain they have admitted in the statement taken on oath u/s. 132(4) of the Act that they have indulged in providing accommodation entries and also admitted that these are paper companies with no real business transactions. Based on this information the assessments were reopened and in the course of reassessment proceedings assessee was required to prove the genuineness of the purchases made from the entities operated by Shri Bhanwarlal Jain/Shri Praveen Kumar Jain. Assessee furnished its submissions along with computation of income, annual account with tax audit report, purchase and sales registers, ledger accounts of the parties, copy of the bank statements reflection the payments and submitted that the purchases

made by the assessee are genuine. When the assessee was asked to produce the parties/suppliers for verification assessee failed to produce them before the Assessing Officer.

4. The Assessing Officer not convinced with the submissions of the assessee and since the suppliers were not produced and no delivery challans were furnished to prove that delivery of goods have been actually made by the alleged suppliers to the assessee and since the Directors of the supplier companies have deposed on oath that they were merely dummy Directors and use to sign different papers for nominal consideration given by Shri Bhanwarlal Jain and they were unaware of the place of operation, books of accounts and the business carried out by the concerns in which they are only dummy directors/proprietors, rejected the submissions of the assessee that the purchases made from these entities are genuine.

5. The Assessing Officer concluded that the transactions made by these entities managed by the Shri Bhanwarlal Jain/ Shri Praveen Kumar Jain group are only providing accommodation entries to the beneficiaries and assessee is one among such beneficiaries. Therefore, the Assessing Officer concluded that the material was debited against various suppliers have entered into stock register and the assessee has shown

corresponding sales against the said purchases debited, this could only mean that the diamonds were brought by the assessee from gray market which is very common practice prevalent in Surat and Mumbai, without bill and to adjust this transaction into the Books of Accounts assessee has obtained bogus bills from Shri Bhanwarlal Jain/ Shri Praveen Kumar Jain group concerns. Therefore, he concluded that the assessee obtained only the bogus bills without movement of goods and goods were purchased in gray market by paying cash. Therefore, taking note of all these facts into consideration the Assessing Officer estimated the gross profit margin at 8% of the purchase cost debited by the assessee against the entities of Shri Bhanwarlal Jain/Shri Praveen Kumar Jain group and brought to tax accordingly.

6. On appeal Ld.CIT(A) upheld the action of the Assessing Officer in treating the purchases as non-genuine as there is no movement of goods and it was admitted by Shri Bhanwarlal Jain/Shri Praveen Kumar Jain that they are providing only accommodation entries and there were no real transactions. Ld.CIT(A) also accepted the action of the Assessing Officer in disallowing certain percentage of impugned purchases in view of the decision of the Hon'ble Gujarat High Court in the case of CIT v. Bholanath Polyfab Pvt. Ltd. [355 ITR 290] and CIT v. Simit P. Seth [356 ITR 451]. Further, the Ld.CIT(A) taking note of the report of the task group for

Diamond Sector Submitted to Department of Commerce wherein the net profit margin in diamond manufacturing and trading was reported in the range of 1.5% to 4.5% and 1% to 3% respectively, he concluded that, as the assessee is trader in polished diamonds margin from such impugned purchases at 4% is appropriate.

7. Learned Counsel for the assessee before us submits that, most of the sales from assessee are 'H' Form sales and they are for associated enterprises and since sales are not disputed and since there was no transfer pricing adjustment made by the TPO on the sales to Associate Enterprise and as the addition is made on the assumption that the alleged purchases are most likely from gray market and as the Ld.CIT(A) has categorically accepted that the assessee is into trading of diamonds, it was submitted that the restriction of addition to 4% by the Ld.CIT(A) is not justified.

8. Ld. DR vehemently supported the orders of the Ld.CIT(A). She further submits that there is no appeal by the Revenue against the order of the Ld.CIT(A) restricting the addition to 4% of the purchases which is very much reasonable and therefore submitted that the Ld.CIT(A) order should be sustained.

9. We have heard the rival submissions, perused the orders of the authorities below. In this case the assessments were reopened based on the information from the DGIT(Investigations), Mumbai that assessee is a beneficiary from the entities operated by Shri Bhanwarlal Jain/Shri Praveen Kumar Jain wherein the search took place and it was found that Shri Bhanwarlal Jain/Shri Praveen Kumar Jain were providing only accommodation entries and there were no actual sale transactions and the assessee could not prove the movement of goods from the suppliers to the assessee. In the absence of delivery challans, proper stock records and based on the depositions of the suppliers that they have provided only accommodation bills, the Assessing Officer has rightly concluded that the assessee has obtained only bogus bills and assessee might have purchased goods in gray market. The Assessing Officer estimated the Gross Profit Margin on such purchases at 8% which the Ld.CIT(A) reduced to 4% taking note of the report of the Task Group for Diamond Sector submitted to the Department of Commerce observing as under: -

“4.2. The A.O called upon the appellant to establish the genuineness of the purchases. The AO noted that the concerns from whom purchases were shown did not have documents to prove the delivery of goods of the appellant. The concerns from whom purchases were claimed to be made were operating from premises which were in the name of Bhanwarlal Jain & Family. The suppliers/ bogus parties could not be produced before the A.O for examination. The A.O therefore concluded that the appellant had merely received bills but not the

material/goods from these parties. Though the appellant had shown corresponding sales against the purchases claimed, purchases were most likely made from grey market. Without bill and to adjust these transactions, bogus bills were obtained from Bhanwarlal Jain Group. The A.O. concluded that the diamonds purchased from the grey market are cheaper than the diamonds sourced from genuine dealers. Subsequently there is an element of discount in the case of cash purchased in the grey market. The A.O. therefore computed the additional G.P earned by the appellant has 8% of the purchase cost. Accordingly, disallowance/ addition of ₹.63,90,742/- was made to the returned income

4.3. In the appellate proceedings the Ld.AR submitted that the appellant was engaged in the business of trading in polished diamonds and manufacturing of jewellery. The appellant had requested the A.O. to furnish the copies of documents relied upon by him for treating the purchases as bogus and to also allow cross examination of the alleged parties. Neither of the request were granted by the A.O. The appellant had furnished detailed chart showing name of parties, date of purchase, quantity in carats, amount in rupees and details of exports made against each purchases. Stock book reflecting the purchases were also produced. Ledger accounts in respect of the purchases and copy of invoices for the purchase and corresponding sales were also furnished. It was contended that the initial burden on the appellant to prove the genuineness of the purchases was fulfilled. The A.O has not conducted any enquiry as regards the alleged bogus transactions of the appellant. No defects have been found in the books. The copies of the material based on which the A.O. concluded that the purchases are not genuine was not provided to the appellant. Once the sales (primarily exports) are not doubted, no addition can be made by doubting the purchases. As regards the absence of delivery challan, it was submitted that the A.O completely ignored confirmation on the purchase bills by the appellant by signing on the face of the bill as is the practice in diamond trade. The allegation that the purchase is from grey market is based on presumptions and surmises. It was also

contended that the estimation of gross profits @8% was quite high Reference was made to its own transfer pricing study report and the report of task group submitted in February 2013 presented to the Commerce and Industry Ministry. It was also submitted that all the impugned purchases are exported. Polished diamonds are purchased locally and exported. Further, that where H form is submitted, there is no levy of VAT and in the cases where VAT is levied, the same is refunded subsequently after export of diamonds. The appellant relied on the decision of the Hon'ble ITAT in the case of Say India Jewellers in ITA No.6735/Mum/2010 stating that no addition should be made.

4.4. I have considered the submissions of the appellant carefully. In the face of categorical denial by the alleged suppliers of diamonds of any real supply of goods, and the appellant's inability to establish the facts to be otherwise, the disallowance of purchases is clearly in order. The action of the assessing officer of disallowing a percentage of impugned purchases is in line with the view expressed in the decisions such as in the case of CIT vs. Bholanath PolyFab Pvt. Ltd. (2013) 355 ITR 290 and thereafter in the case of CIT vs. Simit P. Sheth (2013) 219 Taxman 85 (Guj).

4.5. It is noted that there is nothing distinguishable to identify the sales as corresponding to the purchases. However, the submission that the margin on trading in polished diamonds is low is supported by the report of the Task Group for Diamond Sector submitted to Department of Commerce in which it was reported that net profit in diamond manufacturing is in the range of 1.5 to 4.5% and in trading in the range of 1 to 3%. The appellants business is of trading in polished diamonds in respect of the impugned purchases. Thus, a margin of 4% is considered to be appropriate.

10. On a careful consideration of the totality of facts and circumstances and the findings of the Ld.CIT(A), we do not see any valid reason to interfere with the findings and the decision arrived at by the Ld.CIT(A) in

estimating the Gross Profit at 4% of the bogus purchases as against 8% estimated by the Assessing Officer. Thus, we uphold the order of the Ld.CIT(A) for all these Assessment Years i.e. 2010-11, 2011-12 and 2012-13.

11. In the result, appeals of the assessee are dismissed.

Order pronounced in the open court on the 28th September, 2017.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER
Mumbai / Dated 28/09/2017
VSSGB, SPS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asst. Registrar)
ITAT, Mum