IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI
BEFORE SHRI RAJENDRA, AM AND SHRI RAVISH SOOD, JM

ITA No. 3902/Mum/2017
(**निर्धारण वर्ष /** Assessment Year:2012-13)

M/s Priority Jewels Pvt. Ltd., Plot No. 121, Street No. 15/18, MIDC, Marol, Andheri (E), Mumbai-400 093.	**बनाम**/ Vs.	Assistant CIT-10(3)(2), Aayakar Bhavan Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./PAN No. AAECP4118		

(अपीलार्थी /**Applicant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओर से / **Applicant by**	:	Shri R.K. Sinha, A.R
प्रत्यर्थी की ओर से/**Respondent by**	:	Shri V. Jenardhanan, D.R

सुनवाई की तारीख / **Date of Hearing**	:	09.10.2017
घोषणा की तारीख / **Date of Pronouncement**	:	13.10.2017

आदेश / **O R D E R**

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-17, Mumbai, dated 03.03.2017 which in itself arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 28.03.2015. The assessee

assailing the order of the CIT(A) before us had raised the following grounds of the appeal:-

"1. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not deleting the entire estimated addition made by the assessing officer in respect of the doubtful purchases made from certain parties when the purchases were genuine and recorded in the books of accounts.*

2. *On the facts and in the circumstances of the case and in law, the learned CIT (A) erred both on facts and in law in deciding the matter. It is, therefore, requested that the Assessing Officer may be directed to delete the estimated addition made on account of doubtful purchases.*

3. *On the facts and in the circumstances of the case and in law, the learned CIT(A) was not justified in law for not deleting the entire estimated addition made by the assessing officer even when the appellant was not provided the copy of the statements and opportunity to cross examine the parties on the basis of whose the statements the purchases made from those parties were treated accommodation entry. The addition therefore cannot be sustained.*

4. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in coming to the conclusion that the investigation Wing of the income tax Department had already established the parties as hawala dealers. The addition made by the assessing officer and partially confirmed by the learned CIT (A) is illegal as the assessing officer has to take his own decision rather than following the decision of investigation Wing.*

5. *On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in confirming the view taken by the assessing officer that the purchases made from some of the parties by the appellant was hawala transaction without appreciating the evidences produced before the Assessing Officer.*

6. *On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in not deleting the entire addition made by the assessing officer by estimate in respect of the purchases made from few parties particularly when the books of accounts were not rejected by the assessing officer.*

7. *On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in not deleting the entire estimated addition made by the assessing officer particularly when it has been mentioned in the assessment order that it can be safely concluded that the purchases were indeed made even though not from the parties from whom the bills were taken and as the corresponding sales were in the Samples checked were offered to tax. The estimated addition made by the assessing officer is merely on the basis of human probabilities and suspicion, which is not permitted by law.*

8. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleing the entire addition made by the assessing officer on the basis of the difference in the GP of the comparable, which cannot be compared on various parameters with that of the appellant.

9. On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in not deleting the entire addition made by the assessing officer particularly when in the assessment order it has been mentioned that Rs. 41, 37, 804/- is added back to the income of the assessee on account of unexplained purchase whereas in the assessment order additions have been made on account o unexplained expenditure.

10. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not deleting the entire addition made by the assessing officer particularly when the assessing officer asked for a third party evidence with regard to sale of the jewellery made out of the alleged purchase,, the appellant had submitted the copies of diamond Quality Certificate / Diamond certificate of Authenticity issued by M/s. DGLA, Mumbai and M/s IGI, Mumbai in respect of the diamond jewellery manufactured by the assessee ad sold to various clients.

11. On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in not deleting the entire addition made by the assessing officer even when the sales have been accepted and various evidences were produced in respect of the purchases made especially the fact that payments were made through banking channels.

12. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in comparing GP of the comparables with different parameters than the ones used for calculating GP of the appellant, whereas the GP of the Appellant is more than the GP of the comparables if the same parameters are applied as that of the comparables selected by the A.O.

It is prayed that the entire addition of Rs. 41, 37, 804/- may kindly be deleted.

The appellant craved leave to add, alter or amend any of the aforementioned ground or grounds of appeal, which are without prejudice to each other, as and when an occasion may arise at the time of hearing.

2. Briefly stated, the facts of the case are that the assessee is engaged in the business of manufacturing of plain gold jewellery and other related products. The return of income was filed by the assessee on 28.09.2012, declaring total income of Rs.17,61,26,606/-. The case of the assessee was thereafter taken up for scrutiny assessment u/s 143(2). That information was received by the A.O from the

investigation wing of the department that the assessee was a beneficiary of accommodation bills of purchases from Bhawarlal Jain and Rajendra Jain group, as under:

Sr. No.	**Name of the entity**	**PAN**	**Amount (Rs.)**
1.	Lucky Exports	AEQPL 8566A	2,25,92,700/-
2.	Minal Gems	AHOPJ4856D	1,64,58,000/-
3.	Maximum Gems	ADYPL5014C	78,55,900/-
4.	Naman Export	AGWPC1001D	1,67,40,750/-
5.	Rahul Exports	AANFR5945A	1,65,89,625/-
Total			**8,02,36,975/-**

Rajendra Jain group:

Sr. No.	**Name**	**PAN**	**Amount (Rs.)**
1.	Kalash	AFRPJ9962J	18,76,420/-
2.	Karnawat	AADCK1927A	6,42,675/-
Total			**25,19,095/-**

That as per the aforesaid information the assessee had not made any genuine purchases from the aforesaid bogus concerns, but had only taken accommodation purchase bills from them.

3. Thus, in the backdrop of the aforesaid information the A.O called upon the assessee to substantiate the genuineness and veracity of the purchases claimed to have been made from the aforementioned concerns. The assessee submitted before the A.O that the purchase transactions with the said concerns were genuine and the payments to the aforementioned seven parties, viz. (i) M/s Lucky Exports (ii) Minal Gems (iii) Naman Export, (iv) Maximum Gems (v) Rahul Exports (vi) Kalash Enterprises; and (vii) Karnawat Impex were made through cheques. The assessee in order to substantiate the genuineness and veracity of the respective purchase transactions, placed on record the

details of the transactions with the aforementioned seven parties. The assessee in order to substantiate the consumption of the aforesaid purchases, therein submitted the details of the diamond studded jewellery which was manufactured using the diamonds purchased from the aforementioned parties along with the respective details in respect of the corresponding sales of the same. The assessee further placed on record the copies of Diamond quality certificates/Diamond certificate of authenticity issued by M/s DGLA, Mumbai and M/s IGI, Mumbai in respect of the diamond jewellery manufactured by the assessee company and sold to various clients. The A.O after deliberating on the aforesaid details furnished by the assessee, was however unable to comprehend the significance of the certificates which were furnished by the assessee in order to support the genuineness of the purchase transactions. It was observed by the A.O that the assessee had during the course of the assessment proceedings also expressed its inability to produce the aforementioned supplier parties from whom purchases were claimed to have been made, for examination before the A.O. That it was further observed by the A.O that the assessee not only failed to place on record the confirmations from the aforesaid respective supplier parties, but rather, even failed to furnish their present addresses and whereabouts. Thus, the A.O after deliberating on the aforesaid facts, therein concluded that the assessee apart from stressing that the payments to the respective supplier parties were made vide account payee cheques, however, failed to substantiate the genuineness of the purchase transactions. It was further observed by the A.O that the aforesaid claim of the assessee that the payments to the aforementioned parties were made vide account payee cheques also did not inspire much of confidence, as in the absence of the copies of the bank accounts of the aforementioned parties, the A.O could not

verify the trail of the said payments. The A.O on the basis of his aforesaid observations thus concluded that the assessee had purchased the goods under consideration, though not from the aforementioned parties from whom bills were taken, but from the open/grey market. The A.O though accepted the purchase of the goods, but however, for the failure of the assessee to substantiate that it had made the purchases from the abovementioned parties, therefore, declined to accept the source from which the same were claimed to have been made. The A.O holding a strong conviction that the assessee by purchasing the goods from the open/grey market must had benefited by procuring the same at a lower rate, therefore, in order to evaluate the amount of such profit that had remained suppressed on the part of the assessee, thus, deliberated on the trading results of certain other concerns involved in the trade line of the assessee. The A.O after referring to and taking cognizance of the trading results of various other concerns, therein observed that the gross profit in the case of the assessee could safely be taken at 17%, as against that shown by the assessee at 12% (approx.). Thus, the A.O on the basis of his aforesaid observations worked out the possible suppression of the profit by the assessee at 5% (approx.), on the basis of which a consequential addition of Rs.41,37,804/-[i.e 5% of (Rs.8,20,36,975/- (+) Rs.25,19,095/-)] was made to the income of the assessee on account of unexplained purchases carried out by it.

4. The assessee being aggrieved with the addition made by the A.O carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions of the assessee in the backdrop of the facts of the case, though principally did not dislodge the addition of the differential gross profit percentage that was made by the A.O to the total income of the assessee, but however, being of the view that

on the issue of payment of VAT the assessee could be given a further relief of 1%, thus restricted the estimated gross profit rate of the assessee at 16%.

5. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee submitted that the authorities below had erred in doubting the genuineness and veracity of the purchase transactions made by the assessee from the aforementioned concerns and had wrongly drawn adverse inferences in respect of the same. The ld. A.R in support of his aforesaid contention that no addition was called for in the hands of the assessee, therein relied on the order of a coordinate bench of the ITAT 'F', Mumbai in the case of Indo Unique trading, Pvt. Ltd., Mumbai Vs. DCIT-5(2)(1), Mumbai (ITA No. 6341/Mum/2016, dated 16.08.2017). It was submitted by the ld. A.R. that the Tribunal in the aforementioned case had held that where the A.O had simply relied on the report given by the investigation wing, then no addition made on the said count in respect of the bogus purchase could be sustained in the hands of the assessee. It was further averred by the ld. A.R that the A.O without rejecting the books of account of the assessee had wrongly made the addition in the hands of the assessee by alleging the purchase transactions to be bogus. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the order of the CIT(A).

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that it remains as a matter of fact that despite being afforded sufficient opportunity by the A.O, the assessee had failed to substantiate the genuineness and veracity of the purchase transactions under consideration. We have deliberated on

the facts of the case and find that the assessee except for stressing on its contention that the payments to the aforesaid parties were made vide cheques, had however absolutely failed to place on record any documentary evidence which could go to substantiate the veracity of the said purchase transactions. We find that the assessee was specifically directed by the A.O to produce the respective parties from whom it had claimed to have made the aforesaid purchases, but the assessee expressed its inability for doing the needful. We are of the considered view that in the backdrop of the information received by the A.O from the investigation wing of the Income tax department that the aforementioned parties were merely involved in hawala transactions and the assessee was a beneficiary of accommodation bills of purchases made available by them, therefore, a very heavy onus was cast upon the assessee to prove to the contrary and substantiate the genuineness and veracity of the purchases claimed to have been made from them on the basis of concrete and irrebutable evidence. However, we find that the assessee had absolutely failed to dispel the doubts haunting the veracity of the purchase transactions and could not substantiate the veracity of the same, so much so that even the addresses and the whereabouts of the said respective parties were also not furnished with the A.O in the course of the assessment proceedings. We are unable to persuade ourselves to accept the contention of the ld. A.R that as the payments to the respective parties were made vide account payee cheques, therefore, the genuineness of the purchases could not be doubted. We are of the considered view that merely making of a payment vide account payee cheque cannot be conclusively prove the genuineness and veracity of the purchase transactions, because it remains no hidden a fact that making of payments vide cheques duly forms part of the well knit chain of events involved in making of bogus purchases also. We further find that the

assessee had also failed to place on record the copy of the bank accounts of the alleged supplier parties, as a result whereof the trail of the money deposited therein also could not be verified by the A.O. We are of the considered view that the A.O in the present case had not merely made additions in the hands of the assessee on the basis of the information received from the investigation wing of the department, but rather had so done after conclusively proving that the assessee had failed to substantiate the genuineness and veracity of the purchase transactions during the course of the assessment proceedings. We further find that the A.O had adopted very well reasoned approach, and after benchmarking the gross profits margins of the assessee in the backdrop of the turnover parameter of certain other concerns, had therein fairly estimated the gross profit margin in the hands of the assessee at 17%. We find that the CIT(A) adopting a liberal approach had further allowed a relief of 1% to the assessee on the issue of payment of VAT. We find ourselves to be in agreement with the view arrived at by the CIT(A), and find no reason to dislodge his well reasoned order.

7. We find that the assessee had assailed the order of the CIT(A) on multiple grounds before us. That adverting to the specific issues on the basis of which the order of the CIT(A) had been assailed before us, we find that the contention of the assessee that the purchases made from the aforementioned supplier parties were genuine, cannot be accepted in light of our aforesaid observations. We are also not impressed by the contention of the assessee that the copy of the statements and opportunity for cross examining the aforementioned parties was not provided to it. We find that the A.O after establishing that the assessee had failed to discharge the primary onus as stood cast upon it as regards proving the genuineness and veracity of the

purchase transactions, had thereafter benchmarked the G.P. margin of the assessee in the backdrop of the trading results of certain other concerns in the trade line of the assessee applying the turnover filter, and only thereafter had estimated the gross profit margin of the assessee concern @17%. We are of the considered view that it is not a case where the A.O had made an addition in the hands of the assessee merely by acting on the statement of certain third parties, but as observed by us hereinabove, in the present case the A.O on the basis of independent observations and benchmarking the trading results of the assessee in the backdrop of that of the concerns in the trade line of the assessee, had thereafter only on the basis of a feasible comparison dislodged the trading results of the assessee and made additions in its hands. We are also unable to comprehend the contention of the assessee that the A.O had failed to take any independent decision of his own and had merely endorsed the decision of the investigation wing. We are of the considered view that the aforesaid contention of the assessee is absolutely misconceived and contrary to the material available on record, as it remains as a matter of fact that the A.O had made the addition in the hands of the assessee only after observing that the assessee had failed to substantiate the genuineness and veracity of the purchase transactions under consideration. We find that the assessee had further alleged that the A.O had failed to appreciate the evidences which were produced before him to substantiate the genuineness of the purchase transactions. We do not find ourselves to be in agreement with the aforesaid contention of the assessee and are of the considered view that whatsoever evidence was placed on record by the assessee, the same was duly considered by the A.O before characterising the purchase transactions as bogus. That as regards the contention of the assessee that the A.O had dislodged its book

results without rejecting the books of account of the assessee, we are unable to persuade ourselves to accept the same. We are of the considered view that as the A.O had not doubted the purchase and sale of the goods, but had concluded that in the backdrop of the information received from the investigation wing and the fact that the assessee could also not lead any independent evidence in respect of the source of the purchases, therefore, the same could not be accepted at the very face of it. We are also not persuaded to be in agreement with the contention of the assessee that the A.O had merely proceeded on the basis of human probabilities and suspicion, as we find that the assessee had after duly appreciating the evidence available on record carried out the exercise of estimation of the trading results in the hands of the assessee, which we are of the considered view can safely be characterised as a well reasoned one. That as regards the objection of the assessee to the reference of the G.P. rate of certain parties, we are of the considered view that the same were duly confronted to the assessee by the A.O during the course of the assessment proceedings and no objections at any stage was raised as regards the same by the assessee. Still further, we find that it is not a case that the A.O had transposed the trading result of any concern as against that of the assessee, but had merely benchmarked the trading results of the assessee in the backdrop of that of certain concerns operating in the trade line of the assessee, keeping in view the turnover parameter. We further find that the assessee had assailed the addition of Rs.41,37,804/- made by the A.O for the reason that he had referred to the same as an addition made on account of 'Unexplained expenditure' while culminating the assessment. We are unable to accept the aforesaid contention of the assessee, for the reason that though it remains as a matter of fact that the A.O had used the term 'Unexplained expenditure' in the body of the assessment order, but

then he had qualified the same by specifically using the term *'as discussed above'*, which we find was used in context of the observations recorded by the A.O at Para 3.11, which clearly revealed that the addition of Rs.41,37,804/-(supra) was made in the hands of the assessee on account of 'Unexplained Purchases'. We thus, in the backdrop of our aforesaid observations are unable to accept either of the contentions raised by the assessee at length before us vide grounds of appeal no. 1 to 12. The **Grounds of appeal no. 1 to 12** raised by the assessee are dismissed in terms of our aforesaid observations.

8. The appeal of the assessee is dismissed.

Order pronounced in the open court on 13.10.2017

Sd/-	Sd/-
(Rajendra)	(Ravish Sood)
Accountant Member	Judicial Member

मुंबई Mumbai;दिनांक 13.10.2017

आदेश की 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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**