

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एव श्री भागचन्द, लेखा सदस्य सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 879/JP/2016  
निर्धारण वर्ष/Assessment Year: 2007-08

M/s. Lunawat Gems Corporation Lunawat Market, Darra, Haldion Ka Rasta, Jaipur	बनाम Vs.	The DCIT Circle-2 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAFL 9325 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri G.M. Mehta, CA  
राजस्व की ओर से / Revenue by: Shri P.P. Meena, JCIT - DR

सुनवाई की तारीख / Date of Hearing : 05/02/2018  
घोषणा की तारीख / Date of Pronouncement : 9 /02/2018

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the Id. CIT(A)  
-1, Jaipur dated 01-07-2016 for the Assessment Year 2007-08 raising  
therein following grounds of appeal.

“1. That the Id. CIT(A) has erred in law and on facts in sustaining the legality of initiation of the action u/s 147 of the I.T. Act on the basis of borrowed satisfaction for which objections were raised by the assessee before AO but were disposed of through a non-speaking order dated 18-06-2014 by the AO.

2. Ignoring the better G.P. Rate achieved during the year than immediately preceding year and export of major goods

purchased from M/s. JPK Trading (I) Pvt Ltd. Id. CIT(A) was not justified in sustaining addition of Rs. 3,14,545/- which is equal to 15% of purchases of Rs. 20,96,965/- from said M/s. JPK Trading (I) Pvt. Ltd.

3. The Id. CIT(A) was not justified in sustaining addition of Rs. 3,14,545/- for which the requested opportunity to cross examine the seller M/s. JPK Trading (I) Pvt. Ltd was not provided to the assessee (2011) 334 ITR 262 (SC)

2.1 Apropos Ground No. 1 to 3 of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“3.1.2 Determination

(i) I have duly considered the submissions of the appellant, assessment order and the material placed on record. It is evident from the assessment order that the AO was having sufficient information in his possession that the appellant had taken accommodation entries from Shri Praveen Kumar Jain who admitted himself to working as an entry operator in the statement recorded on oath u/s 132(4) of the Act. It was deposited by Shri Praveen Kumar Jain (P.K. Jain) that he was issuing bogus invoices to the needy parties on commission basis. The appellant had also claimed to make purchases amounting to Rs. 20,96,965/- from M/s. JPK Trading Pvt. Ltd., a company controlled and managed by Shri P.K. Jain. It is therefore, held that the AO has reason to believe that the income had escaped assessment.

(ii) It may be mentioned that the Courts cannot look into the sufficiency of the reasons recorded by the AO for reopening the assessment u/s 147 of the Act. Reliance is placed on the decision of Hon'ble Apex Court in the case of Raymond Woollen Mills Ltd. vs ITO [1999] 236 ITR 34 (SC), wherein it was held by their lordship that:-

*In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed.*

(iii) Further, in the case of ACIT vs Rajesh Jhaveri Stock Brokers Pvt. Ltd. [2007] 291 ITR 500 (SC), it was held by the Apex Court that if the AO, for whatsoever reason, has reason to believe that income has escaped assessment, it confers jurisdiction to reopen the assessment. It is a fact that no assessment was made earlier u/s 143(3)144 of the Act in the case of the appellant, therefore, the ratio in the case of ACIT vs Rajesh Jhaveri Stock Brokers Pvt. Ltd (supra) applies squarely to the facts of the instant case under consideration.

(iv) Further, the objections raised by the appellant with respect to initiation of proceedings u/s 147 of the Act was also dealt by the AO vide its order dated 18-06-2014. It may be mentioned that at the time of initiation of proceedings u/s 147 of the Act, the AO must have some reason to believe that income has escaped assessment and he is not required to prove at all that the income has escaped assessment.

(v) In view of the above discussion, it is held that the AO was justified in reopening the case of the appellant for the year under consideration u/s 147 of the Act. Hence, this ground of appeal is rejected.

“3.3.2 Determination

Rejection of books of accounts:

(i) I have duly considered the assessment order, submissions of the appellant and the material placed on record. The appellant firm was engaged in the export of business of precious and semi-precious stones. It is noted from the assessment order that the Investigation Wing, Mumbai had conducted search and seizure operation over the group concern of Shri P.K. Jain (Praveen Kumar Jain) and it was established by the Investigation Wing that Shri P.K Jain was indulged into providing bogus bills to the needy persons without actually delivery of goods. This fact was established on the basis of the evidences recorded by the Investigation Wing. The Investigation Wing of the department recorded the statement of Shri P.K. Jain who was running a number of bogus concerns wherein it was stated by him that his business concerns were indulged in providing the accommodation bills to needy persons on commission basis. He further noted that he used to issue bogus sales invoices as per the requirement of parties on prefixed commission on the bill amount.

(ii) During the year under consideration, the appellant claimed purchase of Rs. 20,96,965/- from M/s. JPK Trading Pvt. Ltd., a company controlled by Shri P.K Jain. It is noted from the assessment order that a show cause notice was issued by the AO to the appellant requiring it to explain why the above purchases amounting to Rs. 20,96,965/- may not be

treated as bogus in view of the evidences gathered by the Investigation Wing of the Income-tax Department. In the assessment order, AO discussed the issue in detail and it was held by the AO that the purchases claimed to be made by the appellant from M/s. JPK Trading Pvt. Ltd., a company controlled by Shri P.K. Jain were bogus. The AO rejected the books of accounts of the appellant u/s 145(3) and made addition of Rs. 5,24,240/- (being 25% of Rs. 20,96,965/-) to the income of the appellant.

(iii) It was the contention of the appellant that its purchases were genuine as the payments were made through cheques and the AO has not doubted the sales and thus without purchases, the sales cannot be effected. The claim of the appellant that the payments have been made through cheque has no weight as it has been held in a number of cases that the payment claimed to be made through cheques is not sacrosanct. Further the AO has made addition of only 25% of amount of bogus purchases only after taking into account the fact that no sales could be effected without making the purchases.

(iv) It was the contention of the appellant that the AO relied only on the statement of concerned persons of said party taken behind the back of assessee by authorities made the said addition, without giving any opportunity to cross-examine these parties. In this regard, suffice it to say that the proceedings under the I.T. Act are not strictly covered by the provisions of the Indian Evidence Act. The fact in the present case is that the seller had accepted that he had not sold any goods to the appellant and the appellant was provided an opportunity to rebut this claim of the seller. As held by the Hon'ble Supreme Court in the case of Vasantlal (45 ITR 206), the only requirement is that a reasonable opportunity of being heard should be

provided to the assessee before an addition is made. It is seen that in the present case adequate opportunity of being heard was provided to the appellant. Hence, the plea of the appellant on this count also fails.

(v) Thus, it is clear from the above facts that the purchases shown to be made by the appellant from M/s. JPK Trading Pvt.Ltd remain unproved i.e. the trading results declared by the appellant remained unverifiable. It is therefore, held that the AO was justified in rejecting the books of account u/s 145(3) of the Act as held in a number of judicial pronouncements.

#### Estimation of income

(vi) It is noted that in various recent judgement of ITAT, Jaipur Bench, the Hon'ble Bench has upheld 15% disallowance of bogus / unverifiable purchases following its judgement dated 22-10-2014 in batch of cases Anuj Kumar Varshney vs ITO (ITA No. 187/JP/2012) and others. The AO has not doubted the sale of the appellant meaning there by the appellant must have purchased the goods sold by it from some other sources and in order to inflate its expenses, it procured bogus invoices from the concern controlled by Shri P.K. Jain. Respectfully following the above referred decision of Hon'ble ITAT Jaipur , it is held tht the 15% of unverifiable/bogus purchases is to be added to the income of the appellant. Therefore, out of the addition of Rs. 5,24,240/- made by the AO the addition to the extent of Rs. 3,14,545/- (being 15% of 20,96,965/-) is hereby sustained and the remaining addition of Rs. 2,96,695/- is hereby deleted.”

2.2 During the course of hearing, the ld.AR of the prayed that the ld. CIT(A) is not justified in sustaining legality of initiation of the action u/s 147 of the Act by the AO, not justified in sustaining the addition of Rs. 3,14,545/- and not allowing the opportunity to cross-examine the seller M/s. JPK Trading (I) Ltd. In this way, the ld.AR of the assessee opposed the order of the ld. CIT(A).

2.3 On the other hand, the ld. DR relied on the order of the AO and filed the details of the various case laws.

2.4 We have heard the rival contentions and perused the materials available on record. On perusal of the available records, it is noted that the assessee filed the return on 31-10-2007 declaring income of Rs. 13,76,920/- which was processed u/s 143(1) of the Act. It is noted that the Investigation Wing, Mumbai had conducted search and seizure operation over the group concern of Shri Praveen Kumar Jain and it was established by the Investigation Wing that Shri Praveen Kumar Jain was indulged in providing bogus bills to the needy person without actual delivery of goods. This fact was established on the basis of evidences recorded by the Investigation Wing. It is also noted that the Investigation Wing of the department recorded the statement of Shri Praveen Kumar Jain who is

running bogus concern in the name and style of M/s. JPK Trading (I) Pvt. Ltd., who stated that his business concerns are indulged in providing the accommodation bills to needy parties on commission basis. He further deposed that he used to issue bogus sales invoices as per the requirement of parties on prefixed commission on the bill amount. He used to prepare bogus tax invoices on the basis of information provided by the bill seekers and then bogus invoices were supplied to the needy parties. Then as per the availability of funds, the parties who had taken bogus invoices used to issue cheques having consideration amount which were received by the assessee. Thus the cheques having required amount were received by the assessee and they were deposited. After clearing the cheques, the assessee used to withdraw the cash amount and the cash withdrawn was returned back to the parties who had taken bogus invoices after deducting their prefixed commission. In this case, it is noted that the assessee had shown purchases from the above company of Shri Praveen Kumar Jain amounting to Rs. 20,96,965/-. The AO on examination of the records found that no actual purchases were made from these parties but their names were only used to inflate the business expenses and thereby reducing the income chargeable to tax. According to the AO, it is

established on the basis of information provided by the Investigation Wing that purchase from the parties are bogus and the bogus purchases pertaining to the Assessment Year under consideration representing income of Rs. 20,96,965/- had therefore, escaped assessment. The AO noted that it was failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Hence reasons for reopening of the cases were recorded and notice u/s 148 was issued on 24-03-2014 which was duly served upon the assessee. It is also noted that copy of reasons recorded were supplied to the assessee alongwith notice u/s 142(1) and notice u/s 143(2) dated 21-04-2014. The AO on examination of purchase details noted that the assessee had shown purchases from M/s. JPK Trading Pvt. Ltd amounting to Rs. 20,96,965/-. As per the statement of Shri Praveen Kumar Jain, it was found that M/s. JPK Trading Pvt. Ltd had never sold any goods and were only issuing bogus sales invoices and charged commission. The statement of Shri Praveen Kumar Jain is recorded at pages 2 and 3 of the assessment order. Accordingly, the assessee was show caused vide note sheet entry dated 24-07-2014 as to why the purchases made from M/s. JPK Trading (I) Pvt. Ltd may not be treated as unexplained bogus purchases u/s 69C of the I.T.

Act, 1961. It is noted that the assessee had requested for cross examination of the alleged director Shri Praveen Kumar Jain of M/s. JPK Trading (I) Pvt. Ltd. It is noted that in this case to provide reasonable opportunity a letter was again sent to the address of M/s. JPK Trading (I) Pvt. Ltd but it got returned unserved which showed that the entity is not genuine. According to the AO, the assessee was not able to provide any satisfactory explanation for the show cause notice issued to him. It is noted that the AO taking the resort of the various case laws as mentioned in the assessment order has made the trading addition of Rs. 5,24,240/- by disallowing 25% of unverifiable purchases of Rs.20,96,965/- observing as under:-

*“In the present case, assessee had claimed purchases of Rs. 20,96,965/- from M/s. JPK Trading (I) Pvt. Ltd. and this party is only issuing bogus sales invoices for the reasons given in detail in above para. Therefore, in the facts and circumstances of the case and in view of the decision of Hon'ble Gujarat High Court (supra), I disallow 25% of the unverifiable purchases of Rs. 20,96,965/- and made trading addition of Rs. 5,24,240/- to the declared gross profit of the assessee . This will result in addition of Rs. 5,24,240/- in the declared gross profit of the assessee.”*

In first appeal, it is noted that the Id. CIT(A) has confirmed the action of the AO as to initiation of proceedings u/s 147 of the Act by observing as under:-

*“(iv) Further, the objections raised by the appellant with respect to initiation of proceedings u/s 147 of the Act was also*

*dealt by the AO vide its order dated 18-06-2014. It may be mentioned that at the time of initiation of proceedings u/s 147 of the Act, the AO must have some reason to believe that income has escaped assessment and he is not required to prove at all that the income has escaped assessment.*

*(v) In view of the above discussion, it is held that the AO was justified in reopening the case of the appellant for the year under consideration u/s 147 of the Act. Hence, this ground of appeal is rejected.’’*

Further the Id. CIT(A) has reduced the trading addition to Rs. 5,24,240/- in view of the decision of ITAT Jaipur bench dated 22-10-2014 in the cases of Anuj Kumar Varshney vs ITO (ITA No.187/JP/2012) wherein the ITAT Jaipur bench has held that 15% of the unverifiable / bogus purchase is to be added to the income of the assessee. The relevant observation of the Id. CIT(A) is as under:-

*‘’(vi) It is noted that in various recent judgement of ITAT, Jaipur Bench, the Hon'ble Bench has upheld 15% disallowance of bogus / unverifiable purchases following its judgement dated 22-10-2014 in batch of cases Anuj Kumar Varshney vs ITO (ITA No. 187/JP/2012) and others. The AO has not doubted the sale of the appellant meaning there by the appellant must have purchased the goods sold by it from some other sources and in order to inflate its expenses, it procured bogus invoices from the concern controlled by Shri P.K. Jain. Respectfully following the above referred decision of Hon'ble ITAT Jaipur , it is held tht the 15% of unverifiable/bogus purchases is to be added to the income of the appellant. Therefore, out of the addition of Rs. 5,24,240/- made by the AO the addition to the extent of Rs. 3,14,545/- (being 15% of 20,96,965/-) is hereby sustained and the remaining addition of Rs. 2,96,695/- is hereby deleted.’’*

Taking into consideration the above facts and circumstances of the case, we noted that the Id. CIT(A) has elaborately discussed in the issues raised

by the assessee in his order which does not require any interference in the present situation. In this view of the matter, we confirm the order of the Id. CIT(A). Thus the appeal of the assessee is dismissed.

3.0 In the result, the appeal the assessee is dismissed

Order pronounced in the open Court on 9 -02-2018.

Sd/-  
( विजय पाल राव )  
(Vijay Pal Rao)  
न्यायिक सदस्य /Judicial Member

Sd/-  
(भागचन्द)  
(Bhagchand)  
लेखा सदस्य /Accountant Member

जयपुर /Jaipur

दिनांक /Dated:- 9 /02/ 2018

\*Mishra

आदेश की प्रतिलिपि अग्रेषित /Copy of the order forwarded to:

1. अपीलार्थी /The Appellant- M/s. Lunawat Gems Corporation, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle – 2, Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 879/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar