

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA

BEFORE SHRI N.V. VASUDEVAN, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1495/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2008-09)

M/s Style Gems and Jewells	Vs.	ITO, Ward- 31(4), Kolkata
3, Woodburn Park Road, Minto Park, Flat No.1B, 1 st Floor, Kolkata – 20.		10B, Middleton Row, Kolkata – 700 071.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :AAWFS 9727 N		
(Appellant)	..	(Respondent)

Appellant by

:ShriS. M. Surana, Advocate

Respondent by

:ShriSaurabh Kumar, Addl. CIT(Sr. DR)

सुनवाईकीतारीख/ **Date of Hearing**

: 06/02/2018

घोषणाकीतारीख/**Date of Pronouncement**

: 20/04/2018

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Assessee, pertaining to Assessment Year 2008-09, is directed against an order passed by the Commissioner of Income Tax(Appeals)-9, Kolkata, in Appeal No.211/CIT(A)-9/Wd-31(4)/2015-16/Kol, dated 11.05.2016, which in turn arises out of an order passed by the Assessing Officer u/s.143(3)/147 of the I.T. Act, 1961 (hereinafter referred to as the 'Act') dated 27.11.2015.

2.Although, in this appeal, the assessee has raised three grounds of appeal but at the time of hearing the main grievance of the assessee has been confined to Ground Nos.2 & 3 and Ground No.1 was not pressed. The solitary grievance of the assessee in Ground Nos.2 & 3 is that **purchases made by the assessee at Rs.9,36,314/- was not a bogus transaction/bogus purchase.**

3. The brief facts apropos this issue are that the assessee is a partnership concern engaged in the business of jewelry manufacturing and trading. Consequent upon the search proceedings, on Shri Goutam Jain & Others (Surat Diamond Concerns) Group (the Group referred to as "Gautam Jain & Others", which were believed to be engaged in providing non-genuine purchase bills, providing bogus sale bills and also unsecured accommodation "entries" to various interested parties. The assessee's case was reopened u/s 147 with the reason recorded and notice u/s 148 was issued to the assessee. The assessee had made purchases worth Rs.9,36,314/- from M/s Sparsh Exports Pvt. Ltd, as against the amount of Rs.20,73,726/-, which, as per the Assessing Officer, is the amount of sales made to the assessee by M/s. Sparsh Exports Pvt. Ltd. The Assessing Officer noted that out of Rs.20,73,726/- the assessee has himself confirmed that he had purchased goods worth Rs.9,36,314/- and the difference amounting to Rs.11,37,412/- (Rs.20,73,726/- - Rs.9,36,314/-) was treated by the Assessing Officer as unexplained expenditure. According to Assessing Officer, the assessee neither explained the purchase worth Rs.9,36,314/-, (which was treated by the assessing officer as bogus purchase), nor the assessee explained unaccounted expenditure of Rs.11,37,412/-. Therefore, the Assessing Officer made the addition at Rs.20,73,726/- (being, bogus purchase of Rs.9,36,314/- and an unaccounted expenditure at Rs.11,37,412/-).

4. On appeal, the Id CIT(A) directed the assessing officer to inform the DDIT(Inv) to locate the right person to whom this entry is given and take necessary action. The Id. CIT(A) observed that investigation wing found that one of the suppliers of the assessee was into the business of giving accommodation entries for purchases etc. The total sales shown by that supplier viz Sparsh Exports Pvt. Ltd to the assessee was Rs.20,73,726/-. Therefore, the assessment of the assessee was reopened u/s 148 and this purchase of Rs.20,73,726/- was treated as bogus and added to the

income of assessee. Considering these facts, the Id CIT(A) directed the assessing officer to inform the DDIT(Inv) to locate the right person to whom this entry was given in respect of the bogus purchase/unaccounted amounts, (being, bogus purchase of Rs.9,36,314/- and an unaccounted expenditure at Rs.11,37,412/-).

5. Not being satisfied with the order of the Id. CIT(A), the assessee is in appeal before us. The Id. Counsel for the assessee has submitted before us that assessee has made purchases at Rs.9,36,314/- from M/s Sparsh Exports Ltd. during the financial year 2007-08. The assessee had submitted the details of the said purchases before the Assessing Officer, such as, the invoice, payment details and also the confirmation from M/s Sparsh Exports Ltd, from whom the assessee purchased the goods. The books of accounts of the assessee does not contain the entry for the amount of Rs.11,37,412/- (Rs.20,73,726/- - Rs.9,36,314/-). Therefore, there was a discrepancy of Rs.11,37,412/- in purchase account as per statement from M/s Sparsh Exports Ltd. The Assessing Officer has not provided any material to the assessee prior to the statement recorded by the Investigation wing. Moreover, the payment was not established by the Assessing Officer, the addition on account of unaccounted expenditure was unjustified and not tenable. The Id. Counsel for the assessee pointed out that only on the basis of statement given to the Investigation Wing, the addition cannot be made, as the statement has not been corroborated by any tangible material. The counsel also submitted that no opportunity of cross-examination of M/s Sparsh Exports Ltd. had been given by the assessing officer before drawing adverse inference from the statement. The Id. Counsel submitted before us that addition made by the Id. Assessing Officer was on purely on conjecture and surmises. If the Assessing Officer proposes to use any material against assessee which was obtained by enquiry, it should have been cross-examined and for that an opportunity should be given to the assessee.

6. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that as per the reply made by M/s Sparsh Exports Ltd., in response to notice u/s 133(6), wherein it was mentioned that assessee purchased the goods worth Rs.20,73,726/-, whereas the assessee has shown purchases made from M/s Sparsh Exports Ltd. in his books of accounts only at Rs.9,36,314/-. The Assessing Officer noted that out of total purchase at Rs.20,73,726/- made by the assessee, the assessee has shown only purchases to the tune of Rs.9,36,314/-. Therefore, balance amount of Rs.11,37,412/- (Rs.20,73,726 - Rs.9,36,314) was treated by the Assessing Officer as an unexplained expenditure. We note that the Assessing Officer did not bring any cogent evidence on record to establish that the amount of Rs.11,37,412/- was an unexplained expenditure, except a statement made by the supplier of M/s Sparsh Exports Ltd, in response to notice u/s 133(6) of the Act. The statement made by the supplier of M/s Sparsh Exports Ltd has not been cross examined therefore, the Assessing Officer failed to bring any cogent evidence to demonstrate that assessee's purchases were bogus.

7.1 We also note that, on appeal to the CIT(A), the CIT(A) directed the Assessing Officer to inform the DDIT(Inv) to locate the right person. We note that so far the purchase of Rs.9,36,314/- is concerned it cannot be termed as bogus purchase, as the assessee submitted tax audit report, 3CD form, wherein list of books of accounts were mentioned. As per the tax audit report, the assessee was maintaining cash book, bank book, journal, purchase register, sales register, stock register etc. We note that

Assessing Officer has not found any mistake in the books of accounts maintained by the assessee and has not rejected the books of accounts of the assessee.

7.2 We note that the assessee maintains stock register and Assessing Officer has not examined the stock register to find out whether amount of Rs.20,73,726/- belongs to assessee or not. We also note that Assessing Officer made the addition purely based on the reply of the notice u/s 133(6) which was given by M/s Sparsh Exports Pvt. Ltd, stating that the assessee made purchase goods worth Rs.20,73,726/-. The statement of M/s Sparsh Exports Pvt. Ltd. has not been cross-examined with the assessee, that is, the Assessing Officer has not given an opportunity to the assessee to examine the statement furnished by M/s Sparsh Exports Ltd. The Assessing Officer cannot use the material against assessee by keeping the assessee in dark.

7.3 We note that the assessee under consideration is maintaining proper books of account including cash book, bank book, journal register, stock register and the assessing officer has failed to bring any cogent evidence on record to establish that the purchases made from M/s Sparsh Exports Pvt. Ltd. is not properly recorded in the books of the assessee. Therefore, we note that the addition made by the Assessing Officer was purely based on the guess work and conjectures, which is not justifiable. We also note that the Id. assessing officer, in the instant case erred in not giving an opportunity of cross-examination, for that we rely on the judgment of Hon'ble Supreme Court in the case of Andaman Timber Industries 281 ITR 214 (SC), wherein it was held that not allowing the assessee to cross-examine the witness by the adjudicating authority, though the statement of those witness were made, the basis of the impugned order, is a serious flaw of law which makes the order nullity.

Considering the entirety of the facts and circumstances of the case and material on record, we are unable to uphold the stand of the Id. AO in confirming the addition of Rs.20,73,726/-. Therefore, we are of the view that addition made by the Assessing Officer needs to be deleted. Accordingly, we delete the addition.

7.4 In the result, the appeal filed by the assessee, is allowed.

Order is pronounced in the open court on 20.04.2018.

Sd/-
(N.V. VASUDEVAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक Dated 20/04/2018

(RS, SPS)

Sd/-
(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant –M/s Style Gems and Jewells
2. प्रत्यर्थी/ The Respondent-ITO, Ward- 31(4), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.