

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

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

**BEFORE SHRI C.N PRASAD, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.1696/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2007-08)

M/s. Purnapurshottam Exports, Gala no. 6A, Ground floor, Hi-tex Industrial Compound, Behind Petro Pump, S.V. Road, Dahisar (E), Mumbai 400068	बनाम/ v.	ITO Ward -32(2)(5), C-11, 3 rd Floor, Pratyakshakar Bhavan, BKC, Bandra(E), Mumbai-400051
स्थायी लेखा सं./ PAN : AA EFP8085E		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:		Ms. Mrugakshi K. Joshi
Revenue by :		Shri Rajat Mittal (DR)

सुनवाई की तारीख / **Date of Hearing** : 25.04.2018

घोषणा की तारीख / **Date of Pronouncement** : 25.04.2018

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 1696/Mum/2017, is directed against appellate order dated 27.01.2017 passed by learned Commissioner of Income Tax (Appeals)-44, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2007-08, the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 23.03.2015 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2007-08.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

"Ground No. 1 : Passing ex parte order

1. *The learned CIT(A) erred in passing an order without providing the appellant sufficient opportunity of being heard.*

Ground No. 2 : Re-opening assessment u/s. 147/148

1. *The learned CIT(A) erred in confirming the order of the learned AO of re-opening the assessment without substantiating valid "reasons to believe" that income chargeable to tax had escaped assessment. The reasons cannot be non-existent and must be genuine and not a pretence. The reassessment proceedings are bad in law since the reasons to believe are non-existent.*

2. *The learned CIT(A) failed to take into consideration that information provided by the DGIT (Inv.), Mumbai cannot construe as 'tangible material' to justify the re-opening, since the concerned party has retracted the statement as the same being given under coercion/undue influence.*

3. *The learned CIT(A) erred in confirming learned AO's reopening the assessment purely on presumption basis and to make an enquiry or verification.*

4. *The learned CIT(A) failed to take into consideration the cogent evidence submitted by the appellant in the course of assessment proceedings.*

Ground No. 3 : Addition of Rs.1,57,77,971/- u/s 69C

1. *The learned CIT(A) erred in confirming the addition of the amount of Rs.1,57,77,971/- as unexplained expenditure u/s. 69C being purchases made from M/s Moulimani Impex Pvt. Ltd. of Rs.17,32,522/- and M/s Sun Diam of Rs.1,40,45,449/- purely on the baseless presumption of the involvement of cash element in the purchase transaction.*

2. *The learned CIT(A) failed to take into consideration the genuineness of the transaction, although details such as payments made by account payee cheques, bills/vouchers, copy of ledger account were furnished vide letter dated 16.10.2014 to the learned AO and no suspicious withdrawals and deposits have been pointed out by the learned AO in his order u/s. 143(3).*

3. *The learned CIT(A) erred in confirming the addition of the learned AO, made on presumptive basis without any authentic and concrete evidence, and without affording an opportunity of cross-examination of the vendors and disregarding the cogent material being given to him like the ledger account and copies of purchase bills of both the above said parties and bank statements of the appellant.*

4. *The learned CIT(A) failed to consider that the learned AO did not provide the Appellant, with the Affidavit or 'statement taken on oath' by Moulimani Impex Pvt. Ltd. and Sun Diam which were filed before the DGIT, Mumbai wherein a confession was apparently made that it indulged only in issuing bogus purchase entries to parties that*

approached them. The said Affidavit formed the basis of the entire addition and the same should have been provided to the Appellant.

5. The learned CIT(A) failed to consider the fact that the learned AO did not give the Appellant an opportunity for cross-examining the above mentioned 2 vendors from whom alleged bogus purchases were said to be made.

6. The learned CIT(A) failed to consider that the goods purchased from M/s Sun Diam and M/s Moulimani Impex Pvt. Ltd. were exported to the foreign buyers who could be identified from the appellant's stock register.

7. Without prejudice, the learned CIT(A) erred in not restricting the disallowance to the gross profit of the alleged bogus purchases instead of disallowing the entire Purchase amount

The Appellant craves leave to add, alter or amend the Grounds of Appeal at the time of or before the hearing of the appeal.”

3. The brief facts of the case are that the assessee is a firm engaged in the business of export and import of diamonds and precious and semi precious stones . A Search and seizure action u/s. 132 of the 1961 Act was carried out by DGIT(Inv.),Mumbai on 03.10.2013 in Shri Rajendra Jain group cases . On the basis of statement recorded of Shri Rajendra Jain and various other persons and also after making detailed enquiry by the investigation wing , it emerged that Shri. Rajendra Jain group was indulging in providing accommodation entries like bogus purchases, sales, unsecured loans , share capital etc. . The investigation wing passed on that information to the AO. The assessee was stated to be one of the beneficiary of having obtained accommodation entries of Rs. 1,57,77,971/- from M/s Sun Diam and M/s Moulimani Impex Pvt. , concerns of Shri Rajendra Jain group . based on such incriminating material, the AO reopened the concluded assessment of the assessee u/s 147 of the 1961 Act , wherein notices u/s 148 dated 27.03.2014 were issued by the AO to the assessee after recording reasons for reopening of the concluded assessment. The assessee did not object to the reopening of the assessment and hence the reassessment was completed by the AO on merits. The assessee was asked to prove the genuineness of the transaction of the alleged bogus purchases by the AO. The assessee in response submitted copy of ledger account and bank statement and sources of payments made by the assessee. The assessee did not submitted quantitative details, stock reconciliations , stock register , delivery of material proof and other details to prove the genuineness of the

purchases of the material . The AO relied upon the statement on oath given by Shri. Rajendra Jain wherein he stated on oath that , inter-aila, these two concerns namely M/s Sun Diam and M/s Moulimani Impex Pvt. along with several other concerns of Shri. Rajendra Jain group were only issuing bogus bills without supplying any material. The said Sh Rajendra Jain disclosed the entire modus operandi as to how hawala transactions were executed by them . The details were explained by Shri Rajendra Jain in his statement recorded on vide reply to question 14 to 15 , the said statement of Shri Rajendra Jain is reproduced here under:-

“ Whatever stated above is true and correct to the best of my knowledge and belief. The above statement is given by me voluntarily, without any force, threat, coercion, inducement, promise, or other undue influence. I further affirm that oath was administered to me before recording the statement. Further I declare that I have read , understood its contents and that the same has been recorded correctly.

*Sd/-06-10-13
(R.K. Kedia)
DDIT(Inv.)- Unit- II(4), Mumbai*

*sd/-06-10-13
(Rajendra Sohanlal Jain)
(DEPONENT)*

I, Surendra S Jain, S/o. Sobhagmal Jain, aged about 43 years, residing at 303, Laxmi Sadan, Paranjpe Scheme A, Road No. 2, Subash Road, Vile Parle(E), Mumbai- 400 057 in the capacity of business partner of Shri Rajendra Sohanlal Jain confirm that I have read over the above statement, further confirm that whatever stated above is correct and true and I shall abide with like same.

*Sd/-06-10-13
(R.K. Kedia)
DDIT(Inv.)- Unit-II (4), Mumbai*

*sd/- 06-10-13
(SURENDRA KUMAR JAIN)*

Q13. Please furnish details of all the business concerns which are directly or indirectly controlled by you alongwith shri. Surendra Jain.

Ans. Sir, we are operating through a no. of business concerns of all the three nature i.e. proprietorship firm, partnership firm as well as companies in the name of various persons including our employees. But for all practical purposes, myself and shri Surendra Jain are handling the entire business network on profit sharing basis. The name wise detail of all business concern of ours is as follows:-

<u>Proprietorship Firm</u>	<u>Name of Proprietor</u>
<i>a AVI Exports</i>	<i>Rajendra S Jain (myself)</i>
<i>b Kalash enterprises ,</i>	<i>Manish Jain</i>
<i>c Aadi impex</i>	<i>Anoop Jain</i>
<i>d Arihant Exports</i>	<i>Sachin pareek</i>
<i>e Vitrag Jewels</i>	<i>Mudit Karnawat (Ex-employee)</i>
<i>f Super Jewels</i>	<i>Ashok Jain (Ex-employee)</i>

<u>Partnership Firm</u>	<u>name of Partners</u>
<i>A Sun Diam</i>	<i>Rajendra S Jain(myself) & Manish Jain</i>

<u>Companies</u>	<u>Name of Director</u>
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a Kriya Impex Pvt. Ltd. Rajendra S jain (myself) & Manish Jain
b Sparsh exports pvt. Ltd. Rajendra S jain (myself) & Surendra Jain
c Karnavat impex pvt. Ltd. Sachin pareek and Manish Jain
d Mouliraani Pvt. Ltd Rajendra S jain (myself) & Sachin Pareek

Q.14 During the survey action undertaken at various office premises of yours; not a single piece of diamond has been found by respective survey teams though there is Substantial turnover shown by various concerns controlled by you. Please state as to where do you keep your stock in trade.

Ans. Sir, in this regard, I want to admit that we are engaged in business of bills shopping through all the concerns as named by me in response to your question no. 13 due to which we don't have any physical stock of diamond with us at any of our place at any point of time.' I would like to further add that we are merely lending names of our various concerns to the real importers of diamonds who takes the actual delivery of diamonds.

The AO discussed the modus operandi of these hawala transactions as under:

“7.3 In view of the above, it is evidently clear from the chart that Shri Rajendra Jain with Shri Surendra Jain had directly or indirectly controlled various business concerns of all the three nature i.e. Proprietorship firm, Partnership firm and Companies in the name of various persons including their employees and such firm includes Moulimani Impex Pvt. Ltd. (Directors Sh. Rajendra Jain & Sh. Sachin Pareek) and Sun Diam (Partners Sh. Rajendra Jain & Sh. Manish Jain).

7.4 After taking into account all the details submitted, it is necessary and expedient to narrate about the modus operandi involved in such unscrupulous transactions, as it will help in arriving at the judicious conclusion:

The person who wants to inflate his expenses to reduce the total income and there by tax liability, approaches the hawala giver. The hawala giver provides him a purchase invoice, accepts the cheque for which the bill is prepared. The cheque so obtained from the so called buyer is deposited in the account of the hawala giver then the hawala giver passes on this amount to three to four layers and ultimately cash is withdrawn from first account which is passed on to the purchaser after deducting the commission of the hawala giver. This is a raw method of accepting hawala purchase bills. In such cases total purchases being bogus, unproved and non-genuine straight way calls for disallowance on account of unproved expenses.

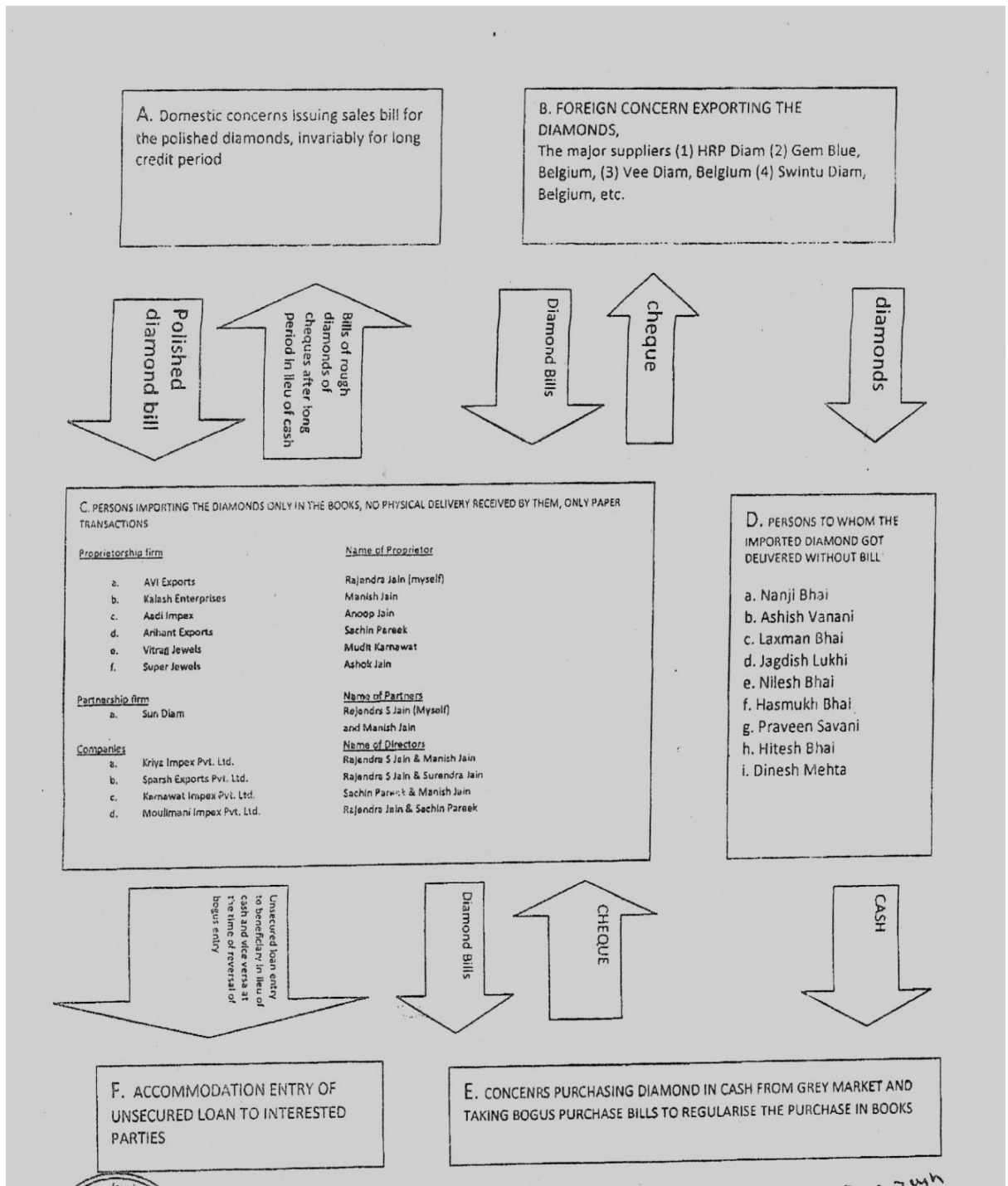
7.5 For sake of convenience, the relevant portion of the said statement is reproduced here in under:

Q. 15 Please explain the modus of your business operations.

Ans. Sir for the sake of clarity, I will explain the modus by finishing a pictorial diagram, which itself will be self explanatory.

(Shri Rajendra S Jain has been given time of one hour to prepare the said details)

I am submitting the same as under :



Thus, the AO made additions to the of Rs. 1,57,77,970/- towards alleged bogus purchases from these two concerns namely M/s Sun Diam and M/s Moulmani Impex Pvt made by the assessee , vide assessment order dated 23.03.2015 passed by the AO u/s. 143(3) r.w.s 147 of the Act.

4. Aggrieved by the assessment order dated 23-03-2015 passed by the AO u/s 143(3) r.w.s. 147 of the 1961 Act, the assessee filed first appeal with learned CIT-A but there was no appearance of the assessee before learned

CIT-A despite several notices issued by learned CIT-A to the assessee which led to dismissal of the appeal , the details of notices issued by learned CIT(A) are detailed hereunder :-

Date of issue of notice/ date of adjournment	Date fixed for hearing/ adjourned date	Remarks
14.10.2016	18.11.2016	No compliance
21.11.2016	06.12.2016	No compliance
07.12.2016	26.12.2016	No compliance
j 30.12.2016	25.01.2017	No compliance

Thus, the learned CIT-A dismissed the appeal of the assessee vide appellate order dated 27.01.2017, by holding as under:-

“5. Decision on grounds of appeal no. 1:

5.1 In this ground, the appellant has stated that there was no sufficient reason for reopening of assessment. However, it is seen from the assessment order that the appellant had not filed any objection against the re-opening of assessment, Further, the reason for reopening was communicated to the appellant. It is also seen from the assessment order that the AR of the assessee had attended before the AO and had filed details/explanations called for. In view of the above, the grounds of appeal no. 1 is dismissed.

6. Decision on grounds of appeal no. 2:

6.1 This ground relates to disallowance of Rs 1,57,77,971/- u/s 69C of the Act, The relevant facts are like this. The appellant is a firm engaged in the business of import and export of diamonds and semiprecious stones. The AO has received information from the Investigation Wing, Mumbai that the appellant had obtained accommodation entries of Rs 1,57,77,971/- through certain group concerns of Rajendra Jain Group of cases. After discussing the modus operandi of the group the AO came to a conclusion that the appellant had shown bogus purchase transaction to the extent of Rs 1,57,77,971/-. The AO accordingly made addition of Rs 1,57,77,971/- to the total income of the appellant u/s 69.C.of the Act.

6.2 During the course of appeal proceedings no one appeared nor was any written submission made. In absence of any written submission and/or document to substantiate the argument of the appellant against the view taken by the AO in the assessment order, it is held that the AO has rightly made the addition. The grounds of appeal no.2 is accordingly dismissed.

7. *In the result, the appeal is dismissed.*”

5. Aggrieved by the appellate order dated 27.01.2017 passed by learned CIT(A), the assessee has come in an appeal before the tribunal . At the outset Ld. Counsel for the assessee submitted that there was a change in address of the assessee from M/s Purna Purshottam Export, 304, Veena Niketan, Vayuduta Complex, Opp, Blue & White MTNL Bldg., Devidas Lane, Borivali (W), Mumbai 400 092. to M/s. Purnapurshottam Exports, Gala no. 6A, Ground floor, Hi-tex Industrial Compound, Behind Petrol Pump, S.V. Road, Dahisar (E), Mumbai 40006 but however inadvertently the said address was not notified to learned CIT-A which led to dismissal of appeal ex-parte by learned CIT(A). It was prayed that the appeal be decided by tribunal on merits. It was further submitted that the assessee is challenging both the reopening of the concluded assessment by Revenue u/s 147 as well issues arising in this appeal on merits . She relied upon certain judgement of the tribunal to contend that some reasonable profits be estimated in this case but at the same time she fairly agreed that learned CIT-A decided the appeal ex-parte in the absence of assessee as the new address was not notified by the assessee to the Ld. CIT-A and hence notices were not received by the assessee which was the reason for non-appearance of the assessee before the Ld. CIT-A leading to dismissal of appeal ex-parte by learned CIT(A). The Ld. DR strongly supported the orders of authorities below and submitted that the assessee has only submitted copy of ledger , bank statement and sources for making payment by cheque to these alleged hawala operators which is not sufficient to prove genuineness of the purchases . It was submitted that neither stock reconciliation statements nor quantitative details, stock register and proof of delivery of material etc. were submitted before the authorities below and hence primary onus itself could not be discharged by the assessee. It is also the submission of the Ld. DR that purchases are appearing in the books of the assessee and onus is on the assessee to establish by cogent evidences that these purchases are genuine and these are not merely accommodation entries/ bogus purchases as stated by Shri. Rajendra Jain in his statement recorded on oath recorded before DDIT(Inv) Mumbai. Thus, he prayed for sustaining the additions or in alternative prayed that the matter be restored to the file of the learned CIT(A) for fresh determination of the issue on merits.

6. We have considered rival contentions and perused the material on record. We have explained the facts in extenso in the preceding para's. . The assessee did not appear before learned CIT-A and claim is made before us by learned counsel for the assessee that there was a change in address which could not be notified to learned CIT-A inadvertently which led to dismissal of appeal ex-parte by learned CIT(A). Since there was no representation of the assessee before the learned CIT-A as there were a change in address of the assessee from M/s Purna Purshottam Export, 304, Veena Niketan, Vayuduta Complex, Opp, Blue & White MTNL Bldg., Devidas Lane, Borivali (W), Mumbai-400 092 to M/s. Purnapurshottam Exports, Gala no. 6A, Ground floor, Hi-tex Industrial Compound, Behind Petrol Pump, S.V. Road, Dahisar (E), Mumbai-400068 which could not be notified to the learned CIT(A) inadverantly as claimed by the assessee now , we in the interest of the substantial justice are of the considered view that the matter need to be set aside and restored to the file of learned CIT-A for fresh / de-novo adjudication of the issue on merits in accordance with law after giving proper and adequate opportunity of being heard to the assessee in accordance with principal of natural justice in accordance with law . The evidences filed by the assessee in its defence shall be admitted by learned CIT-A who shall adjudicate the same on merits in accordance with law. We would like to clarify that we have not commented on merits of the case and all the issues are kept open. We order accordingly.

7. In the result , the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 25.04.2018

आदेश की घोषणा खुले न्यायालय में दिनांक: 25 .04.2018 को की गई ।

Sd/-
(C.N PRASAD)
JUDICIAL MEMBER
Mumbai, dated: 25.04.2018

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

**DY/ASSTT. REGISTRAR
ITAT, MUMBAI**